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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 9

[Docket ID: FSA–2020–0004]

Notification of Funding Availability; Coronavirus Food Assistance Program (CFAP) Additional Eligible Commodities

AGENCY: Office of the Secretary, Agriculture (USDA).

ACTION: Notification of funding availability (NOFA).

SUMMARY: CFAP helps agricultural producers impacted by the effects of the COVID–19 outbreak. As provided in the CFAP regulation, this document announces additional commodities that have been determined eligible for CFAP assistance. USDA carefully reviewed the additional information provided in the comments to develop the list of additional commodities.

DATES: The notification of funding availability is effective August 14, 2020.

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

SUPPLEMENTARY INFORMATION: CFAP helps agricultural producers impacted by the effects of the COVID–19 outbreak. The CFAP regulations are in 7 CFR part 9. The CFAP regulations provide the general eligibility requirements, the application process, and payment calculation information. The CFAP rule was published in the **Federal Register** on May 21, 2020 (85 FR 30825–30835) and corrections were published in the **Federal Register** on June 12, 2020 (85 FR 35799–35800) and July 10, 2020 (85 FR 41328–41330). USDA is also publishing a correction to the final rule, which includes an extension of the

CFAP application deadline for all eligible commodities. CFAP applications will be accepted through September 11, 2020.

USDA requested information to evaluate whether additional commodities suffered losses that should result in eligibility for CFAP. The CFAP document that requested information from the public for additional commodities that suffered losses was published in the **Federal Register** on May 22, 2020 (85 FR 31062–31065), and a correction was published on June 12, 2020 (85 FR 35812). USDA specifically requested information in order to evaluate whether additional commodities suffered losses that should result in eligibility for CFAP. Comments were submitted through June 22, 2020, and USDA received a total of 1,740 comments from individuals and organizations.

In the interest of announcing additional commodities as eligible for CFAP as quickly as possible, we published a previous document in the **Federal Register** on July 10, 2020 (85 FR 41321–41323), announcing additional specialty crops that were eligible for CFAP. USDA has continued to review the information provided by the comments, and this document announces additional eligible specialty crops, non-specialty crops, and livestock that were not included in the regulation or the July 10 NOFA that announced additional agricultural commodities eligible for CFAP and the payment rates for each commodity. Payments for these commodities being added by this document will be calculated as specified in 7 CFR 9.5. This document also specifies the payment calculations and payment rates for aquaculture, nursery crops (including cut flowers), and frozen and liquid eggs, which were not included in the CFAP regulation. Payment rates for additional commodities announced in this notification are included in a table at the end of this document. Complete lists of all eligible commodities and payment rates as announced in the regulation and through the documents published in the **Federal Register** are available at <https://www.farmers.gov/cfap>.

In this document, the commodities and issues raised in the comments that were not addressed in the prior notification are discussed by type of

commodity. This document also lists the commodities for which assistance was requested that USDA has determined will not be eligible for CFAP.

Specialty Crops

Comment: Requesting that a number of specified commodities be added to the list of eligible specialty crops. The commodities experienced price decreases as much as other eligible commodities. Certain commodities should be eligible even when no price decrease was identified because they were affected by market chain disruptions.

Response: USDA evaluated the data submitted by commenters and Market News data when available. As a result of that evaluation, we are adding to the following list of commodities as eligible for CFAP: Aloe Leaves, Bananas, Batatas, Bok Choy, Carambola (Star Fruit), Cherimoya, Chervil (French parsley), Citron, Curry Leaves, Daikon, Dates, Dill, Donqua (Winter Melon), Dragon Fruit (Red Pitaya), Endive, Escarole, Filberts, Frisee, Horseradish, Kohlrabi, Kumquats, Leeks, Mamey Sapote, Maple Sap (for Maple Syrup), Mesculin Mix, Microgreens, Nectarines, Parsley, Persimmons, Plantains, Pomegranates, Pummelos, Pumpkins, Rutabagas, Shallots, Tangelos, Turnips (Celeriac), Turmeric, Upland and Winter Cress, Water Cress, Yautia (Malanga), and Yuca (Cassava).

Comment: Requesting eligibility for zucchini and coriander.

Response: Zucchini is considered a variety of squash, which was included as an eligible specialty crop in the final rule; therefore, no change is needed. USDA is adding coriander as eligible under the cilantro category, which was announced as an eligible crop in the July 10 document.

Comment: Requesting that USDA reviews additional data for pistachios, peppermint, and spearmint, which were not previously eligible for payment under 7 CFR 9.5(b)(1) for sales losses, but were eligible for payment for product that left the farm but spoiled due to loss of marketing channel (§ 9.5(b)(2)) and for product that did not leave the farm or mature crops that remained unharvested between January 15, 2020, and April 15, 2020, due to loss of marketing channel (§ 9.5(b)(3)), as announced in the July 10 document. Data was provided to substantiate a 5

percent price decrease for these commodities.

Response: USDA reviewed the data submitted by commenters and determined that these commodities experienced a 5 percent or more price decrease and are eligible for payment for sales losses under § 9.5(b)(1). This notification provides the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, Pub. L. 116–136) payment rate for sales losses for pistachios, and corrects the CARES Act payment rate for pistachios for product that left the farm but spoiled due to loss of marketing channel and the CCC payment rate. This document also revises the provisions for mint to separate it into three categories (peppermint, spearmint, and other mint) and provide the payment rates for each one, including CARES Act payment rates for sales losses for peppermint and spearmint. “Other mint” continues to be eligible for payment for product that left the farm but spoiled due to loss of marketing channel (§ 9.5(b)(2)) and for product that did not leave the farm or mature crops that were unharvested due to loss of marketing channel (§ 9.5(b)(3)), but is not eligible for payment for sales losses (§ 9.5(b)(1)).

USDA is also publishing a correction to the final rule to correct the payment rates and make the following crops eligible for payment for sales losses under § 9.5(b)(1): Onions, green; walnuts; and watermelons.

Non-Specialty Crops

Comment: Requesting CFAP assistance for ELS cotton, also known as Pima cotton.

Response: USDA’s National Agricultural Statistics Service (NASS) has only annual producer price data. The USDA Agricultural Marketing Service (AMS) daily spot price of \$1.10 per pound has not changed since December 31, 2019. The National Cotton Council suggested using the U.S. Census Bureau monthly export price data, which show a 7 percent price decline from January to April 2020. Under existing CFAP policy, export prices are not considered a proxy to producer prices. USDA has determined ELS (Pima) cotton is not eligible for CFAP due to a lack of national price data.

Comment: Requesting CFAP assistance for wheat types other than red hard spring and durum wheat, which are currently eligible for CFAP.

Response: USDA determined that other wheat varieties (including hard red winter, soft red winter, and soft white winter) are ineligible. The industry provided information recognizing that the monthly NASS prices between January and April

(which were not available during the initial CFAP analysis) do not support a 5 percent price loss. The National Wheat Association Growers requested that USDA instead compare the highest and lowest daily May 2020 futures contract between January and March, but this methodology does not conform with existing CFAP policy. USDA has determined that wheat varieties, with the exception of hard red spring wheat and durum wheat, are not eligible for CFAP due to not having a 5 percent or greater price decline, nationally.

Comment: Requesting CFAP assistance for tobacco. The tobacco industry acknowledged there was no price decline, but shared concerns regarding the contracted quantity and requested that USDA use the contracted amount for CFAP eligibility rather than the price decline.

Response: The Commodity Credit Corporation Charter Act prohibits use of CCC funds under 15 U.S.C. 714c(b), (d), and (e) for tobacco. NASS only publishes an annual marketing year average price for tobacco. Using contracted quantity to determine CFAP eligibility does not conform to existing CFAP policy. USDA has determined that tobacco is not eligible for CFAP due to a lack of national price data.

Comment: Requesting CFAP assistance for hemp.

Response: USDA evaluated data representing on farm sales prices from January to April 2020. While the national price did decrease during the first quarter of 2020, it was only a 1 percent decrease, which did not meet the 5 percent or greater decrease in price for CFAP eligibility. The national price is represented by the average of 5 regional published hemp biomass benchmark midpoints. USDA has determined hemp is not eligible for CFAP due to not meeting the 5 percent or greater price decline, nationally.

Comment: Requesting CFAP assistance for alfalfa.

Response: Alfalfa prices are dependent on several variables, making it difficult to determine a national price that represents the industry as a whole. Alfalfa is sold through either direct sales or auctions. The prices for the same quality, size, and locations can vary between direct and auctions sales, and differ from week to week and month to month. Alfalfa can be sold in bales and cubes, in various sizes, and the quality is tested and graded as supreme, premium, good, fair, and utility. Both the NASS monthly national prices and AMS direct sale prices showed a decrease in price from January 2020 to April 2020; however, the decrease was below 5 percent. While auctions are an

important part of the hay market, their sales are not as consistent as direct sales. Direct sales make up the majority of the markets sales because they are sales to dairies and feedlots. USDA has determined alfalfa is not eligible for CFAP due to not meeting the 5 percent or greater price decline, nationally.

Comment: Requesting CFAP assistance for green peanuts.

Response: The only data available for green peanuts during the weeks of January 15, 2020, and April 11, 2020, were AMS terminal market daily report prices, and an average price point was taken for each week. There was not a decrease between the two weeks; in fact, the price increased. USDA has determined green peanuts are not eligible for CFAP due to not meeting the 5 percent or greater price decline, nationally.

Livestock

Comment: Requesting CFAP assistance for sheep that were not previously determined to be eligible in the CFAP final rule.

Response: The CFAP final rule provided assistance for lambs and yearlings, which are defined as “all sheep less than 2 years old,” but did not provide assistance for other sheep. USDA has determined that all other sheep will also be eligible for CFAP. “All other sheep” includes all sheep that are 2 years old or older. Payments for all other sheep will be determined based on the calculation for lambs and yearlings in 9 CFR 9.5(f), using the payment rates provided in columns 3 and 4 of Table 2 of this document.

Comment: Requesting CFAP assistance for goats, including kids and young goats. Meat goat producers were unable to get animals to auction or processing plants due to facility closures due to COVID–19.

Response: USDA reviewed available data for goat prices. Nationally, slaughter goats did not suffer a 5 percent or greater price decline from mid-January to mid-April 2020. USDA has determined goats, including kids, are not eligible for CFAP due to not meeting the 5 percent or greater price decline, nationally.

Comment: Requesting CFAP assistance for bison, buffalo, and beefalo.

Response: Each individual category of bison slaughter data was researched (young bulls, young heifers, aged bulls, and aged cows). USDA reviewed data from the AMS Market News Monthly Bison Report for January 2020 and April 2020. No category met the 5 percent or greater price decline individually, or as a weighted average of all categories as

a whole. USDA has determined that bison, buffalo, and beefalo are not eligible for CFAP due to not meeting the 5 percent or greater price decline, nationally.

Comment: Requesting CFAP assistance for turkeys. The turkey industry stated that independent turkey farmers, who make up around 10 percent of the turkey industry, suffered financial losses because the number of turkeys requested by the processing plant decreased from their initial request to the farmer. Farmers had increased indirect costs due to raising birds that would not be sold.

Response: While USDA understands that turkey producers suffered losses, the turkey industry, as a whole, did not have a 5 percent or greater price decline, according to national prices from AMS. USDA has determined turkeys are not eligible for CFAP due to not meeting the 5 percent or greater price decline, nationally.

Aquaculture

Comment: Requesting CFAP assistance for oysters, clams, mussels, scallops, and marine algae.

Response: We understand that losses have been suffered and we have carefully considered the other assistance that is being provided by the Federal government. The Secretary of Commerce is authorized to provide assistance for molluscan shellfish and marine algae with funding provided by section 12005 of the CARES Act. To avoid providing duplicate payments for the same losses, USDA has determined that CFAP will not cover those commodities.

Comment: Requesting CFAP assistance for catfish, largemouth bass and carp sold live as foodfish, hybrid striped bass, red drum, salmon, sturgeon, tilapia, trout, ornamental or tropical fish, and recreational sportfish. Industry organizations indicated that most aquaculture producers faced an abrupt and significant drop in sales but did not suffer price losses. Many producers kept unsold fish inventories for possible sales at later dates; however, that inventory would likely be sold at reduced prices as animals grew past their optimal market size and producers would incur additional operational costs.

Response: USDA had determined that catfish, largemouth bass and carp sold live as foodfish, hybrid striped bass, red drum, salmon, sturgeon, tilapia, trout, ornamental or tropical fish, and recreational sportfish will be eligible for CFAP assistance. We recognize that aquaculture commodities are unique because they require continued feeding and care, and they continue to grow and

may ultimately exceed the size range that is preferred by buyers. In addition, many aquaculture producers cannot begin raising new fish while still maintaining the fish intended to be sold prior to April 15, 2020.

Payments for these aquaculture commodities will be the sum of:

(1) Aquaculture species sold (excluding crawfish) from January 15, 2020, through April 15, 2020, multiplied by the payment rate in column 3 of Table 3 in this document; and

(2) Inventory of the aquaculture species (excluding crawfish) that was not sold but was market size and available to be marketed between January 15, 2020, and April 15, 2020, multiplied by the payment rate in column 4 of Table 3 in this document.

Comment: Requesting CFAP assistance for crawfish.

Response: USDA had determined that crawfish will be eligible.

Payments for crawfish will be the sum of:

(1) Crawfish sales from January 15, 2020, through April 15, 2020, multiplied by the payment rate in column 3 of Table 3 in this document; and

(2) Crawfish inventory that was not sold as of April 15, 2020, due to lack of market and will not be sold in calendar year 2020 multiplied by the payment rate in column 4 of Table 3 in this document.

Nursery Crops and Cut Flowers

Comment: Requesting CFAP assistance for nursery crops and cut flowers.

Response: USDA has determined that CFAP will cover losses for nursery crops and cut flowers. "Nursery crops" means decorative or nondecorative plants grown in a container or controlled environment for commercial sale. "Cut flowers" includes cut flowers and cut greenery from annual and perennial flowering plants grown in a container or controlled environment for commercial sale.

There is no traditional market mechanism able to capture the price of thousands of different varieties of commodities of nursery crops and cut flowers; therefore, payments will be based on a percentage of the producer's wholesale value of inventory as described below. Payments for nursery crops and cut flowers will be the sum of:

(1) For nursery crop and cut flower inventory that was shipped but subsequently spoiled or is unpaid due to loss of marketing channels between January 15, 2020, and April 15, 2020,

the wholesale value of the inventory that was shipped that spoiled or is unpaid, multiplied by 15.55 percent; and

(2) For nursery crop and cut flower inventory that did not leave the farm between January 15, 2020, and April 15, 2020, due to a complete loss of marketing channel, the wholesale value of the inventory ready for sale that did not leave the farm by April 15, 2020, and that will not be sold due to lack of markets, multiplied by 13.45 percent.

Payment rates were determined using coverage rates that represent half of input costs multiplied by the 40.5 percent average reported revenue loss. This approach accounts for the higher percentage of input costs incurred prior to "harvest" of the inventory compared to traditional agricultural crops. The portion of the payment calculated under paragraph (1) above will be paid with CARES Act funding, and the portion of the payment calculated under paragraph (2) will be paid with CCC funding. Inventory that may be sold after April 15, 2020, is not eligible for CFAP.

Other

Comment: Requesting CFAP assistance for mink.

Response: NASS has only annual producer price data for mink. The data submitted by Fur Commission USA (FCUSA) show no sales in January because of the closure of auction houses; therefore, a 5 percent price loss cannot be determined. FCUSA requested that USDA instead compare January through April 2020 average prices with January through April 2019 average prices, but this methodology does not conform with existing CFAP policy. USDA has determined mink is not eligible for CFAP due to a lack of national price data.

Comment: Requesting CFAP assistance for mohair.

Response: NASS has only annual producer price data. A 5 percent price loss cannot be calculated, per existing CFAP policy, because the data submitted by Texas Sheep and Goat Raisers' Association (TSGRA) show no sales in April. The Mohair South Africa Auction Report is an alternative data source, but there were no auctions held in January and April to use to determine a proxy price. USDA has determined mohair is not eligible for CFAP due to a lack of national price data.

Comment: Requesting CFAP assistance for shell and dried eggs.

Response: AMS weekly data did not indicate a 5 percent or greater price decline from either shell or dried eggs from mid-January to mid-April 2020. USDA has determined shell eggs and

dried eggs are not eligible for CFAP due to not meeting the 5 percent or greater price decline, nationally.

Comment: Requesting CFAP assistance for liquid and frozen eggs.

Response: Two data sources (Urner-Barry and AMS Processed Eggs: Weekly National Egg Products (Fri.) report) for the weeks of January 15, 2020, and April 11, 2020, showed a greater than 5 percent price decline. USDA has determined that both liquid eggs and frozen eggs are eligible for CFAP. Payments for liquid and frozen eggs will be equal to the sum of the results of the following two calculations:

(1) First quarter production, multiplied by the CARES Act payment rate in Table 2 of this document; and

(2) First quarter production, multiplied by the CCC payment rate in Table 2 of this document.

Comment: Requesting assistance for the following commodities: Alligator, Ame, Aronia Berry, Asparagus Seed, Awa, Baby Beetroot, Bahia Grass Seed, Feed Barley, Bees, Bermuda Grass, Bitter Melon, Blue Grass Seed, Bovine Embryos and Semen, Breadfruit, Broccoli Romanesco, Buckwheat, Burdock, Cacao and Cocoa, Chayote,

Sweet Cherries, Tart Cherries, Chickpeas, Chukkar, Coffee, Crosnes, Culantro (Recaco), Dichondra, Dry Beans, Ducks, Edamame, Fennel, Field Peas, Flax Seed, Forage Crops, Game Birds and Chicks, Garlic Scapes, Ginger, Ginseng, Goat Milk, Grapes, Grass Seed, Green Nira, Guanabana, Guinea Pigs, Hay, Heart of Palm, Hon Tsai Tai, Honey, Hops, Horses, Jackfruit, Kai Lan, Kentucky Bluegrass, Lamb Pelts, Lavender, Lentils, Lerenese (Guinea Arrowroot), Limu (Ogo), Longan, Lychee, Macadamia Nuts, Mangoes, Methi Leaf, French Melon, Sun Jewel Melon, Sweet Sarah Melon, Mong Toi, Moringa, Nettles, Noni (Morinda Citrafolia), Olives, Ornamental Corn, Partridge Peas, Paw Paws, Pea Vine, Pheasants, Pitanos, Pollinators, Poultry, Prairie Hay, Prunes, Pulpwood (Hardwood and Pine), Pumpkin Seeds, Quail, Rabbits, Radishes, Rambutan, Sapodilla, Shen Li Hon, Shrimp, Snake Gourd, Spondias, Squab (Fledgling Pigeon), Straw, Sturgeon Caviar, Sugar Beets, Sunchoke, Sweet Potato Leaves, Tamarind, Tapioca, Tat Soi, Tea, Timber, Timothy Grass, Tomatillos, Tong Ho, Triticale, Turfgrass, Turtles, Snapping Turtles, Vanilla, Vegetable

Seeds, Wheatgrass, Wild Rice, Wine Grapes, Yam, and Yu Cho Sum.

Response: Commenters requesting assistance for these commodities did not provide sufficient data for USDA to determine eligibility. Due to a lack of information required to determine if these crops suffered eligible losses due to the effects of COVID-19, USDA has determined these crops are not eligible for CFAP.

Comment: Requesting assistance for maple butter, maple sugar, maple syrup, olive oil, wine, raisins, and cheese.

Response: USDA has determined that these commodities are not eligible because they are processed products and the intention of the program is to pay growers for losses of commodities, rather than processors. However, as noted above, maple sap is eligible.

USDA received several comments that addressed issues outside of the scope of the questions included in the notification.

USDA appreciates the input and will take the comments under consideration; however, at this time, for CFAP, USDA is only reviewing comments that addressed eligibility of commodities as provided in the notification.

TABLE 1—PAYMENT RATES FOR SPECIALTY CROPS

Commodity	CARES Act payment rate for sales losses (\$/lb)	CARES Act payment rate for product that left the farm but spoiled due to loss of marketing channel (\$/lb)	CCC payment rate (\$/lb)
Aloe Leaves	\$0.06	\$0.19	\$0.04
Bananas	0.34	0.20	0.04
Batatas .....	.....	0.32	0.06
Bok Choy	0.22	0.23	0.05
Carambola (Star Fruit) .....	.....	0.58	0.11
Cherimoya	1.83	0.98	0.19
Chervil (French Parsley)	2.74	8.09	1.58
Citron	0.32	0.26	0.05
Cilantro (Coriander)	0.19	0.23	0.05
Curry Leaves	2.40	5.25	1.03
Daikon .....	.....	0.19	0.04
Dates .....	.....	1.44	0.28
Dill .....	.....	5.38	1.05
Donaqua (Winter Melon)	1.42	0.60	0.12
Dragon Fruit (Red Pitaya) .....	.....	1.03	0.20
Endive	0.04	0.15	0.03
Escarole	0.11	0.18	0.04
Filberts	0.41	0.67	0.13
Frisee .....	.....	0.69	0.14
Horseradish .....	.....	3.72	0.73
Kohlrabi .....	.....	0.24	0.05
Kumquats	1.28	1.76	0.34
Leeks	0.14	0.18	0.03
Mamey Sapote	0.56	0.92	0.18
Maple Sap* (for Maple Syrup)	0.07	0.20	0.04
Mesculin Mix .....	.....	0.79	0.16
Microgreens .....	.....	7.15	1.40
Mint (Others not listed) .....	.....	0.93	0.18
Nectarines .....	.....	0.30	0.06
Parsley	0.19	0.23	0.04
Peppermint	1.60	5.40	1.06
Persimmons .....	.....	0.53	0.10

TABLE 1—PAYMENT RATES FOR SPECIALTY CROPS—Continued

Commodity	CARES Act payment rate for sales losses (\$/lb)	CARES Act payment rate for product that left the farm but spoiled due to loss of marketing channel (\$/lb)	CCC payment rate (\$/lb)
Pistachios	0.22	1.28	0.25
Plantains	0.18	0.15	0.03
Pomegranates		0.54	0.11
Pummelos		0.21	0.04
Pumpkins	0.72	0.39	0.08
Rutabagas	0.08	0.19	0.04
Shallots	0.51	0.70	0.14
Spearmint	1.60	4.80	0.94
Tangelos	0.05	0.22	0.04
Turmeric		1.05	0.20
Turnips (Celeriac)		0.20	0.04
Upland and Winter Cress		2.18	0.43
Watercress		2.18	0.43
Yautia (Malanga)	0.48	0.42	0.08
Yuca (Cassava)		0.16	0.03

* The payment rates for Maple Sap (for Maple Syrup) are \$/gallon.

TABLE 2—PAYMENT RATES FOR NON-SPECIALTY CROPS AND LIVESTOCK

Commodity	Unit	CARES Act payment rate (\$/unit)	CCC payment rate (\$/unit)
Liquid Eggs	Pound	\$0.05	\$0.02
Frozen Eggs	Pound	0.06	0.02
All Other Sheep (All sheep greater than 2 years of age)	Head	24.00	7.00

TABLE 3—PAYMENT RATES FOR AQUACULTURE COMMODITIES

Commodity	Unit	CARES Act payment rate (\$/unit)	CCC payment rate (\$/unit)
Crawfish	Pound	\$0.65	\$0.05
Catfish	Pound		0.07
Largemouth Bass and Carp Sold as Foodfish	Pound	0.51	0.39
Hybrid Striped Bass	Pound		0.25
Red Drum	Pound		0.24
Salmon	Pound	1.14	0.31
Sturgeon	Pound		0.29
Tilapia	Pound		0.16
Trout	Pound		0.11
Ornamental or Tropical Fish	Piece		0.03
Recreational Sportfish	Pound		0.27

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

[FR Doc. 2020-17781 Filed 8-11-20; 11:15 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 9

[Docket ID: FSA-2020-0004]

RIN 0503-AA65

Coronavirus Food Assistance Program; Correction

AGENCY: Office of the Secretary, Agriculture (USDA).

ACTION: Correcting amendments.

SUMMARY: The Secretary of Agriculture implemented the Coronavirus Food

Assistance Program (CFAP), which provides assistance to agricultural producers impacted by the effects of the COVID-19 outbreak, through a final rule published in the **Federal Register** on May 21, 2020. We were able to reevaluate the payment rates for certain specialty crops based on data that was available from industry in response to the CFAP notice of funding availability, which was published in the **Federal Register** on May 22, 2020. This document corrects payment rates and categories for those specialty crops that were published in the final rule. It also clarifies eligibility of aquaculture commodities and extends the CFAP

application deadline for all applicants until September 11, 2020.
DATES: *Effective Date:* August 14, 2020.
FOR FURTHER INFORMATION CONTACT: William L. Beam; telephone: (202) 720-3175; email: *Bill.Beam@usda.gov*. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION: This rule corrects the CFAP regulations in 7 CFR part 9, which were implemented in the final rule that was published in the **Federal Register** on May 21, 2020 (85 FR 30825-30835). This is the third set of corrections. The first set of corrections was published in the **Federal Register** on June 12, 2020 (85 FR 35799-35800), and the second set of corrections was published in the **Federal Register** on July 10, 2020 (85 FR 41328-41330). This document augments those corrections.

In response to the notice of funding availability published in the **Federal Register** on May 22, 2020 (85 FR 31062-31065), a few commenters requested that USDA review data supporting price decreases for certain commodities, including several that were specified in the CFAP regulation.

Accordingly, USDA is correcting 7 CFR 9.5 to make onions, green; walnuts; and watermelons eligible for payment under 7 CFR 9.5(b)(1), and adding CARES Act payment rates for sales losses for those crops to Table 1 to § 9.5(h). We are also correcting the other

rates for those crops based on our review of additional data. Additional eligible crops and changes to eligibility for crops previously announced in a notification published in the **Federal Register** on July 10, 2020 (85 FR 41321-41323) will be announced in a separate notification.

The addition in the payment rates and the resulting changes in the eligibility for specific types of payments per commodity will not change CFAP costs.

This rule also clarifies provisions regarding eligibility of aquaculture businesses in 7 CFR 9.5(j)(2). USDA understands that producers of molluscan shellfish and marine algae have suffered losses and we have carefully considered the other assistance that is being provided by the Federal Government. The Secretary of Commerce is providing assistance for these commodities with funding provided by section 12005 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, Pub. L. 116-136). To avoid providing duplicate payments for the same losses, USDA has determined that CFAP will not cover those commodities. Aquaculture commodities that will be covered by CFAP will be announced in a separate notification.

In addition, 7 CFR 9.5(j)(2) is being clarified that eligibility is based on the USDA determination that the aquaculture products incurred “qualifying losses between January 15, 2020, and April 15, 2020.” Specifically,

“qualifying losses” replaces “a decline in prices of 5 percent or more.”

List of Subjects in 7 CFR Part 9

Agricultural commodities, Agriculture, Disaster assistance, Indemnity payments.

Accordingly, 7 CFR part 9 is corrected by making the following correcting amendments:

PART 9—CORONAVIRUS FOOD ASSISTANCE PROGRAM

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

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

§ 9.4 [Amended]

■ 2. In § 9.4, amend paragraph (a) by removing “August 28, 2020” and adding “September 11, 2020” in its place.

■ 3. Amend § 9.5 as follows:

■ a. In Table 1 to paragraph (h):

■ i. Remove the entry for “Onions green”;

■ ii. Add the entry for “Onions, green” in alphabetical order; and

■ iii. Revise the entries for “Walnuts” and “Watermelons”; and

■ b. Revise paragraph (j)(2).

The addition and revisions read as follows:

§ 9.5 Calculation of payments.

* * * * *
 (h) * * *

TABLE 1 TO PARAGRAPH (h)—PAYMENT RATES FOR SPECIALTY CROPS
 [Including, but not limited to, the listed commodities]

Commodity	CARES Act payment rate for sales losses (\$/lb)	CARES Act payment rate for product that left the farm but spoiled or is unpaid due to loss of marketing channel (\$/lb)	CCC payment rate (\$/lb)
Onions, green	\$0.51	\$0.70	\$0.14
Walnuts	0.26	0.34	0.07
Watermelons	0.04	0.06	0.01

* * * * *
 (j) * * *
 (2) Producers that are privately owned aquaculture businesses growing freshwater and saltwater products in controlled environments, including raceways, ponds, tanks, and recirculating systems, extending to all farmed shrimp and salmonids (trout and salmon) are included in CFAP to the extent USDA determines individual

types of the products have incurred qualifying losses between January 15, 2020, and April 15, 2020. The determination of which species are included will be specified in the NOFA referenced in paragraph (j)(1) of this section. CFAP does not provide assistance for molluscan shellfish and marine algae.

* * * * *

§ 9.7 [Amended]

■ 4. In § 9.7, amend paragraph (h) by removing “August 28, 2020” and adding “September 11, 2020” in its place.

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

[FR Doc. 2020-17780 Filed 8-11-20; 11:15 am]

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 9885]

RIN 1545-BO56

Base Erosion and Anti-Abuse Tax; Correcting Amendment**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Correcting amendments.

SUMMARY: This document contains corrections to final regulations (TD 9885) that were published in the *Federal Register* on Friday, December 6, 2019. The final regulations implementing the base erosion and anti-abuse tax, designed to prevent the reduction of tax liability by certain large corporate taxpayers through certain payments made to foreign related parties and certain tax credits.

DATES:

Effective date: The final regulations are effective on August 14, 2020.

Applicability date: December 6, 2019.

FOR FURTHER INFORMATION CONTACT:

Sarah Hoyt at (202) 317-6848 or Julie Wang at (202) 317-6975 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

The final regulations (TD 9885) that are the subject of this correction are issued under § 1.1502-59A of the Internal Revenue Code.

Need for Correction

As published, December 6, 2019 (84 FR 66968) the final regulations (TD 9885; FR DOC. 2019-25744) contains an error that needs to be corrected.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

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

PART 1—INCOME TAXES

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

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

§ 1.1502-59A [Transferred]

■ **Par. 2.** Section 1.1502-59A is amended by transferring the section underneath the undesignated heading

“Special Taxes and Taxpayers” and following § 1.1502-55.

* * * * *

Martin V. Franks,

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

[FR Doc. 2020-16383 Filed 8-13-20; 8:45 am]

BILLING CODE 4830-01-P

PENSION BENEFIT GUARANTY CORPORATION**29 CFR Part 4022****Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits****AGENCY:** Pension Benefit Guaranty Corporation.**ACTION:** Final rule.

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

DATES: Effective September 1, 2020.**FOR FURTHER INFORMATION CONTACT:**

Gregory Katz (*katz.gregory@pbgc.gov*), Attorney, Regulatory Affairs Division, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, (202) 229-3829. (TTY users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to (202) 229-3829.)

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

PBGC uses the interest assumptions in appendix B to part 4022 (“Lump Sum Interest Rates for PBGC Payments”) to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Because some private-sector pension plans use these interest rates to determine lump sum amounts payable to plan participants (if the resulting lump sum is larger than the

amount required under section 417(e)(3) of the Internal Revenue Code and section 205(g)(3) of ERISA), these rates are also provided in appendix C to part 4022 (“Lump Sum Interest Rates for Private-Sector Payments”).

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

The September 2020 lump sum interest assumptions will be 0.00 percent for the period during which a benefit is (or is assumed to be) in pay status and 4.00 percent during any years preceding the benefit’s placement in pay status. In comparison with the interest assumptions in effect for August 2020, these assumptions represent no change in the immediate rate and are otherwise unchanged.

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

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

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

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

List of Subjects in 29 CFR Part 4022

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

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

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

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

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

■ 2. In appendix B to part 4022, rate set 323 is added at the end of the table to read as follows:

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

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)					
	On or after	Before		i_1	i_2	i_3	n_1	n_2	
* 323	* 9–1–20	* 10–1–20	* 0.00	* 4.00	* 4.00	* 4.00	* 7	* 8	

■ 3. In appendix C to part 4022, rate set 323 is added at the end of the table to read as follows:

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

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)					
	On or after	Before		i_1	i_2	i_3	n_1	n_2	
* 323	* 9–1–20	* 10–1–20	* 0.00	* 4.00	* 4.00	* 4.00	* 7	* 8	

Issued in Washington, DC.

Hilary Duke,

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

[FR Doc. 2020–17626 Filed 8–13–20; 8:45 am]

BILLING CODE 7709–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2018–0633; FRL–10011–71–OAR]

RIN 2060–AT80

Revisions to Appendix P to 40 CFR Part 51, Concerning Minimum Emission Reporting Requirements in SIPs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending a regulation that specifies what State Implementation Plans (SIPs) must require of sources in four categories with respect to continuous emission monitoring, recording, and reporting. Specifically, the amendments revise provisions that specify the minimum frequency for submitting reports of excess emissions that must be included in SIPs. The minimum frequency is being revised from “for each calendar quarter” to “twice per year at 6-month

intervals.” The four source categories covered are: Fossil fuel-fired steam generators; fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries; sulfuric acid plants; and nitric acid plants. As a result of this revision, states may choose to revise their SIPs to reflect the revised minimum frequency specified in our regulations. This action also corrects an erroneous cross-reference in our regulations.

DATES: This final rule is effective on September 14, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0633. All documents in the docket are listed in the <https://www.regulations.gov> website. Although listed in the index, some information may not be 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. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For further general information on this rule, contact Ms. Lisa Sutton, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, State and Local Programs Group (C539–01), Research Triangle Park, NC 27711,

telephone number (919) 541–3450, email address: sutton.lisa@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected directly by this action include states, United States (U.S.) territories, local authorities and eligible tribes that are currently administering, or may in the future administer, EPA-approved implementation plans (collectively “states”).¹ Entities potentially affected indirectly by this action are sources categorized as fossil fuel-fired steam generators, fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries, sulfuric acid plants, or nitric acid plants. For convenience, the EPA’s reference to “affected sources” in this rulemaking generally refers to sources affected by SIP requirements, i.e., those sources to which a SIP’s 40 CFR part 51, appendix P-specified monitoring requirements actually apply. While all sources among the appendix P source

¹ The EPA respects the unique relationship between the U.S. Government and tribal authorities and acknowledges that tribal concerns are not interchangeable with state concerns. Under the CAA and EPA regulations, a tribe may, but is not required to, apply for eligibility to have a tribal implementation plan (TIP). For convenience, the EPA refers to either “states” or “air agencies” in this rulemaking when meaning to refer in general to states, the District of Columbia, U.S. territories, local air permitting authorities and eligible tribes that are currently administering, or may in the future administer, EPA-approved implementation plans.

categories (when not already excepted in appendix P itself) are *potentially* affected by such requirements, it is within the state's discretion to grant an exemption in its SIP from applicability of the appendix P-specified monitoring requirements for certain sources. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

B. What is the Agency's authority for taking this action?

This action is being taken by the EPA under the authority of sections 110(a)(2)(F) and 301(a) of the Clean Air Act (CAA).

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

In addition to being available in the docket, an electronic copy of this **Federal Register** document will be posted at <https://www.epa.gov/air-quality-implementation-plans/develop-air-quality-sip#guidance>.

D. How is this final rulemaking organized?

The information presented in the preamble is organized as follows:

- I. General Information
 - A. Does this action apply to me?
 - B. What is the Agency's authority for taking this action?
 - C. Where can I get a copy of this document and other related information?
 - D. How is this final rulemaking organized?
 - E. Judicial Review
- II. Amendments to Appendix P
 - A. Background and Summary of the Proposed Rule
 - B. Summary of Comments on the Proposed Rule and the EPA's Responses
 - C. Final Action
- III. Environmental Justice Considerations
- IV. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
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 - C. Paperwork Reduction Act (PRA)
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 - F. Executive Order 13132: Federalism
 - G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
 - I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

- J. National Technology Transfer and Advancement Act (NTTAA)
- K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- L. Congressional Review Act (CRA)
- V. Statutory Authority

E. Judicial Review

Under CAA section 307(b)(1), judicial review of this nationally applicable 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.

II. Amendments to Appendix P

A. Background and Summary of the Proposed Rule

Pursuant to CAA section 110, the EPA established procedural requirements applicable to all states concerning the preparation, adoption, and submission of SIPs and SIP revisions. These regulations, initially promulgated in 1971, comprise 40 CFR part 51, "Requirements for Preparation, Adoption, and Submittal of Implementation Plans." Like the SIPs themselves, these regulations are periodically revised. The EPA in 1975 promulgated appendix P to 40 CFR part 51, setting forth minimum requirements for continuous emission monitoring that each SIP must require of certain specified categories of existing stationary sources in order to be approved under the provisions of 40 CFR 51.19 (now 40 CFR 51.214). *See* 40 FR 46240 (October 6, 1975). With respect to reporting requirements, appendix P specified under paragraph 4.1 that the SIP "shall require owners or operators of facilities required to install continuous monitoring systems to submit a written report of excess emissions for each calendar quarter and the nature and cause of the excess emissions, if known."² The reports are required whether or not excess emissions occurred within the reporting period (*see* appendix P, paragraph 4.5). At the time of promulgation in 1975, this specification in appendix P of quarterly reporting as the minimum frequency was by design aligned with the quarterly reporting frequency generally specified for new sources under 40 CFR part 60.

² *Id.* at 46249/1.

Over the next many years, the EPA expanded the types of sources to be regulated pursuant to CAA sections 111 (for New Source Performance Standards (NSPS)) and 112 (for National Emission Standards for Hazardous Air Pollutants (NESHAP)), and those later regulations (*e.g.*, NSPS under 40 CFR part 60 and NESHAP under 40 CFR parts 61 and 63) increasingly allowed sources to submit such reports on a less frequent basis, semiannually or in some cases even annually.

In finalizing revisions to appendix P, the EPA is resolving a longstanding inconsistency in reporting requirements for certain categories of sources between (i) those specified as the minimum for appendix P source categories in the SIP context (under 40 CFR part 51) and (ii) those prescribed for similar sources through NSPS (under part 60) or NESHAP (under 40 CFR parts 61 and 63).

B. Summary of Comments on the Proposed Rule and the EPA's Responses

Through a notice of proposed rulemaking (NPRM) (85 FR 10121, February 21, 2020), the EPA solicited public comment on proposed revisions to appendix P to 40 CFR part 51—to change the minimum frequency of continuous emission monitoring reports specified for SIPs and to correct an erroneous cross-reference. Also through the NPRM, the EPA invited the public to comment on information collection activities in the rule; *see* section IV.C of this document for a brief summary of the Information Collection Request (ICR) document that the EPA prepared. The EPA received three comment submissions on its proposed revisions to appendix P to 40 CFR part 51. Two submissions were from state commenters and one submission was from an industry commenter. All comments concerned the proposed change in appendix P's minimum reporting frequency specified for SIPs. Among comments received, none were adverse comments, none were specific to the proposed correction of the cross-reference in appendix P, and none were specific to the ICR document. In this section of the final rule, the EPA summarizes and responds to comments received.

Comment: All commenters fully supported the proposed change in reporting frequency. These commenters agreed with the EPA's observation that the proposed reduced frequency of continuous emission monitor data reporting (semiannual reporting frequency) is already allowed under most Federal rules applicable to facilities among the same source

categories as those listed under appendix P. All commenters also agreed that, as the EPA described in its experience, semiannual reporting provides sufficiently timely information to ensure compliance and enable adequate enforcement of applicable requirements while imposing less burden on the affected industry than would quarterly reporting.

Response: The EPA acknowledges the commenters' support of the proposed revision to the minimum reporting frequency specified in appendix P for SIPs.

Comment: Two commenters suggested that the appendix P revisions, by allowing less frequent reporting, would potentially reduce states' burden associated with receipt and review of continuous emission monitor reports and would not compromise compliance with or enforceability of the SIPs' emissions reporting requirements.

Response: The EPA agrees that the appendix P revisions, by allowing less frequent reporting, may result in a reduction in burden associated with a state's receipt and review of reports. This rule will *directly* affect burden on a state, however, only so far as the state chooses to prepare and submit a SIP revision that includes an appendix P-related provision. The changes to appendix P made in this action do not, by themselves, revise any SIP provisions. In the case where a state does choose to revise its SIP to allow less frequent reporting by some or all sources in the four appendix P source categories, any further effect on burden, such as that associated with the state's receipt and review of reports, will depend on factors unique to that state. Those factors include, *e.g.*, the number of sources in the state among appendix P source categories and whether the SIP grants certain sources an exemption from applicability of the appendix P-specified monitoring requirements (as appendix P allows, such as because the sources are subject to NSPS requirements). Accordingly, when estimating regulatory burden associated with this rulemaking, the EPA did not address potential reduction in states' burden attributable to less frequent reporting.

Comment: All commenters asserted that the appendix P revisions would potentially reduce reporting burden for owners and operators of affected sources. As a case in point, the industry commenter referred to NSPS regulations applicable to refineries (40 CFR part 60, subpart Ja), which apply to one of the appendix P source categories (fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries).

The commenter calculated the approximate cost of semiannual excess emission reporting to be \$4,200 per refinery per year, based on the EPA's associated burden estimate. The commenter stated that activities contributing to the reporting burden are relatively independent of the length of the reporting period and that "quarterly reporting, where it is imposed through a SIP program, would roughly double the reporting burden cost." On that basis, the commenter concluded that to allow semiannual reporting in regulations imposed through a SIP "has the potential to significantly reduce the burdens imposed on respondents."

Response: The EPA agrees that the revision of reporting frequency requirements in SIPs may *indirectly* provide burden reduction for sources. The EPA notes, however, that this action neither revises any SIPs nor has any *direct* effect on industrial sources. Any effect on burden for potentially affected sources depends on the extent to which (or even whether) the state in which each source is located decides to revise its SIP to reflect the revisions to appendix P. Accordingly, in estimating regulatory burden associated with this rulemaking, the EPA did not include a quantitative estimate of potential burden reduction for industrial sources.

C. Final Action

The EPA is amending appendix P to 40 CFR part 51, which specifies what SIPs must require of sources among four categories with respect to continuous emission monitoring, recording, and reporting. Those four appendix P source categories are: Fossil fuel-fired steam generators; fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries; sulfuric acid plants; and nitric acid plants.

All revisions proposed in the NPRM (85 FR 10121, February 21, 2020) are being finalized without substantive change in this action. This action changes the minimum reporting frequency specified in appendix P for SIPs from "for each calendar quarter" to "twice per year at 6-month intervals." The change aligns the minimum reporting frequency specified in appendix P for SIPs with the reporting frequency that the EPA has generally established under more recently updated programs applicable to sources among the four appendix P source categories, as the EPA explained in the NPRM. As a result of this change, a state may in turn choose to revise its SIP's reporting frequency requirement applicable to appendix P source categories. With this action, the EPA is achieving its mission of protecting

public health and the environment by assuring that SIPs continue to apply adequate monitoring requirements. This action does not obligate a state to revise its SIP, however. The change in minimum reporting frequency specified in appendix P does not affect any state choosing to retain a more frequent reporting frequency requirement in its SIP for affected source categories. Therefore, this action will directly affect burden on a given state only to the extent that the state voluntarily prepares and submits a SIP revision that includes an appendix P-related provision. The EPA has prepared and submitted to OMB an Information Collection Request (ICR) document to estimate the regulatory burden from information collection activities associated with this rule. That burden is attributed to states' preparation and submission of SIP revisions, a type of reporting burden. The ICR is briefly summarized in Section IV.C of this document, and a copy of the ICR is available in the docket for this rulemaking. Aside from the direct burden attributed to states' preparation and submission of SIP revisions, the EPA anticipates that the final rule will indirectly reduce reporting-related burden on certain states and affected sources located in those states, while continuing to protect public health and the environment. The EPA has found, as noted in the NPRM at section IV.A, that semiannual reporting provides sufficiently timely information to ensure compliance and enable adequate enforcement of applicable requirements while imposing less burden on the affected industry than would quarterly reporting. The EPA does not expect the change in minimum reporting frequency to result in any change in the pollutant emissions from any of the sources.

In this action, the EPA is also revising a cross-reference in appendix P under section 1.0, as explained in the NPRM at section II.A, so that it correctly refers to the continuous emission monitoring regulations at 40 CFR 51.214.

Notwithstanding the revisions to appendix P being promulgated in this action, a source that is subject to more stringent federally enforceable excess emission reporting requirements would be required to comply with the applicable provisions of those rules.

III. Environmental Justice Considerations

A change in the specified minimum frequency with which affected sources must submit continuous monitoring system data reports to states, as a result of the final rule revising appendix P, is not expected to result in any change in

the pollutant emissions from any of the affected sources. Therefore, the EPA concludes that this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations.

IV. Statutory and Executive Order Reviews

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

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

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

This action is 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 rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2590.01. It will be assigned an OMB control number upon approval by OMB. You can find a copy of the ICR submitted to OMB in the docket for this rule, and it is briefly summarized here.

The regulatory burden under the information collection is attributed to states' preparation and submission of SIP revisions, a type of reporting burden. For purposes of estimating the paperwork burden, the EPA assumes that each of 56 entities, including states, the District of Columbia, and U.S. territories, would make a single SIP submission that includes an appendix P-related provision within 3 years after the effective date of the rule, corresponding to the requested 3-year collection period. There are no capital costs or operation and maintenance costs attributed to the rule.

Respondents/affected entities: All states.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 56.

Frequency of response: One-time.

Total estimated burden: 3,080 hours per year (or 55 hours per respondent per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$191,200 per year (or \$3,414 per respondent per year),

with no capital cost and no operation and maintenance cost.

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. Any 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 this rule. This action will not impose any requirements on small entities. Instead, this action leaves to each state the choice as to whether to reflect in its SIP a reduction in minimum reporting frequency specified for certain categories of stationary sources regulated under the CAA.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. It would not have a substantial direct effect on one or more Indian tribes, since no tribe has to develop a TIP under these regulatory

revisions. Furthermore, these regulation revisions do not affect the relationship or distribution of power and responsibilities between the Federal Government and Indian tribes. The CAA and the Tribal Air Rule establish the relationship of the Federal Government and tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because the reduction in minimum reporting frequency specified for certain categories of sources regulated under the CAA will have no effect on any obligation to comply with emission limitations in SIPs, and so it does not concern an environmental health risk or safety risk.

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

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This action merely allows states the option to reflect in their SIPs a reduction in minimum reporting frequency specified for certain categories of stationary sources regulated under the CAA.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

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

This action merely allows states the option to reflect in their SIPs a

reduction in minimum reporting frequency specified for certain categories of stationary sources regulated under the CAA, which will have no effect on any obligation to comply with emission limitations in SIPs.

L. Congressional Review Act (CRA)

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

VI. Statutory Authority

The statutory authority for this action is provided by CAA section 101 *et seq.* (42 U.S.C. 7401 *et seq.*).

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Nitrogen oxides, Opacity, Ozone, Reporting and recordkeeping requirements, Sulfur dioxide, Sulfur oxides, Transportation, Volatile organic compounds.

Andrew Wheeler,
Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Appendix P to Part 51—[Amended]

■ 2. In appendix P to part 51:

■ a. Paragraph 1.0 is amended by removing “40 CFR 51.165(b)” and adding in its place “40 CFR 51.214”;

■ b. Paragraph 4.1 is amended by removing the words “for each calendar quarter” and adding in their place the words “twice per year at 6-month intervals”;

■ c. Paragraph 4.6 is amended by removing the words “in the quarterly summaries, and” and adding in their place the words “as specified in paragraph 4.1 of this appendix,”;

■ d. Paragraph 5.2.3 is amended by removing the words “quarterly summary” and adding in their place the words “reports submitted as specified in paragraph 4.1 of this appendix”; and

■ e. Paragraph 5.3.3 is amended by removing the words “quarterly summary” and replacing them with “reports submitted as specified in paragraph 4.1 of this appendix”.

[FR Doc. 2020–15668 Filed 8–13–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 20–13]

Policy Statement on Passenger Vessel Financial Responsibility

AGENCY: Federal Maritime Commission.

ACTION: Policy statement.

SUMMARY: The Federal Maritime Commission (Commission) is publishing this policy statement in order to provide guidance on possible regulatory relief with respect to COVID–19’s unprecedented economic effects to passenger vessel operators.

DATES: This policy statement is effective August 14, 2020.

FOR FURTHER INFORMATION CONTACT:

Cindy Hennigan, Director, Bureau of Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street NW, Room 1018, Washington, DC 20573; email: bcl@fmc.gov; phone: 202–523–5787.

SUPPLEMENTARY INFORMATION:

I. Background

On March 14, 2020, the Centers for Disease Control and Prevention (CDC) issued a “No Sail Order and Suspension of Further Embarkation” causing passenger vessel operators (PVOs) in the U.S. to cease all operations. CDC later extended the term of the order, demonstrating the uncertainty associated with this coronavirus pandemic (COVID–19).

On April 30, 2020, the Commission initiated Fact Finding 30 to investigate COVID–19’s impact on the cruise industry. The Commission’s Fact-Finding Officer has been meeting with PVOs, marine terminal operators, and other stakeholders to understand COVID–19’s effects on the cruise industry.

To overcome the effects COVID–19 has had on our economy, on May 19, 2020, President Trump issued Executive Order 13924, Regulatory Relief To Support Economic Recovery. President Trump declared that federal agencies “should address this economic emergency by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that

may inhibit economic recovery, consistent with applicable law and with protection of the public health and safety, with national and homeland security, and with budgetary priorities and operational feasibility.”

II. Policy Statement for 46 CFR Part 540 Passenger Vessel Financial Responsibility

The Commission administers Public Law 89–777, 46 U.S.C. 44101 *et seq.*, to ensure PVOs satisfy the financial responsibility requirements related to nonperformance of transportation and death or injury to passengers. The Commission set forth the procedures for PVOs to establish their financial responsibility in 46 CFR part 540.

Pursuant to the Commission’s regulations, PVOs must file with the Commission evidence of financial responsibility for nonperformance of transportation in the form and amount described in the regulations. The Commission’s regulations at 46 CFR 540.5 provides that the amount of coverage generally required shall be in an amount determined by the Commission to be no less than 110 percent of the unearned passenger revenue (UPR) of the applicant on the date within the two fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue.

The regulation, however, also provides that the Commission may, for good cause shown, consider a time period other than the previous two-fiscal-year requirement or other methods acceptable to the Commission to determine the amount of coverage required. The Commission’s regulations at 46 CFR 540.9(l) further allow smaller PVOs¹ to submit a request to substitute alternative forms of financial protection to evidence the financial responsibility as otherwise provided in the regulations.

The Commission believes the sudden suspension of most cruise transportation due to COVID–19 has likely significantly reduced some PVOs’ current UPR, leading to substantial disparity between current UPR and the generally required coverage amount under 46 CFR 540.5. This disparity could result in unnecessarily high premiums and required collateral for PVOs to maintain their required financial instruments. The Commission believes that COVID–19’s unprecedented effects on the cruise

¹ Only PVOs whose UPR at no time during the two immediately prior fiscal years has exceeded 150% of the required cap may request alternative forms of financial responsibility under § 540.9(l).

industry constitute good cause under 46 CFR 540.5 and 46 CFR 540.9(l) for the Commission to consider alternative forms of financial protection using a shorter period to determine the amount of PVOs' financial responsibility.

PVOs eligible under 46 CFR 540.9(l) (*i.e.*, those whose UPR at no time during the two immediately prior fiscal years has exceeded 150% of the cap (currently \$32 million)) are therefore encouraged to submit a request to the Director of the Bureau of Certification and Licensing (BCL) to substitute alternative forms of evidence of financial responsibility for nonperformance with a lower coverage amount based on UPR determined over a shorter period of time. In accordance with 46 CFR 540.9(l), such requests should include copies of the requesting PVO's most recently available annual and quarterly financial and income statements, as well as any other supporting documentation. *See* 46 CFR 540.9(l)(3). The Commission intends to review such requests with greater flexibility considering the unprecedented economic effects of COVID-19 to the cruise industry.

In particular, the Commission will look favorably on requests for alternative forms of evidence of financial responsibility that are based upon 110% of the PVO's previous month's UPR, provided that: (1) The PVO agrees to comply with individual reporting requirements imposed by the Director of BCL regarding the submission of satisfactory documentation demonstrating the PVO's UPR on a monthly basis;² and (2) if the PVO fails to comply with the requirements and conditions of the alternative form of evidence of financial responsibility, the PVO will once again be subject to the generally applicable financial responsibility requirements and coverage amounts under part 540.³ The Director of BCL is delegated the authority to grant such requests. Requests for other types of alternative forms of evidence of financial responsibility, other than those described in 46 CFR 501.26(d),⁴ will

² In accordance with § 540.9(l)(8), the Commission or BCL may request additional information from a PVO whose request under this section has been granted. Under this authority, BCL may establish individual reporting requirements for each PVO whose request is granted in order to monitor their UPR and ensure that the amount covered by the financial instrument (or instruments) remains adequate.

³ In addition, failure to comply with the conditions of an approved request for an alternative form of evidence of financial responsibility may result in the suspension or revocation of the PVO's certificate under 46 CFR 540.26(b)(2) and (3).

⁴ The Director of BCL is delegated the authority to grant requests to substitute alternative financial responsibility under § 540.9(l) based upon existing

protection available to purchases of passenger vessel transportation by credit card by an amount up to fifty (50) percent of the passenger vessel operator's highest two-year unearned passenger revenues. *See* 46 CFR 501.26(d).

continue to be reviewed by the Commission. The Commission will maintain this policy as long as it determines that COVID-19's negative effects on the cruise industry continue and may maintain the policy after the expiration of the CDC's "No Sail Order" but in no case shall this policy terminate prior to the 1st of April 2021.

PVOs with any questions or concerns are encouraged to contact the Commission's Bureau of Certification and Licensing by email at bcl@fmc.gov or phone at 202-523-5787.

III. Regulatory Analyses and Notices

Administrative Procedure Act

The Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) excludes the following types of rules from the notice-and-comment requirement: Interpretative rules; general statements of policy; rules of agency organization, procedure, or practice; or when the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to public interest. *See* 5 U.S.C. 553(b). This is a general statement of policy that is exempt from many of the procedural rulemaking requirements of the APA, including the requirements for prior notice, an opportunity for comment, and a delay between the issuance of a final rule and its effective date.

Congressional Review Act

This policy statement is not a "major rule" as defined by the Congressional Review Act, codified at 5 U.S.C. 801 *et seq.* The policy will not result in: (1) An annual effect on the economy of \$100,000,000 or more; (2) a major increase in costs or prices; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies. 5 U.S.C. 804(2).

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601-612) provides that whenever an agency promulgates a final rule after being required to publish a notice of proposed rulemaking under the APA (5 U.S.C. 553), the agency must prepare and make available a final regulatory flexibility analysis describing the impact of the rule on small entities or the head of the

agency must certify that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604-605. As indicated above, this policy statement is not subject to the APA's notice-and-comment requirements, and the Commission is not required to either prepare a regulatory flexibility analysis or certify that the final rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11. This policy statement, however, does not contain any new collections of information, as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

By the Commission.

Rachel Dickon,
Secretary.

[FR Doc. 2020-16965 Filed 8-13-20; 8:45 am]

BILLING CODE 6730-02-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[Docket No. FWS-R7-MB-2020-0008; FXMB1261070000-201-FF07M01000]

RIN 1018-BE24

Migratory Bird Subsistence Harvest in Alaska; Region-Specific Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, are adopting as a final rule an interim rule that went into effect on April 2, 2020, establishing migratory bird subsistence harvest regulations in Alaska for the 2020 season and beyond. These regulations, which are subject to annual review, allow for the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. For the reasons given in the interim rule and in this document, we are adopting the

interim rule as a final rule without change.

DATES: The effective date for the interim rule that published April 2, 2020, at 85 FR 18455, is affirmed as April 2, 2020.

ADDRESSES: Documents pertaining to this rulemaking action are available on the internet at the Federal eRulemaking Portal: <http://www.regulations.gov> at Docket No. FWS-R7-MB-2020-0008.

FOR FURTHER INFORMATION CONTACT: Eric J. Taylor, U.S. Fish and Wildlife Service, 1011 E Tudor Road, Mail Stop 201, Anchorage, AK 99503; (907) 903-7210.

SUPPLEMENTARY INFORMATION:

Background

On April 2, 2020, we, the U.S. Fish and Wildlife Service, published an interim rule in the **Federal Register** revising regulations in title 50 of the Code of Federal Regulations (CFR) in part 92 (85 FR 18455). These regulations pertain to the take of migratory birds in Alaska for subsistence uses during the spring and summer, when sport hunting of migratory birds is not allowed. Prior to the interim rule, the regulations in 50 CFR part 92, subpart D, were last amended April 3, 2019 (84 FR 12946).

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918 (MBTA), at 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to issue regulations to ensure that “the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.” Per the MBTA, the normal season for the subsistence harvest of migratory birds in Alaska begins on April 2 each year.

The provisions of the interim rule were the current regulations at § 92.31, with one change. These provisions were also set forth in rules issued in 2017, 2018, and 2019. In response to those rulemaking actions, no significant controversy was raised during the public comment periods.

Public Comments

We solicited public comments on the interim rule until April 13, 2020. By the close of the comment period, we received two comments. One comment was outside the scope of this rulemaking action, and the other comment expressed opposition to the

rule because it allows the killing of birds.

Service Response: For centuries, indigenous inhabitants of Alaska have harvested migratory birds for subsistence purposes during the spring and summer months. The U.S. treaties with Canada and Mexico were amended for the express purpose of allowing subsistence hunting for migratory birds during these months. Consequently, as discussed above, the MBTA also provides for the issuance of regulations to allow such hunting; see 16 U.S.C. 712(1). Therefore, this rule furthers a legitimate purpose as set forth in international treaties and U.S. law.

Related Rulemaking

As stated in the interim rule, the migratory bird subsistence harvest regulations are developed cooperatively. The Alaska Migratory Bird Co-Management Council consists of the U.S. Fish and Wildlife Service, the Alaska Department of Fish and Game, and representatives of Alaska’s Native population. The Council’s primary purpose is to develop recommendations pertaining to the subsistence harvest of migratory birds.

The Council recommended changes to the subsistence harvest regulations in 2018 and 2019. Therefore, in a related rulemaking action (RIN 1018-BF12, Docket No. FWS-R7-MB-2020-0022), we are taking action to revise § 92.31 as recommended by the Council.

Required Determinations

We hereby affirm our responses to the following determinations required of the Federal rulemaking process as published in the April 2, 2020, interim rule (85 FR 18455):

- Executive Orders 12630, 12866, 12988, 13132, 13175, 13211, 13563, and 13771
- Regulatory Flexibility Act and Small Business Regulatory
- Enforcement Fairness Act (5 U.S.C. 601 *et seq.* and 804(2))
- Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)
- Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)
- National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)
- Government-to-Government Relations with Native American Tribal Governments (59 FR 22951, and 512 DM 2)

List of Subjects in 50 CFR Part 92

Hunting, Treaties, Wildlife.

Affirmation of Interim Rule

Accordingly, the Department of the Interior affirms as a final rule, without

change, the interim rule amending 50 CFR part 92 that was published at 85 FR 18455 on April 2, 2020.

Authority: 16 U.S.C. 703-712.

George Wallace,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2020-17026 Filed 8-13-20; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200807-0210]

RIN 0648-BJ54

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Fishing Year 2020 Recreational Management Measures

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

ACTION: Interim final rule; request for comments.

SUMMARY: This rule sets fishing year 2020 recreational management measures for Gulf of Maine cod and haddock. This action is necessary to respond to updated catch and other scientific information. The measures are intended to ensure the recreational fishery achieves, but does not exceed, fishing year 2020 catch limits.

DATES: This action is effective August 13, 2020. Comments must be received on or before September 14, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2020-0105, by the following method:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2020-0105,

2. Click the “Comment Now!” icon, complete the required fields, and
3. Enter or attach your comments.

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, etc.),

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).

Copies of the analyses supporting this rulemaking, including the Framework Adjustment 59 environmental assessment (EA) prepared by the New England Fishery Management Council are available from: Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. The supporting documents are also accessible via the internet at: <http://www.nefmc.org/management-plans/northeast-multispecies> or <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Management Specialist, phone: 978-281-9232; email: Spencer.Talmage@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The recreational fishery for Gulf of Maine (GOM) cod and haddock is managed under the Northeast Multispecies Fishery Management Plan (FMP). The multispecies fishing year starts on May 1 and runs through April 30 of the following calendar year. The FMP sets sub-annual catch limits (sub-ACL) for the recreational fishery each fishing year for both species. These sub-ACLs are a fixed proportion of the overall catch limit for each stock. The FMP also includes proactive recreational accountability measures

(AM) to prevent the recreational sub-ACLs from being exceeded and reactive AMs to correct the cause or mitigate the effects of an overage if one occurs.

The proactive AM provision in the FMP allows the Regional Administrator, in consultation with the New England Fishery Management Council, to develop recreational management measures for the upcoming fishing year to ensure that the recreational sub-ACL is achieved, but not exceeded. The provisions authorizing this action can be found in the FMP’s implementing regulations at 50 CFR 648.89(f)(3).

The 2020 recreational sub-ACL for GOM cod is 193 metric tons (mt) and 6,210 mt for GOM haddock.

Using the 2020 sub-ACLs and a peer-reviewed bioeconomic model developed by NMFS’s Northeast Fisheries Science Center that predicts fishing behavior under different management measures, we estimated 2020 recreational GOM cod and haddock removals under various combinations of minimum sizes, possession limits, and closed seasons. The bioeconomic model considers measures for the two stocks in conjunction because cod are commonly caught while recreational participants are targeting haddock, linking the catch and effort for each stock to the other. Preliminary estimates of GOM cod and haddock catch for fishing year 2019 indicate that the recreational fishery will not exceed the sub-ACL of either stock.

For each of the sets of management measures, 100 simulations of the bioeconomic model were conducted, and the number of simulations which

yielded mortality estimates under the sub-ACL was used as an estimate of the probability that set of measures will not result in an overage of the sub-ACL. Several sets of measures considered using the bioeconomic model were rejected because the measures failed to exceed a 50-percent probability of removals remaining under the GOM cod sub-ACL. Two sets of possible measures resulted in model-estimated removals under the sub-ACL greater than 50 percent of the time. These were the status quo measures, Option 1, and an alternative, Option 2, which included the status quo measures and added an April 15 through 30 open season for cod (Table 1).

The bioeconomic model projects that measures for both GOM cod and haddock can be liberalized somewhat without the 2020 recreational fishery’s sub-ACLs being exceeded. With any given model, however, there exists some level of uncertainty in the accuracy of model predictions. As in past years, we are using preliminary data from the Marine Recreational Information Program (MRIP) for this fishing year. Incorporation of new waves, or data updates, may result in changes in model estimates. MRIP data can be uncertain and highly variable from year to year. This is the first year in which the new, mail-based Fishing Effort Survey metrics were able to be used directly in the bioeconomic model to predict mortality. This reduced uncertainty relative to last year, which was caused by back-calibration of the MRIP estimates to the old Coastal Household Telephone Survey metrics.

TABLE 1—SUMMARY OF THE MEASURES ANALYZED BY THE BIOECONOMIC MODEL

2020 options	Haddock					Cod				
	Possession limit	Minimum size	Open season	Predicted catch (mt)	Simulations under haddock sub-ACL (%)	Possession limit	Minimum size	Open season	Predicted catch (mt)	Simulations under cod sub-ACL (%)
1 (Status Quo) ...	15	17 inches (43.18 cm).	May 1–February 28, April 15–30.	1,092	100	1	21 inches (53.34 cm).	September 15–30	185	67
2	15	17 inches (43.18 cm).	May–February 28, April 15–30.	1,094	100	1	21 inches (53.34 cm).	September 15–30, April 15–30.	187	65

The results of the bioeconomic model run were shared with the Council and its Recreational Advisory Panel (RAP) and Groundfish Committee for review. At its January meeting, the Council voted to recommend a set of measures that added an April 1–14 season for cod and extend the haddock open season to April 1. The Council expects this recommendation to result in catch of cod that would not exceed the sub-ACL. This was based on an assumption that the estimates for mortality under Option 2 could be used as an upper bound

estimate for mortality for their recommendation. The Council recommendation would not allow fishing for cod from April 15–30, which was included in the bioeconomic model run for Option 2. A recommendation for an open cod season in that time period was disapproved in 2019 due to our and the public’s concern about adverse impacts on spawning cod.

We intended to propose the Council recommendation from January. However, on April 29, 2020, we received a letter from the Council which

stated that it planned on revisiting its recommendations at its June meeting to address unexpected disruptions to the for-hire recreational fishery. These included state restrictions on the operation of for-hire recreational fishing vessels.

At its June Meeting, the Council revised its recommended recreational GOM cod measures for fishing year 2020 to expand the fall open season by two additional weeks, to occur from September 8 through October 7, 2020, for the for-hire recreational fishery only.

The open season for GOM cod for private recreational fleet would remain unchanged. The Council intends for this recommendation to allow the for-hire fleet to use the fall season to make up for the loss of access to the fishery in the spring.

As part of its recommendation, the Council noted that travel and other restrictions imposed by states in March and April effectively closed the for-hire fishery. While state restrictions of for-hire fishing have been lifted, limits on

the number of people who may gather are still in place, limiting the number of passengers on vessels.

We used Vessel Trip Report (VTR) data to examine changes in activity among party/charter vessels in May and June 2020. These data indicate that the number of weekly party/charter trips and weekly mean number of anglers on party/charter VTRs have been reduced in 2020 in comparison to past years, both region-wide and in the GOM. (Table 2). The data examined in this

analysis is limited to trips with a submitted VTR; trips that are missing a VTR submission and/or vessels that do not have a VTR requirement (*i.e.*, vessels without a Federal permit and participating in the state waters fisheries) are not captured by this analysis. As such, while the report is informative of changes in recreational fishing effort in 2020, it does not capture all the recreational for-hire fishing that has occurred in the GOM this year.

TABLE 2—NUMBER OF TRIPS AND AVERAGE NUMBER OF ANGLERS REPORTED BY VESSEL TRIP REPORTS IN MAY AND JUNE, 2016–2020

Year	Month	Number of trips	Average number of anglers
2016	May	466	17
	June	711	18.2
2017	May	385	16.8
	June	725	18
2018	May	431	16.2
	June	735	17.6
2019	May	430	17.2
	June	665	19.1
2020	May	153	10.5
	June	271	14.4

The private recreational fleet has been allowed to access the GOM haddock fishery during the spring and early summer fishery, and so the lack of access that supports expanding the fall season for the party/charter fleet does not apply to the private recreational fishery.

Based on the analysis using the bioeconomic model and other available information, this rule implements the measures as recommended by the Council at its June meeting, as follows:

—GOM haddock:

- Possession Limit: 15 fish
- Minimum Size: 17 inches (43.18 cm)
- Open Season: May 1–February 28, April 1–30

—GOM cod:

- Possession Limit: 1 fish
- Minimum Size: 21 inches (53.34 cm)
- Open season (Private): September 15–30, April 1–14
- Open Season (For-Hire) September 8–October 7, April 1–14

Classification

The Assistant Administrator for Fisheries, NOAA (AA) has made a determination that this interim final rule is consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

The AA finds that prior notice and the opportunity for public comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B), would be contrary to the public interest. The Council’s revised recommendation for recreational GOM cod and haddock measures at its June meeting prevented NMFS from publishing a proposed rule in time to implement final measures by September 8, 2020, which is the start of the open cod season for party/charter fishing vessels. The revised measures provide opportunities to mitigate adverse economic impacts from lost opportunities to fish in the spring due to state and local health and safety restrictions. The recommended additional weeks of open-season were subject to public comment at several meetings, including the Council’s June meeting. The public, including the for-hire fleet, is anticipating an expanded open-season this fall given the public recommendations voted on by the Council at the June meeting. We are accepting additional public comments on this rule. The delay required for comments on these measures prior to their implementation would undermine the benefit intended by these measures. For these reasons, prior notice and the opportunity for public comment, pursuant to authority set forth at U.S.C. 553(b)(B), would be contrary to the public interest.

Similarly, the need to implement these measures in a timely manner to put this interim final rule in place prior to September 8, 2020, constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to establish an effective date less than 30 days after date of publication. The revised measures remove restrictions on fishing. Delay in implementing this rule would prevent party/charter fishing vessels from fishing for GOM cod during the recommended open season that will assist the for-hire recreation fishery adjust to impacts of state restrictions on the for-hire fleet carrying passengers in May and June this year. Plus, the for-hire fleet should benefit from the certainty from the immediate implementation of these measures upon publication. The certainty will provide additional time for the for-hire fleet to prepare for and take advantage of the opportunity to recruit and carry passengers for the recommended additional weeks this fall by enabling earlier advertisement to customers of available trips.

This interim final rule has been determined to be not significant for purposes of Executive Order 12866.

This interim final rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

This interim final rule is exempt from the procedures of the Regulatory

Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 10, 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 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.89, revise paragraphs (c)(1) and (2) as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(c) * * *

(1) *Private recreational vessels.*

Persons aboard private recreational

fishing vessels during the open season listed in the column titled “Open Season” in Table 2 to this paragraph (c), may not possess more fish in or from the EEZ than the amount listed in the column titled “Possession Limit” in Table 2 to this paragraph (c).

(i) *Closed season.* Persons aboard private recreational fishing vessels may not possess species, as specified in the column titled “Species” in Table 2 to paragraph (c), in or from the EEZ during that species closed season as specified in the column titled “Closed Season” in Table 2 to paragraph (c).

TABLE 2 TO PARAGRAPH (c)

Stock	Open season	Possession limit	Closed season
GB Cod	All Year	10	N/A.
GOM Cod	September 15–30, April 1–14	1	April 15–September 14, October 1–March 31.
GB Haddock	All Year	Unlimited	N/A.
GOM Haddock	May 1–February 28 (or 29), April 1–30	15	March 1–March 31.
GB Yellowtail Flounder	All Year	Unlimited	N/A.
SNE/MA Yellowtail Flounder	All Year	Unlimited	N/A.
CC/GOM Yellowtail Flounder	All Year	Unlimited	N/A.
American Plaice	All Year	Unlimited	N/A.
Witch Flounder	All Year	Unlimited	N/A.
GB Winter Flounder	All Year	Unlimited	N/A.
GOM Winter Flounder	All Year	Unlimited	N/A.
SNE/MA Winter Flounder	All Year	Unlimited	N/A.
Redfish	All Year	Unlimited	N/A.
White Hake	All Year	Unlimited	N/A.
Pollock	All Year	Unlimited	N/A.
N Windowpane Flounder	Closed	No retention	All Year.
S Windowpane Flounder	Closed	No retention	All Year.
Ocean Pout	Closed	No retention	All Year.
Atlantic Halibut	See paragraph (c)(3) of this section		
Atlantic Wolffish	Closed	No retention	All Year.

(ii) [Reserved]
 (2) *Charter or Party Boats.* Persons aboard party or charter boats during the

open season listed in the column titled “Open Season” in Table 3 to this paragraph (c), may not possess more fish

in or from the EEZ than the amount listed in the column titled “Possession Limit” in Table 3 to this paragraph (c).

TABLE 3 TO PARAGRAPH (c)

Species	Open season	Possession limit	Closed season
GB Cod	All Year	10	N/A.
GOM Cod	September 8–October 7, April 1–14	1	April 15–September 7, October 8–March 31.
GB Haddock	All Year	Unlimited	N/A.
GOM Haddock	May 1–February 28 (or 29), April 1–30	15	March 1–March 31.
GB Yellowtail Flounder	All Year	Unlimited	N/A.
SNE/MA Yellowtail Flounder	All Year	Unlimited	N/A.
CC/GOM Yellowtail Flounder	All Year	Unlimited	N/A.
American Plaice	All Year	Unlimited	N/A.
Witch Flounder	All Year	Unlimited	N/A.
GB Winter Flounder	All Year	Unlimited	N/A.
GOM Winter Flounder	All Year	Unlimited	N/A.
SNE/MA Winter Flounder	All Year	Unlimited	N/A.
Redfish	All Year	Unlimited	N/A.
White Hake	All Year	Unlimited	N/A.
Pollock	All Year	Unlimited	N/A.
N Windowpane Flounder	Closed	No retention	All Year.
S Windowpane Flounder	Closed	No retention	All Year.
Ocean Pout	Closed	No retention	All Year.

TABLE 3 TO PARAGRAPH (c)—Continued

Species	Open season	Possession limit	Closed season
Atlantic Halibut	See Paragraph (c)(3) of this section		
Atlantic Wolffish	Closed	No retention	All Year.

* * * * *
 [FR Doc. 2020–17707 Filed 8–13–20; 8:45 am]
 BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200221–0062; RTID 0648–XA310]

Fisheries of the Exclusive Economic Zone Off Alaska; In Season Adjustment to the 2020 Gulf of Alaska Pollock Seasonal Apportionments

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

ACTION: Temporary rule; in season adjustment.

SUMMARY: NMFS is adjusting the 2020 C seasonal apportionments of the total allowable catch (TAC) for pollock in the Gulf of Alaska (GOA) by re-apportioning unharvested pollock TAC in Statistical Area 630 of the GOA. This action is necessary to provide opportunity for harvest of the 2020 pollock TAC, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), August 13, 2020, until 2400 hours A.l.t., December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

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

The annual pollock TACs in Statistical Areas 610, 620, and 630 of the GOA are apportioned among four seasons, in accordance with

§ 679.23(d)(2). Regulations at § 679.20(a)(5)(iv)(B) allow the underharvest of a seasonal apportionment to be added to subsequent seasonal apportionments, provided that any revised seasonal apportionment does not exceed 20 percent of the seasonal apportionment for a given statistical area. Therefore, NMFS is increasing the C season apportionment of pollock in Statistical Area 630 of the GOA to reflect the underharvest of pollock in Statistical Area 630 during the B season. In addition, any underharvest remaining beyond 20 percent of the originally specified seasonal apportionment in a particular area may be further apportioned to other statistical areas. Therefore, NMFS also is increasing the C season apportionment of pollock to Statistical Areas 610 and 620 based on the underharvest of pollock in Statistical Area 630 of the GOA. These adjustments are described below.

The C seasonal apportionment of the 2020 pollock TAC in Statistical Area 610 of the GOA is 9,070 metric tons (mt) as established by the final 2020 and 2021 harvest specifications for groundfish of the GOA (85 FR 13802, March 10, 2020). In accordance with § 679.20(a)(5)(iv)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), hereby increases the C season apportionment for Statistical Area 610 by 287 mt to account for the underharvest of the TAC in Statistical Area 630 in the B season. This increase is in proportion to the estimated pollock biomass and is not greater than 20 percent of the C seasonal apportionment of the TAC in Statistical Area 610. Therefore, the revised C seasonal apportionment of the pollock TAC in Statistical Area 610 is 9,357mt (9,070 mt plus 287 mt).

The C seasonal apportionment of the 2020 pollock TAC in Statistical Area 620 of the GOA is 6,739 mt as established by the final 2020 and 2021 harvest specifications for groundfish of the GOA (85 FR 13802, March 10, 2020). In accordance with § 679.20(a)(5)(iv)(B), the Regional Administrator hereby increases the C seasonal apportionment for Statistical Area 620 by 213 mt to account for the underharvest of the TAC in Statistical Area 630 in the B season. This increase is not greater than 20

percent of the C seasonal apportionment of the TAC in Statistical Area 620. Therefore, the revised C seasonal apportionment of the pollock TAC in Statistical Area 620 is 6,952 mt (6,739 mt plus 213 mt).

The C seasonal apportionment of the 2020 pollock TAC in Statistical Area 630 of the GOA is 9,248 mt as established by the final 2020 and 2021 harvest specifications for groundfish of the GOA (85 FR 13802, March 10, 2020). In accordance with § 679.20(a)(5)(iv)(B), the Regional Administrator hereby increases the C seasonal apportionment for Statistical Area 630 by 1,850 mt to account for the underharvest of the TAC in Statistical Area 630 in the B season. This increase is in proportion to the estimated pollock biomass and is not greater than 20 percent of the C seasonal apportionment of the TAC in Statistical Area 630. Therefore, the revised C seasonal apportionment of pollock TAC in Statistical Area 630 is 11,098 mt (9,248 mt plus 1,850 mt).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reapportionment of pollock in Statistical Areas 610, 620, and 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 10, 2020.

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

Dated: August 11, 2020.

Kelly Denit,

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

[FR Doc. 2020–17846 Filed 8–13–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 85, No. 158

Friday, August 14, 2020

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2020-0708; Airspace Docket No. 20-ACE-14]

RIN 2120-AA66

Proposed Amendment of Class D and Class E Airspace; Waterloo, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class D and Class E airspace at Waterloo Regional Airport, Waterloo, IA. The FAA is proposing this action as the result of an airspace review caused by the closure of runway 6/24 at Waterloo Regional Airport. The names and geographic coordinates of the airport and navigational aids would also be updated to coincide with the FAA's aeronautical database.

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, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366-9826, or (800) 647-5527. You must identify FAA Docket No. FAA-2020-0708/Airspace Docket No. 20-ACE-14 at the beginning of your comments. You may also submit comments through the internet at <https://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at https://www.faa.gov/air_traffic/publications/. For further information, you can contact the

Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email: fedreg.legal@nara.gov or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class D airspace, Class E surface airspace, Class E airspace area designated as an extension to Class D and Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface at Waterloo Regional Airport, IA, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2020-0708/Airspace Docket No. 20-ACE-14." The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

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

Amending the Class D airspace at Waterloo Regional Airport, Waterloo, IA, by updating the name (previously Waterloo Municipal Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database; and replacing the outdated term "Airport/Facility Directory" with "Chart Supplement";

Amending the Class E surface area Waterloo Regional Airport by updating the name (previously Waterloo Municipal Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database; and replacing the outdated term "Airport/Facility Directory" with "Chart Supplement";

Amending the Class E airspace area designated as an extension to Class D and Class E surface airspace at Waterloo Regional Airport by removing the extensions east, south, and southwest of the VORTAC, as they are no longer needed; adding an extension within 1 mile each side of the 128° bearing from the Waterloo Regional: RWY 12-LOC extending from the 4.3-mile radius of the Waterloo Regional Airport to 4.4 miles southeast of the Waterloo Regional Airport; amending the extension north of the VOR/DME to the 356° radial (previously 351° radial); and updating the name and geographic coordinates of the Waterloo Regional Airport (previously Waterloo Municipal Airport) and the name of the Waterloo VOR/DME (previously Waterloo VORTAC) to coincide with the FAA's aeronautical database;

And amending the Class E airspace extending upward from 700 feet above the surface at Waterloo Regional Airport by removing the extension southeast of the airport, as it is no longer needed; adding an extension 2.4 miles each side of the 313° radial of the Waterloo VOR/DME extending from the 6.8-mile radius of the Waterloo Regional Airport to 7 miles northwest of the Waterloo VOR/DME; adding an extension 2.4 miles each side of the 356° radial of the Waterloo VOR/DME extending from the 6.8-mile radius of the Waterloo Regional Airport to 7 miles northwest of the Waterloo VOR/DME; and updating the name and geographic coordinates of the Waterloo Regional Airport (previously Waterloo Municipal Airport) and the name of the Waterloo VOR/DME (previously Waterloo VORTAC) to coincide with the FAA's aeronautical database.

This action is due to an airspace review caused by the closure of runway 6/24 at Waterloo Regional Airport.

Class D and E airspace designations are published in paragraph 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designation listed in this document will be published subsequently in the Order.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ACE IA D Waterloo, IA [Amended]

Waterloo Regional Airport, IA
(Lat. 42°33'26" N, long. 92°24'01" W)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4.3-mile radius of Waterloo Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ACE IA E2 Waterloo, IA [Amended]

Waterloo Regional Airport, IA
(Lat. 42°33'26" N, long. 92°24'01" W)

Within a 4.3-mile radius of Waterloo Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ACE IA E4 Waterloo, IA [Amended]

Waterloo Regional Airport, IA
(Lat. 42°33'26" N, long. 92°24'01" W)
Waterloo Regional: RWY 12-LOC
(Lat. 42°32'55" N, long. 92°22'53" W)
Waterloo VOR/DME
(Lat. 42°33'23" N, long. 92°23'56" W)

That airspace extending upward from the surface within 1 mile each side of the 128° bearing from the Waterloo Regional: RWY 12-LOC extending from the 4.3-mile radius of the Waterloo Regional Airport to 4.4-miles southeast of the Waterloo Regional Airport, and within 2.4 miles each side of the 313° radial from the Waterloo VOR/DME extending from the 4.3-mile radius of the Waterloo Regional Airport to 7 miles northwest of the Waterloo VOR/DME, and within 2.4 miles each side of the 356° radial from the Waterloo VOR/DME extending from the 4.3-mile radius of the Waterloo Regional Airport to 7 miles north of the Waterloo VOR/DME.

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

* * * * *

ACE IA E5 Waterloo, IA [Amended]

Waterloo Regional Airport, IA
(Lat. 42°33'26" N, long. 92°24'01" W)
Waterloo VOR/DME
(Lat. 42°33'23" N, long. 92°23'56" W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Waterloo Regional Airport, and within 2.4 miles each side of the 313° radial from the Waterloo VOR/DME extending from the 6.8-mile radius of the Waterloo Regional Airport to 7 miles northwest of the Waterloo VOR/DME, and within 2.4 miles each side of the 356° radial from the Waterloo VOR/DME extending from the 6.8-mile radius of the Waterloo Regional Airport to 7 miles north of the Waterloo VOR/DME.

Issued in Fort Worth, Texas, on August 10, 2020.

Steven T. Phillips,

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

[FR Doc. 2020-17761 Filed 8-13-20; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2020-0734; Airspace
Docket No. 20-AGL-29]

RIN 2120-AA66

**Proposed Revocation of Class E
Airspace; Delavan, WI**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking
(NPRM).

SUMMARY: This action proposes to revoke the Class E airspace extending upward from 700 feet above the surface at Lake Lawn Airport, Delavan, WI, due to the cancellation of the instrument procedures at that airport and the airspace no longer being required.

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, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366-9826, or (800) 647-5527. You must identify FAA Docket No. FAA-2020-0734/Airspace Docket No. 20-AGL-29, at the beginning of your comments. You may also submit comments through the internet at <https://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between

9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

FOR FURTHER INFORMATION CONTACT:

Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5711.

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would revoke the Class E airspace extending upward from 700 feet above the surface at Lake Lawn Airport, Delavan, WI, due to the cancellation of the instrument procedures at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in

triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2020-0734/Airspace Docket No. 20-AGL-29." The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

**Availability and Summary of
Documents for Incorporation by
Reference**

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by revoking the Class E airspace extending upward from 700 feet above the surface Lake Lawn

Airport, Delavan, WI, as this airspace no longer being required.

This action is the result of the cancellation of instrument procedures at this airport.

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

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL WI E5 Delavan, WI [Remove]

Issued in Fort Worth, Texas, on August 10, 2020.

Steven T. Phillips,

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

[FR Doc. 2020–17762 Filed 8–13–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0730; Airspace Docket No. 20–ASO–20]

RIN 2120–AA66

Proposed Amendment of the Class E Airspace; Hartford, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Ohio County Airport, Hartford, KY. The FAA is proposing this action as the result of an airspace review due to the decommissioning of the Central City VHF omnidirectional range (VOR) navigation aid as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

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, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2020–0730/Airspace Docket No. 20–ASO–20,

at the beginning of your comments. You may also submit comments through the internet at <https://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2020-0730/Airspace Docket No. 20-ASO-20." The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile radius (increased from a 6.4-mile radius) of Ohio County Airport, Hartford, KY; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the decommissioning of the Central City VOR, which provided navigation information for the instrument procedures at this airport, as part of the VOR MON Program.

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

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO KY E5 Hartford, KY [Amended]

Ohio County Airport
(Lat. 37°27'31" N, long. 86°50'59" W)

That airspace extending upward from 700 feet or more above the surface within a 6.5-mile radius of Ohio County Airport.

Issued in Fort Worth, Texas, on August 10, 2020.

Steven T. Phillips,

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

[FR Doc. 2020-17760 Filed 8-13-20; 8:45 am]

BILLING CODE 4910-13-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[EPA-R09-UST-2020-0258; FRL-10013-09-Region 9]

Hawaii: Proposed Authorization of Underground Storage Tank Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Hawaii has applied to the Environmental Protection Agency (EPA) for updated authorization of changes made to its underground storage tank (UST) program under the Resource Conservation and Recovery Act (RCRA), as amended, since the previous authorization of Hawaii's UST program in September 2002. The EPA has reviewed Hawaii's application and has

tentatively determined that these changes satisfy all requirements needed to qualify for the requested updated authorization. Therefore, we are proposing to authorize the State's changes. The EPA seeks public comment prior to taking final action.

DATES: Comments must be received on or before September 14, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-UST-2020-0258 at <https://www.regulations.gov> or via email to pallarino.bob@epa.gov. For comments submitted at <https://www.regulations.gov>,

follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from <https://www.regulations.gov>. For either manner of submission, the EPA may publish any comment received to its public docket.

Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov>. We encourage electronic submittals but if you are unable to submit electronically, need assistance in a language other than English, are a person with disabilities who needs a reasonable accommodation at no cost to you, or need other assistance, please reach out to the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

The federal www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment

that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Robert Pallarino, Project Officer, Underground Storage Tank Program Office, LND-4-3, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, pallarino.bob@epa.gov, (415) 947-4128.

SUPPLEMENTARY INFORMATION:

A. Why are State programs approved?

Section 9004 of RCRA, 42 U.S.C. 6991c, authorizes the EPA to approve State UST programs to operate in the State in lieu of the federal UST program, subject to the authority retained by the EPA in accordance with RCRA. Program approval may be granted by the EPA pursuant to RCRA section 9004(b), if the EPA finds that the State program: (1) Is "no less stringent" than the federal program for the seven elements set forth at RCRA section 9004(a)(1) through (7); (2) includes the notification requirements of RCRA section 9004(a)(8); and (3) provides for adequate enforcement of compliance with UST standards of RCRA section 9004(a). Note that RCRA sections 9005 (on information-gathering) and 9006 (on federal enforcement) by their terms apply even in states with programs approved by the EPA under RCRA section 9004. Thus, the EPA retains its authority under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the EPA will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state authorized analogues to these provisions.

B. Why are revisions to state programs necessary?

States that have received final approval from the EPA under RCRA section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain an UST program that is equivalent to, consistent with, and no less stringent than the

Federal UST program. When the EPA makes revisions to the regulations that govern the UST program, states must revise their programs to comply with the updated regulations and submit these revisions to the EPA for approval. Changes to state UST programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) part 280. States can also initiate changes on their own to their UST program and these changes must then be approved by the EPA.

C. What decisions has the EPA made in this proposed rule?

On October 8, 2018, in accordance with 40 CFR 281.51(a), Hawaii submitted a complete program revision application seeking approval for its UST program revisions corresponding to the EPA final rule published on July 15, 2015 (80 FR 41566), which finalized revisions to the 1988 UST regulation and to the 1988 state program approval (SPA) regulation. As required by 40 CFR 281.20, the State submitted the following: A transmittal letter from the Governor requesting approval, a description of the program and operating procedures, a demonstration of the State's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency, a statement of certification from the Attorney General, and copies of all relevant State statutes and regulations. The EPA has reviewed the Hawaii application for updated UST Program authorization and has tentatively determined that the revisions to Hawaii's UST program are equivalent to, consistent with, and no less stringent than the corresponding federal requirements in Subpart C of 40 CFR part 281, and that the Hawaii program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, the EPA is proposing to grant Hawaii approval to operate its UST program with the changes described in the program revision application as outlined below.

The EPA will consider all public comments on its proposed approval received in writing during the public comment period. Issues raised by those comments may be the basis for a decision to deny final approval to Hawaii's request for updated authorization. The EPA will make a final decision on whether to approve the subject changes to Hawaii's program

after the close of the public comment period and will give notice of it in the **Federal Register**. The document will include a summary of the reasons for the final determination and a response to all major comments.

D. What is the effect of this action?

This action does not impose additional requirements on the regulated community because the requirements that are the subject of this proposed rule are already effective in the State of Hawaii, and they are not changed by this action. This action merely proposes approval of the existing State requirements as meeting the federal requirements and would thereby render them federally enforceable.

E. What happens if the EPA receives comments that oppose this action?

If the EPA receives comments on this proposed action, we will address all such comments in a later final rule. You are unlikely to have another opportunity to comment. If you want to comment on this proposed authorization, you should do so at this time.

F. What has Hawaii previously been authorized for?

Hawaii initially received final authorization on September 25, 2002, effective September 30, 2002 (67 FR 60161) to implement the UST program. On September 17, 2008, the EPA codified the approved Hawaii program that is subject to the EPA's inspection and enforcement authorities under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions (73 FR 53742).

G. What changes are we proposing with today's action?

In order to be approved, each state program application must meet the general requirements in 40 CFR 281.11, and specific requirements in 40 CFR 281 Subpart B (Components of a Program Application); Subpart C (Criteria for No Less Stringent); and Subpart D (Adequate Enforcement of Compliance). This also is true for proposed revisions to approved state programs.

As more fully described below, the State has made the changes to its approved UST program to reflect the 2015 Federal Revisions. The EPA is proposing to approve the State's changes because they are equivalent to, consistent with, and no less stringent than the federal UST program and because the EPA has confirmed that the Hawaii UST program will continue to provide for adequate enforcement of

compliance, as required by 40 CFR 281.11(b) and part 281, Subpart D.

The Hawaii Department of Health (HDOH) is the lead implementing agency for the UST program in Hawaii. The HDOH continues to have broad statutory authority to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases under Hawaii Revised Statutes (HRS) 342L-1 through 342L-53. The Hawaii UST Program gets its enforcement authority from the powers and duties of the HDOH Director (Director) found in HRS 342L-8. Under HRS 342L-7 the Director is authorized to require an owner to furnish records, conduct monitoring or testing, and provide access to tanks. Under the powers granted to the Director, the HDOH is authorized to issue installation and operating permits (HRS342L-31). Permits must be renewed every five years (HRS342L-4). Penalties for non-compliance with Hawaii's UST statutes may be assessed under HRS342L-10. HRS342L-32.5 allows the HDOH to place a delivery prohibition tag on a tank for failure to have, or act in accordance with, a permit, spill and overflow prevention, required tank and/or piping leak detection, corrosion protection, or maintain financial responsibility.

Specific authorities to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases, are found under Hawaii Administrative Rules (HAR), effective July 15, 2018, section 11-280.1-1 through section 11-280.1-429 Underground Storage Tanks. Reporting and recordkeeping authorities and requirements are found under HRS section 342L-7, HRS section 342L-7.5, and HAR section 11.280.1-34. The EPA has tentatively determined that the aforementioned statutory sections and regulations satisfy the requirements of 40 CFR 281.40 and 281.41.

The State of Hawaii and the EPA have signed a Memorandum of Agreement (MOA), which will be effective at the time the EPA publishes its final decision to grant UST program approval to the changes to the State's UST program. This MOA provides that the State will continue to be the primary implementation agency for the UST Program in Hawaii and will continue to allow the EPA to conduct oversight and reviews of the State's efforts. The MOA also specifies how the EPA and the State will continue to share information.

The State's changes to its UST program do not affect the continued compliance of the State's statutes and rules with the public participation provisions contained in 40 CFR 281.42.

HRS section 342L-12.5 provides that any person may intervene in any civil action to enforce the State's statutes and rules, if that person has an interest that is, or may be, adversely affected.

To qualify for approval, revisions to a state's program must be "equivalent to, consistent with, and no less stringent" than the federal program, in this case, the 2015 Federal Revisions. In the 2015 Federal Revisions, EPA addressed UST systems deferred in the 1988 UST regulations and added, among other things: New operation and maintenance requirements; secondary containment requirements for new and replaced tanks and piping; operator training requirements; and a requirement to ensure UST system compatibility before storing certain biofuel blends. In addition, the EPA removed past deferrals for emergency generator tanks, field constructed tanks, and airport hydrant systems. The EPA analyzes revisions to approved state programs pursuant to the criteria found in 40 CFR 281.30 through 281.39.

The HDOH has revised its regulations to help ensure that the State's UST program revisions are equivalent to, consistent with, and no less stringent than the 2015 Federal Revisions. The HDOH has repealed its previous UST rules, chapter 11-281, Hawaii Administrative Rules (HAR), and adopted a new chapter 11-280.1, HAR, effective July 15, 2018. The EPA has tentatively determined that the revised HAR addresses all the requirements of 40 CFR 281.30-281.39 and are at least as stringent, but in some cases more stringent or broader in scope, than the federal UST regulations. Hawaii rules that are broader in scope than the federal UST rules are discussed in more detail in Section I.H. of this document.

As part of the State Application, the Hawaii Attorney General certified that the State revisions meet the requirements "equivalent to, consistent with, and no less stringent" criteria in 40 CFR 281.30 through 281.39. The EPA is relying on this certification, the analysis submitted by the State and our own review in making this decision to propose approval of the State's updated authorization application.

H. Where are the State's revised rules different from the Federal rules?

Broader in Scope Provisions

Where an approved state program has a greater scope of coverage than required by federal law, the additional coverage is not part of the federally approved program and is not federally enforceable (40 CFR 281.12(a)(3)(ii)). The following paragraphs describe the

State rules that are considered broader in coverage than the federal program, as these State-only regulations are not required by federal regulation and are implemented by the State in addition to the federally approved program.

Hawaii's definitions of "regulated substance" at HRS section 342L-1 and section 11-280.1-12 are broader in scope than the federal definitions of "regulated substance." For the most part, the definitions in the State and federal statutes and regulations are the same except that the State includes in its definitions "any other substance designated by the department that, when released into the environment, may present substantial danger to human health, welfare, or the environment." These definitions are broader in scope to the extent that Hawaii includes substances that are designated as regulated substances by the HDOH, pursuant to subsection (3) of Hawaii's definition of the term, which are neither (a) "any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under subtitle C [of RCRA])" or (b) "[p]etroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute)."

HAR section 11-280.1-21 requires that all UST systems be upgraded to secondary containment by a firm fixed date, July 15, 2028, except for field constructed tanks and airport hydrant systems, which must be provided with secondary containment by July 15, 2038. This aspect of Hawaii's program is broader in scope than the federal program since the federal UST program does not require all UST systems to be upgraded to provide secondary containment, only newly (after the effective date of the federal UST rule) installed or repaired tanks or piping.

HAR section 11-280.1-23 and HAR section 11-280.1-42 require hazardous substance USTs to use interstitial monitoring and be secondarily contained with no exceptions. As long as the implementing agency approves, the federal program allows hazardous substance USTs installed prior to October 13, 2015 to use alternative release detection methods if specific conditions are met. This aspect of Hawaii's program, mandating the use of interstitial monitoring as the only release detection method for all hazardous substance UST systems, is broader in scope than the federal program to the extent it applies to

hazardous substance USTs installed prior to October 13, 2015, where the specific conditions referenced in 40 CFR 280.42(e) of the federal rules are met.

HAR section 11-280.1-34(a) requires notifications to the HDOH when changes are made to the UST system, which is broader in scope than the federal requirements. Federal UST rules only require notification of existing or newly installed UST systems or when UST systems are switched to storing certain regulated substances.

HAR section 11-280.1-53(b)(2) and section 11-451-6(b)(4) establish a "reportable quantity" threshold for trichloropropane of 10 lbs. Since the federal program does not require reporting of releases of trichloropropane, this requirement of the State's program is broader in scope than the federal program to this limited extent.

HAR section 11-280.1-61.1 requires owners and operators to post signs around the perimeter of a site where contamination poses an immediate health risk or where contaminated media is exposed to the surface, if the Department determines that the posting of such signs is appropriate. This requirement is broader in scope than the federal UST program, which does not include an analogous provision.

HAR section 11-280.1-67 requires public notification in the event of a confirmed release. This requirement is broader in scope than the federal UST program, which only requires public notification when an implementing agency requires a corrective action plan.

HAR 11-280.1-300 through 11-280.1-335 require permits for the installation and operation of USTs. Permits must be renewed regularly. There is no federal requirement for USTs to be permitted either at installation or during operation. This aspect of Hawaii's program is broader in scope than the federal program since the federal UST program does not include analogous permitting requirements.

HRS 342L-14 allows the Director of the Department to establish fees for department services. HAR 11-280.1-335 specifies the amounts for various fees for permit and variance applications. This provision of Hawaii's UST program is broader in scope because there are no federal requirements which address the establishment of fees for services.

Hawaii's UST program contains provisions that allow the State to grant variances. The Hawaii Attorney General's Office has indicated that such variances may be granted where State rules are broader in scope than the federal regulations. To the extent that such variances are granted, and the

resulting requirements imposed pursuant to such variances are broader in scope than the federal UST requirements, the requirements imposed by such variances will not be federally enforceable as part of the authorized State program. However, to the extent that any variances are issued for aspects of the State's program that result in the imposition of requirements which are merely more stringent than the federal UST requirements, as opposed to broader in scope, the resulting requirements of such variances will be federally enforceable as part of the authorized State program. The following provisions pertain to Hawaii's variance requirements: HRS section 342L-1 (definition of "variance"); HRS section 342L-5 (variance allowed); HRS section 342L-6 (procedures for variances); HAR 11-280.1-12 (definition of "variance"); HAR 11-280.1-332 (variance allowed); and HAR 11-280.1-333 (variance applications).

II. Codification

A. What is codification, and will EPA codify Hawaii's UST program as proposed in this rule?

Codification is the process of placing citations and references to the state's statutes and regulations that comprise the state's authorized UST program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized state rules in 40 CFR part 282. EPA is not proposing to codify the authorization of Hawaii's changes at this time. However, EPA intends to amend 40 CFR part 282, subpart B for any updated authorization of Hawaii's program changes at a later date.

III. Statutory and Executive Order (E.O.) Reviews

This action only applies to Hawaii's UST Program requirements pursuant to RCRA Section 9004 and imposes no requirements other than those imposed by state law. It complies with applicable EOs and statutory provisions as follows:

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

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and 13563 (76 FR 3821, Jan. 21, 2011). This action proposes to approve state requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by

state law. Therefore, this action is not subject to review by OMB.

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

This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this proposed approval of Hawaii's revised underground storage tank program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Because this action proposes to approve and codify pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, and because there are no federally recognized Tribes within the State, this proposed action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

D. Executive Order 13132: Federalism

This proposed action 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, as specified in Executive Order 13132 (64 FR 43255, Aug. 10, 1999), because it merely proposes approval of state requirements as part of the State RCRA Underground Storage Tank Program without altering the relationship or the distribution of power and responsibilities established by RCRA.

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

This proposed action also is not subject to Executive Order 13045 (62 FR 19885, Apr. 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks.

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

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a “significant regulatory action” as defined under Executive Order 12866.

G. National Technology Transfer and Advancement Act

Under RCRA section 9004(b), the EPA grants a state's application for approval as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

H. Executive Order 12988: Civil Justice Reform

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

I. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

The EPA has complied with Executive Order 12630 (53 FR 8859, Mar. 15, 1988) by examining the takings implications of the proposed rule in accordance with the “Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order.

J. Paperwork Reduction Act

This proposed rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b).

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

Executive Order 12898 (59 FR 7629, Feb. 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. Because this proposed rule would approve pre-existing state rules which are at least equivalent to, consistent with, and no less stringent than existing federal requirements, and would impose no additional requirements beyond those imposed by state law, and there would be no anticipated significant adverse human health or environmental effects, the proposed rule is not subject to Executive Order 12898.

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA seeks public comment prior to taking final action on this proposal. The proposed rule will not become effective until the EPA makes a final decision on whether or not to approve the subject changes to Hawaii's program and gives notice of that final decision in the **Federal Register**. At that time, the EPA will submit a report containing the final decision document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Authority: This proposed rule is issued under the authority of Sections 2002(a), 7004(b), and 9004, 9005 and 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6974(b), and 6991c, 6991d, and 6991e.

List of Subjects in 40 CFR Part 281

Administrative practice and procedure, Hazardous substances, State program approval, Program revisions update, and Underground storage tanks.

Dated: July 30, 2020.

John Busterud,

Regional Administrator, Region 9.

[FR Doc. 2020–17180 Filed 8–13–20; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 85, No. 158

Friday, August 14, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc No. AMS-FGIS-20-0051]

Designation for the Cedar Rapids, Iowa Area

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing the designation of Mid-Iowa Grain Inspection, Inc. (Mid-Iowa), to provide official services under the United States Grain Standards Act (USGSA), as amended.

DATES: July 1, 2020.

FOR FURTHER INFORMATION CONTACT:

Austyn Hughes, (816) 891-0456 or FGISQACD@usda.gov.

Read Applications: If you would like to view the applications, please contact us at FGISQACD@usda.gov.

SUPPLEMENTARY INFORMATION: In the February 10, 2020, **Federal Register** (85 FR 7527), AMS requested applications for designation to provide official services in the geographic area presently serviced by Mid-Iowa. Applications were due by March 11, 2020.

AMS received two applications for designation. These applicants were Mid-

Iowa and Midwest Grain Inspection, Inc (Midwest). Mid-Iowa is the current official agency in the assigned territory and has applied for the entire territory. Midwest is a new business, requesting designation in two counties in Iowa (Clinton and Jackson) and two counties in Illinois (Carroll and Whiteside) within the territory.

AMS evaluated each application against the designation criteria in section 7(f) of the USGSA (7 U.S.C. 79(f)) and determined that Mid-Iowa is better able to provide official services in the geographic area specified in the **Federal Register** on February 10, 2020. The designation to provide official services in the specified area of Mid-Iowa is effective July 1, 2020, to June 30, 2023.

Interested persons may obtain official services by contacting this agency at the following telephone number:

Official agency	Headquarters location and telephone	Designation start	Designation end
Mid-Iowa	Cedar Rapids, IA, 319-363-0239	07/01/2020	6/30/2023

Section 7(f) of the USGSA authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79 (f)).

Authority: 7 U.S.C. 71-87k.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020-17851 Filed 8-13-20; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 11, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 14, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs

potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: RUS Form 87, Request for Mail List Data.

OMB Control Number: 0572-0051.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture. The agency makes loans (direct and guaranteed) to finance electric and telecommunications facilities in rural areas in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 as amended, (ReAct). RUS Electric Program provides support to the vast rural American electric infrastructure. RUS' Telecommunications Program makes loans to furnish and improve telephone services and other telecommunications purposes in rural areas.

Need and Use of the Information: RUS will collect information using RUS Form 87, Request for Mail List Data. The information is used for the RUS Electric and Telephone programs to obtain the

name and addresses of the borrowers' officers/board of directors and corporate officials, who are authorized to sign official documents and/or to make official representations concerning borrower operations and management. RUS uses the information to assure that (1) accurate, current, and verifiable information is available; (2) correspondence with borrowers is properly directed; and (3) the appropriate officials have signed the official documents submitted. Failure to collect information from borrowers could result in failure to protect the government's security interest when determining eligibility and administering loan programs.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 985.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 245.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020-17847 Filed 8-13-20; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 11, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 14, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the

following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

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Animal and Plant Health Inspection Service

Title: Imported Seed and Screening.

OMB Control Number: 0579-0124.

Summary of Collection: The United States Department of Agriculture (USDA) is responsible for preventing plant diseases or insect pests from entering the United States, preventing the spread of pests not widely distributed in the United States, and eradicating imported pests when eradication is feasible. Under the authority of the Federal Seed Act of 1939, as amended, the USDA regulates the importation and interstate movement of certain agricultural and vegetable seeds. The USDA Animal & Plant Health Inspection Service (APHIS) Plant Protection and Quarantine (PPQ) Division has established a seed analysis program with Canada that allows U.S. companies that import seed for cleaning or processing to enter into compliance agreements with APHIS. To monitor and ensure compliance with United States agricultural regulations, APHIS will collect information using forms and other information activities.

Need and Use of the Information: APHIS will collect information from forms, correspondence, inspections, and discussions to ensure imported seeds do not pose a threat to U.S. agriculture. If the information were not collected, there would be increased risk of severe economic damage to United States agriculture caused by plant diseases and insect pests.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 1,153.

Frequency of Responses:

Recordkeeping; Reporting: On occasion.

Total Burden Hours: 9,632.

Animal and Plant Health Inspection Service

Title: Importation of Beef and Ovine Meat from Uruguay and Beef from Argentina and Brazil.

OMB Control Number: 0579-0372.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 (7

U.S.C. 8301), is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The agency charged with carrying out this disease prevention mission is the Animal and Plant Health Inspection Service (APHIS). Disease prevention is the most effective method for maintaining a healthy animal population and enhancing APHIS' ability to compete globally in animal and animal product trade. APHIS import regulations in sections 94.1, 9 CFR 94.11, and 9 CFR 94.29 place certain restrictions on the importation of beef and ovine meat from Uruguay into the United States. Under these regulations, APHIS must collect information (via a Foreign Meat Inspection Certificate), prepared by an authorized veterinary official of the Government of Argentina and Brazil, certifying that specific conditions for importation have been met.

Need and Use of the Information: Imported beef and ovine meat from Uruguay and imported beef from northern Argentina and imported beef from the specific regions in Brazil must be accompanied by a foreign meat inspection certificate that is completed and signed by an authorized veterinary official of the Government of Uruguay, Argentina, and Brazil. Without the information, APHIS would be unable to establish an effective defense against the entry and spread of foot-and-mouth disease and other animal diseases from Uruguay beef and ovine product imports as well as imports of beef and beef products from Argentina and Brazil.

Description of Respondents: Federal Government; Business or Other for Profit.

Number of Respondents: 6,019.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 10,044.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020-17795 Filed 8-13-20; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Request for Extension or Renewal of a Currently Approved Information Collection

AGENCY: Office of Assistant Secretary for Civil Rights.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Office of the Assistant Secretary for Civil Rights to request a renewal to an approved information collection for race, ethnicity, and gender along with comments.

DATES: Comments on this notice must be received by October 13, 2020 to be assured of consideration.

ADDRESSES: The Office of the Assistant Secretary for Civil Rights invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

Federal eRulemaking Portal: This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to <http://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

Mail, including CD-ROMs, etc.: Send to U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Mailstop 9407, Washington, DC 20250.

Hand- or courier-delivered submittals: Deliver to 355 E Street SW, Room 7-205, Washington, DC 20024.

Instructions: All items submitted by mail or electronic mail must include the Agency name, Office of the Assistant Secretary for Civil Rights. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

Docket: For access to background documents or comments received, go to the Office of the Assistant Secretary for Civil Rights at 1400 Independence Avenue SW, 507-A, Washington, DC 20250 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Denise A. Banks, Office of the Assistant Secretary for Civil Rights, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250, (202) 401-7654 and fax number (202) 690-1782.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Office of the Assistant Secretary for Civil Rights to request

approval for an existing collection in use with an OMB control number.

Title: Race, Ethnicity and Gender Data Collection.

OMB Number: OMB No. 0503-0019.

Expiration Date of Approval: October 31, 2020.

Type of Request: Extension and renewal of a currently approved information collection.

Abstract: This data collection is necessary to implement Sections 14006 and 14007 of the Food, Conservation, and Energy Act of 2008, 7 U.S.C. 8701 (hereafter referred to as the 2008 Farm Bill). Section 14006 of the 2008 Farm Bill establishes a requirement for the Department of Agriculture (USDA) to annually compile application and participation rate data regarding socially disadvantaged farmers or ranchers by computing for each program of the USDA that serves agriculture producers and landowners (a) raw numbers of applicants and participants by race, ethnicity, and gender subject to appropriate privacy protections, as determined by the Secretary; and (b) the application and participation rate, by race, ethnicity and gender, as a percentage of the total participation rate of all agricultural producers and landowners for each county and State in the United States. Pursuant to the authority in section 14006, the agencies of USDA are to collect the data and transmit it to the Secretary of Agriculture. Section 14007 requires USDA to use the data collected in the conduct of oversight and evaluation of civil rights compliance.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 minutes per response.

Respondents: Producers, applicants.

Estimated Number of Respondents: 1,913,798.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 63,793.

Comments are invited on: (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) 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 the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology.

All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

Devon Westhill,

Deputy Assistant Secretary for Civil Rights.

[FR Doc. 2020-17831 Filed 8-13-20; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 11, 2020.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13 on or after the date of publication of this notice. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments regarding these information collections are best assured of having their full effect if received by September 14, 2020. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such

persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: National Research, Promotion, and Consumer Information Programs.

OMB Control Number: 0581-0093.

Summary of Collection: The U.S. Department of Agriculture has the responsibility for implementing and overseeing programs for a variety of commodities including beef, blueberries, cotton, dairy, eggs, fluid milk, Hass avocados, honey, lamb, mangos, mushrooms, paper and paper-based packaging, peanuts, popcorn, pork, potatoes, softwood lumber, sorghum, soybeans, and watermelons. Various Acts authorizes these programs to carry out projects relating to research, consumer information, advertising, sales promotion, producer information, market development and product research to assist, improve, or promote the marketing, distribution, and utilization of their respective commodities. The Agricultural Marketing Service (AMS) has the responsibility to appoint board members and approve the boards' budgets, plans, and projects and for foreign projects, the Foreign Agricultural Service. AMS' objective in carrying out this responsibility is to assure the following: (1) Collection of funds are properly accounted for; (2) expenditures of all funds are for the purposes authorized by enabling legislation; and (3) the board's administration of the programs conforms to USDA policy.

Need and Use of the Information: The boards administer the various programs using a variety of forms to carry out their responsibilities. Only authorized employees of the various boards and USDA employees will use the information collected. Were the data collected less frequently, (1) it would hinder data needed to collect and refund assessments in a timely manner and result in delayed or even lost revenue; (2) boards would be unable to carry out the responsibilities of their respective Acts; and (3) requiring reports less frequently than monthly would impose additional record keeping requirements.

Description of Respondents: Business or other for profit, Farms.

Number of Respondents: 161,820.

Frequency of Responses: Reporting: On occasion, Weekly, Monthly, Semi-annually, Annually; Recordkeeping:

Total Burden Hours: 147,939.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020-17820 Filed 8-13-20; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS-2020-0025]

Salmonella—State of the Science

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notification of public meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) is hosting a virtual public meeting with participation from the Agricultural Research Service (ARS), the U.S. Food and Drug Administration (FDA), and the Centers for Disease Control and Prevention (CDC). FSIS will discuss the Agency's commitment to reducing *Salmonella* contamination associated with FSIS-regulated products and thus saving lives, by leading with science, building relationships, and influencing behavior change. Industry, interested individuals, organizations, and other stakeholders are invited to participate in the meeting and to comment on the data and science that drive FSIS *Salmonella* reduction efforts.

DATES: The virtual public meeting will be held on Tuesday, September 22, 2020, from 9 a.m. to 3:15 p.m. EST. Submit comments on or before September 25, 2020.

ADDRESSES: The meeting is virtual and will be viewed via the web-ex link provided by email when you register for the meeting. Attendees must be pre-registered for the meeting. See the pre-registration instructions under "Registration and Meeting Materials."

Comments on this notice may be submitted by one of the following methods:

Federal eRulemaking Portal: This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to <http://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

Mail, including CD-ROMs, etc.: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250-3700.

Hand- or courier-delivered submittals: Deliver to 1400 Independence Avenue

SW, Room 6065, Washington, DC 20250-3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2020-0025. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

Docket: For access to background documents or comments received, email docketclerk@usda.gov or call 202-692-4235 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250-3700.

FOR FURTHER INFORMATION CONTACT:

Email Congressional and Public Affairs at FRN@usda.gov. Attendees requiring a sign language interpreter or other special accommodations should notify Evelyn Arce by calling 202-418-8903 or emailing Evelyn.Arce@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The daily work of implementing the Federal Meat Inspection Act (FMIA), Poultry Products Inspection Act (PPIA), and the Egg Products Inspection Act (EPIA) is carried out by FSIS inspectors in over 6,500 establishments across the country. Although not always apparent to the public, there are many other components of the Agency that support the work of the field personnel in addressing foodborne pathogens. While the scope of FSIS authority to enforce FMIA, PPIA, and EPIA is centered on the meat, poultry, and egg products industries, the activities of the Agency drive change along the entire farm-to-fork continuum to protect our food supply. Food safety is a shared responsibility, and FSIS, in partnership with the greater food safety community ensures that safe and wholesome foods are on our dinner table and in our restaurants, schools, and institutions every day.

FSIS aggressively targets all foodborne pathogens of importance within their regulatory authority, including *Salmonella*. As food safety challenges evolve, FSIS will use the latest science and data to modernize inspection systems, laboratory and sampling methods, and communications to protect public health and meet consumers' needs. FSIS is focused on improving the Agency's ability to predict, detect, and reduce pathogens while encouraging industry to adopt the latest technology and innovations to produce a safer product. At the same time, FSIS is working to ensure that

consumers are empowered with information on how to safely handle, cook, and store food.

Salmonella is a leading cause of foodborne illness, and outbreaks of *Salmonella* illness have been linked to poultry, pork, and beef products. Using outbreak data through 2017, the Interagency Food Safety Analytics Collaboration estimates that approximately 38 percent of foodborne salmonellosis in the United States can be attributed to meat and poultry products.¹ These data highlight that FSIS plays an important role in helping achieve national public health goals aimed at reducing foodborne illness caused by *Salmonella*. Although findings from a recent analysis of FSIS data show that there has been an overall reduction in the occurrence of *Salmonella* on meat and poultry products over the past 20 years,² there is still more work to be done. The food safety community did not meet the 2020 national public health goal for reduction of *Salmonella* illnesses, and FSIS remains committed to working toward achieving the Healthy People³ target set for 2030.

Public Meeting

FSIS is announcing that it will hold a virtual public meeting on September 22, 2020, to discuss issues related to the foodborne pathogen *Salmonella*. At this meeting, FSIS will present its Roadmap to Reducing *Salmonella*, which describes how FSIS advances programs and policies that are science-based, data-driven, and promote innovation to reduce *Salmonella* and other pathogens in meat, poultry, and egg products. The roadmap describes current FSIS programs and future activities to drive progress toward meeting the Healthy People 2030 public health goals. FSIS, with speakers from ARS, FDA, and CDC, will highlight some of these efforts and describe the science and data that supports them. An agenda will be published online before the public meeting. FSIS will finalize the agenda on or before the meeting dates and post it on the FSIS website at: <http://>

¹ Interagency Food Safety Analytics Collaboration. Foodborne illness source attribution estimates for 2017 for *Salmonella*, *Escherichia coli* O157, *Listeria monocytogenes*, and *Campylobacter* using multi-year outbreak surveillance data, United States. GA and DC: U.S. Department of Health and Human Services, CDC, FDA, USDA-FSIS. 2019.

² Williams et al. 2020. Changes in *Salmonella* Contamination in Meat and Poultry Since the Introduction of the Pathogen Reduction: Hazard Analysis and Critical Control Point Rule. Accepted for Publication. *Journal of Food Protection* (early view) <https://doi.org/10.4315/JFP-20-126>.

³ <https://www.healthypeople.gov/2020/topics-objectives/topic/food-safety>.

www.fsis.usda.gov/meetings. Topics will include:

- *Salmonella* presence in FSIS regulated products;
- Modernization of inspection systems;
- The role of FSIS Laboratories and sampling methods to reduce *Salmonella* in FSIS regulated products;
- *Salmonella* performance standards;
- Consumer research and education; and
- Future scientific strategies for controlling *Salmonella*

Registration and Meeting Materials

There is no fee to register for the public meeting, but pre-registration is mandatory for participants attending. All attendees must register online at <https://ems8.intellor.com/?p=831058&do=register&t=6>, after which they will receive an email acknowledging their registration. Stakeholders who wish to speak at the meeting must notify FSIS during registration.

Public Comments and Participation in Meetings

Public Comments: Oral Comments

Stakeholders will have an opportunity to provide oral comments during the public meeting. As mentioned above, stakeholders must notify FSIS during registration of their wish to speak at the meeting. Stakeholders who do not notify FSIS during registration of their wish to speak will not have the opportunity to comment on the day of the public meeting. Due to the anticipated high level of interest in the opportunity to make public comments and the limited time available to do so, FSIS will do its best to accommodate all persons who registered and requested to provide oral comments, and will limit all speakers to three minutes. FSIS encourages persons and groups who have similar interests to consolidate their information for presentation by a single representative.

Public Questions

During the meeting, FSIS will host a roundtable discussion with subject matter experts. Questions for the roundtable discussion panel should be submitted in advance, to FRN@usda.gov by September 10, 2020.

Transcripts

As soon as the meeting transcripts are available, they will be accessible on the FSIS website at: <http://www.fsis.usda.gov/wps/portal/fsis/newsroom/meetings>. The transcripts may also be viewed at the FSIS Docket Room at the addressed listed above.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication online through the FSIS web page located at: <http://www.fsis.usda.gov/federal-register>.

FSIS also will make copies of this publication available through the FSIS *Constituent Update*, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <http://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination, any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at: http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf, or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250-9410.

Fax: (202) 690-7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication

(Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

Done at Washington, DC.

Theresa Nintemann,
Deputy Administrator.

[FR Doc. 2020-17827 Filed 8-13-20; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Recordkeeping for Employment and Training Program Activity Report and Requests for Additional 100 Percent Funding

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection for the extension, without change, of a currently approved collection for the Supplemental Nutrition Assistance Program (SNAP) Employment and Training (E&T) Program Activity Report (form FNS-583) and State requests for additional funding only. Requests and recordkeeping for these activities are currently approved under OMB No. 0584-0339, expiration date 01/31/2021. The burden hours and total annual responses remains unchanged. FNS is not seeking public comments on the reporting burden for the FNS-583 because that is under FNS' web-based Food Program Reporting System, OMB Control No: 0584-0594, expiration date 07/31/2023.

DATES: Written comments must be received on or before October 13, 2020.

ADDRESSES: Comments may be sent to: Moira Johnston, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314. Comments may also be submitted via email to moira.johnston@fns.usda.gov. Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov>, and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of this information collection should be directed to Moira Johnston at 703-305-2515.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Employment and Training Program Activity Report and Requests for Additional 100 percent Funding.

Form Number: FNS-583 (Recordkeeping burden only).

OMB Number: 0584-0339.

Expiration Date: 01/31/2021.

Type of Request: Extension, without change, of a currently approved collection.

Abstract: 7 CFR 273.7(c)(9) requires State agencies to maintain quarterly E&T Program Activity Reports containing monthly figures for participation in the program. FNS uses Form FNS-583 to provide the format for this data. State agencies report this data using the online Food Program Reporting System (FPRS, OMB Control No: 0584-0594 expiration date 7/31/2023). State agencies must maintain records in order to support data reported in FPRS.

The information collected on the FNS-583 report includes:

- On the first quarter report, the number of work registrants receiving SNAP as of October 1 of the new fiscal year;
- On each quarterly report, by month, the number of new work registrants; the number of able-bodied adults without dependents (ABAWDs) applicants and recipients participating in qualifying components; the number of all other applicants and recipients (including ABAWDs involved in non-qualifying activities) participating in components; and the number of ABAWDs exempt under the State agency's 15 percent exemption allowance;
- On the fourth quarter report, the total number of individuals who participated in each component, which is also sorted by ABAWD and non-

ABAWD participants and the number of individuals who participated in the E&T Program during the fiscal year.

7 CFR 273.7(d)(1)(i)(D) provides that if a State agency will not expend all of the funds allocated to it for a fiscal year, FNS will reallocate unexpended funds to other State agencies during the fiscal year or the subsequent fiscal year as FNS considers appropriate and equitable. After FNS makes initial E&T allocations, State agencies may request more funds as needed. Typically FNS receives eighteen such requests per year.

The time it takes to prepare these requests is included in the burden. After receiving the State requests, FNS will reallocate unexpended funds as provided above. The following is the estimated burden for E&T reporting including the burden for State agencies to request additional funds.

Affected Public: State, Local and Tribal Government. Respondent groups identified include State agencies administering the SNAP E&T program in 50 States, the District of Columbia, Guam, and the U.S. Virgin Islands.

Estimated Number of Respondents: The total estimated number of respondents annually for the recordkeeping burden of the FNS-583 is 53 State agencies, including the agencies responsible for SNAP administration in 50 States, the District of Columbia, Guam, and the U.S. Virgin Islands.

The estimated number of respondents for requesting additional funds and maintaining records to support these requests is 18 per year.

Estimated Number of Responses per Respondent: The 53 State agencies are required to submit data on the FNS-583 quarterly. State agencies will be required to maintain data to support 4 reports per year.

The State agencies requesting additional funds typically do so once per year.

Estimated Total Annual Responses: 248.

Estimated Time per Response: The estimated time of response varies from 8 to 60 minutes depending on respondent group, as shown in the table below, with an average estimated time of .199 hours per response.

Estimated Total Annual Burden on Respondents: 2,971 minutes (49.51 hours rounded to 50 burden hours). See the table below for estimated total annual burden for each type of respondent.

TOTAL ANNUAL REPORTING AND RECORDKEEPING BURDEN: COMPILING AND REPORTING FOR THE FNS-583 AND REQUESTS FOR MORE FUNDING SNAP EMPLOYMENT AND TRAINING PROGRAM ACTIVITY REPORT

Section of regulation	Title	Number of respondents	Reports filed annually	Total responses (C x D)	Estimated number of hours per response	Estimated total hours (C x D x F)
A	B	C	D	E	F	G
REPORTING						
7 CFR 273.7(d)(1)(i)(F)	Preparing requests for more funds after initial allocation.	18	1	18	1	18
Total Reporting Additional Funds Requests.	.....	18	1	18	1	18
RECORDKEEPING						
7 CFR 277.12	Recordkeeping burden for FNS-583	53	4	212	0.137	29.04
7 CFR 277.12	Record-keeping burden for additional requests.	18	1	18	0.137	2.47
Total Recordkeeping Burden for FNS 583 and Additional Funds Requests.	.....	53	4.34	230	0.137	31.51
SUMMARY						
Total all burdens .....	.....	53	4.679	248	0.199	49.51

Pamilyn Miller,
Administrator, Food and Nutrition Service.
 [FR Doc. 2020-17673 Filed 8-13-20; 8:45 am]
BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Evaluation of Child Support Cooperation Requirements in the Supplemental Nutrition Assistance Program

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This NEW information collection will provide USDA with information on Child Support Cooperation Requirements in the Supplemental Nutrition Assistance Program (SNAP).

DATES: Written comments must be received on or before October 13, 2020.

ADDRESSES: Written comments may be sent to: Michael Burke, Office of Policy Support, FNS, USDA, 1320 Braddock Place, 5th Floor, Alexandria, VA 22314. Comments may also be submitted via email to *michael.burke@usda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov>, and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m. Monday through Friday) at Office of Policy Support, FNS, USDA, 1320 Braddock Place, 5th Floor, Alexandria, VA 22314.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Michael Burke by mail at Office of Policy Support, FNS,

USDA, 1320 Braddock Place, 5th Floor Alexandria, VA 22314; by email at *michael.burke@usda.gov*; or by phone at (703) 305-4369.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Evaluation of Child Support Cooperation Requirements in SNAP
Form Number: Not Applicable
OMB Number: 0584-NEW
Expiration Date: Not Yet Determined
Type of Request: New Information Collection

Abstract: In the Agriculture Improvement Act of 2018 (Pub. L., 115–334, Section 4015), Congress directed FNS to assess the implementation, impacts, costs, and benefits of child support cooperation requirements in SNAP. Child support cooperation requirements generally mandate a child's primary caretaker (typically a custodial parent) applying for that program's benefits to assist the child support agency by providing information that helps locate noncustodial parents and establish paternity and support orders. States may also require SNAP noncustodial parents to cooperate with child support by meeting their financial and medical support obligations. The child support cooperation requirement is mandatory in the Temporary Assistance for Needy Families (TANF) program and Medicaid but is a State option and not a mandate for a SNAP participant to obtain, retain or maintain SNAP benefits. Eight States currently implement cooperation requirements in SNAP, and others are considering adopting this requirement.

The study will include 12 States, including 7 States that are exercising the option to implement a child support requirement in SNAP, 2 States that formerly implemented a child support cooperation requirement but no longer do so, and 3 States that are considering implementing this requirement. Study objectives include (1) assessing the implementation of the child support cooperation requirement in States currently implementing it; (2) assessing the feasibility of implementing a child support cooperation requirement in study States that formerly chose to implement the requirement or are considering implementing it; (3) assessing the impact of a child support cooperation requirement in SNAP on custodial and noncustodial parents in study States that have or formerly had the requirement; (4) assessing how State agencies align the procedures for implementing a child support cooperation requirement in SNAP to those in other Federal programs that have a cooperation requirement; (5) determining the costs and benefits to State SNAP agencies, child support

agencies, and households of requiring State agencies to implement a child support cooperation requirement; and (6) assessing the impact of a child support cooperation requirement on SNAP eligibility, benefit levels, food security, income, and economic stability.

To achieve the research objectives, the study will conduct site visits and collect administrative data. The site visits will include interviews with State staff designated by the State Director from the SNAP and child support agencies. In 7 States that currently have child support requirements in SNAP, site visits will include visits to two local SNAP and two local child support agency offices as well as interviews with staff. The study will use this information to document the processes used to implement the child support cooperation requirement. The study will conduct in-person interviews with SNAP participants in 10 States that either have child support requirements in SNAP or are considering implementing these requirements to collect information on how clients understand the requirement and how it affects them.

To assess the impact of the requirement on SNAP participants and applicants, the study will also collect and analyze SNAP and child support administrative data in all 12 study states. In the 9 study states that currently have or formerly had child support requirements in SNAP, the SNAP agency respondent who provides the SNAP data for the study will also provide TANF and/Medicaid administrative data if those program data are housed in the same agency that administers SNAP. If the TANF and/or Medicaid programs are housed in agencies different from the SNAP agencies, the TANF and/or Medicaid administrative data will not be collected. Finally, the study will collect and analyze cost data associated with implementing the requirement in selected States to assess the costs of implementation and to compare these against the benefits of the requirement.

Affected Public: Members of the public affected by the data collection include Individuals/households; State,

Local and Tribal governments; and business-for-profit.

Estimated Number of Respondents: The total estimated number of respondents—which includes everyone contacted for data collection regardless of whether they participate—is 1,114. This includes 750 individuals/households, 352 State and local government staff, and 12 advocates. FNS will contact 750 individuals/households, out of which 300 parents/caretakers will complete in-person interviews and 450 parents/caretakers will be considered nonrespondents. FNS will contact 100 State and local agency directors/managers; 210 State or local agency direct service staff; and 12 representatives or staff from State legislature or judicial systems for in-person interviews. Twenty-four of the directors/managers will provide administrative data and 6 will provide cost data. FNS will contact 12 advocates for in-person interviews.

Estimated Frequency of Responses per Respondent: 1.418312387791741.

FNS used the average frequency of all respondent/non-respondent group to determine the annual frequency estimates. Average 1.40 frequency of responses for individuals/households (with an expected 1,050 responses from 750 respondents), 1.4375 responses for State and local government representatives (with an expected 506 responses from 352 respondents), and 2.00 responses for (business for profit) private sector representatives (with an expected 24 responses from 12 respondents).

Estimated Total Annual Responses: 1,579.99 rounded up to 1,580.

Estimated Time per Response: 1.277012658.

FNS used the time per all respondent/non-respondent group to determine the annual frequency estimates. The estimated time of response varies from 0.0835 or (5 minutes) to 35.00 burden hours depending on the respondent group, with an average estimated time of 1.28 hours (1 hour and 17 minutes).

Estimated Annual Burden Hours: The estimated annual burden hours is 2,017.679.

Affected public	Data collection activity	Respondents type	Sample size	Respondents				Non-respondents				Grand total burden estimate		
				Estimated number of respondents	Frequency of response	Total annual responses	Average burden hours per response	Total annual burden estimate (hours)	Estimated number of non-respondents	Frequency of response	Total annual responses		Average burden hours per response	Total annual burden estimate (hours)
Individuals/households	Invitation call or letter In-person interview	Parent/caretaker Parent/caretaker	750 750	300 300	1 1	300 300	0.08 1.67	24.00 501.00	0.08 0.00	450 0	1 0	450 0	36.00 0.00	60.00 501.00
Subtotal individuals/households			750	300		600		525.00		450		450	36.00	561.00
State and local government	Invitational email and fact sheet review. In-person interview	State or local agency director/manager (SNAP: 12 State SNAP agency directors, 12 SNAP policy directors, 12 SNAP data managers, 2 SNAP local office directors, Child Support: 12 State Child Support agency directors, 12 Child Support policy directors, 12 Child Support data managers, and 2 Child Support local office agency directors). State or local agency director/manager (Same breakdown as depicted in cell above). State or local agency direct service staff (SNAP: 105 SNAP direct service staff; Child Support: 105 Child Support direct service staff).	100 210	100 210	1 1	100 210	1.00 1.77	100.00 371.70	0.00 0.08	0 0	1 1	0 0	0.00 0.00	100.00 371.70
	Invitational email and fact sheet review. In-person interview	Representative or staff from State legislature or judicial system. Representative or staff from State legislature or judicial system.	12 12	12 12	1 1	12 12	0.08 1.00	0.96 12.00	0.08 0.00	0 0	1 0	0 0	0.00 0.00	0.96 12.00
	Written data collection request; any needed clarifying discussions. Provide administrative data Written data collection request; any needed clarifying discussions. Provide cost data	State or local agency director/manager. State or local agency director/manager. State or local agency director/manager. State or local agency director/manager.	24 24 6 6	24 24 6 6	1 1 2 2	24 24 12 12	2.00 35.00 1.00 4.00	48.00 840.00 12.00 48.00	0.08 0.00 0.08 0.00	0 0 0 0	1 0 1 0	0 0 0 0	0.00 0.00 0.00 0.00	48.00 840.00 12.00 48.00
Subtotal state and local government			352	352		506		1,440.66		0		0	0.00	1,440.66
(Business-for-profit) Private sector.	Invitational email and fact sheet review. In-person interview	Advocate or other stakeholder. Advocate or other stakeholder.	12 12	12 12	1 1	12 12	0.08 1.00	0.96 12.00	0.08 0.00	0 0	1 0	0 0	0.00 0.00	0.96 12.00
Subtotal business-for-profit private sector			12	12		24		12.96		0		0	0.00	12.96
Grand total			1,114	664		1,130		1,978.62		450		450	0.00	2,017.68

Pamilyn Miller,
Administrator, Food and Nutrition Service.
 [FR Doc. 2020-17674 Filed 8-13-20; 8:45 am]
BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Forest Service

Request for Applications: The Community Forest and Open Space Conservation Program

AGENCY: Forest Service, USDA
ACTION: Request for applications.

SUMMARY: The U.S. Department of Agriculture (USDA), Forest Service, State and Private Forestry, Cooperative Forestry staff, requests applications for the Community Forest and Open Space Conservation Program (Community Forest Program or CFP). The Community Forest Program is a competitive grant program whereby local governments, qualified nonprofit organizations, and federally recognized Indian tribes are eligible to apply for grants to establish community forests that provide community benefits through fee simple acquisition of private forest land.

DATES: Interested local government and nonprofit applicants must submit applications to the State Forester. Tribal applicants must submit applications to the appropriate Tribal government official. All applications, either hardcopy or electronic, must be received by State Foresters or Tribal governments by January 11th, 2021. State Foresters or Tribal government officials must forward applications to the appropriate Forest Service Regional office or International Institute of Tropical Forestry by February 8th, 2021.

ADDRESSES: All local government and qualified nonprofit organization applications must be submitted to the State Forester of the State where the property is located. All Tribal applications must be submitted to the equivalent Tribal government official. Applicants are encouraged to contact and work with the Forest Service Region or International Institute of Tropical Forestry, and State Forester or equivalent Tribal government official when developing their proposal. Applicants must consult with the State Forester and equivalent Tribal government official prior to requesting technical assistance for a project. The State Forester's member roster may be found on <https://www.stateforesters.org/who-we-are/our-membership/>. All applicants must also send an email to SM.FS.CFP@usda.gov to confirm an

application has been submitted for funding consideration.

State Foresters and Tribal government officials shall submit applications, either electronic or hardcopy, to the appropriate Forest Service Region/Institute contact noted below.

Northern and Intermountain Regions

Regions 1 and 4

(ID, MT, ND, NV, UT)

Janet Valle, USDA Forest Service, 324 25th St., Ogden, UT 84401, 801-625-5258 (phone), 801-710-3795 (mobile), janet.valle@usda.gov

Rocky Mountain Region

Region 2

(CO, KS, NE, SD, WY)

Claire Harper, USDA Forest Service, 1617 Cole Boulevard, Bldg. 17, Lakewood, CO 80401, 303-895-6157 (mobile), claire.harper@usda.gov

Southwestern Region

Region 3

(AZ, NM)

Alicia San Gil, USDA Forest Service, 333 Broadway SE, Albuquerque, NM 87102, 505-842-3289 (phone), 505-235-9233 (mobile), alicia.sangil@usda.gov

Pacific Southwest Region

Region 5

(CA)

Amanda G. McAdams, USDA Forest Service, 221 W. 8th Street, Alturas, CA 96101, 530-233-8743 (phone), 530-802-6935 (mobile), amanda.mcadams@usda.gov

(Hawaii, Guam, American Samoa, Federated States of Micronesia and other Pacific Islands)

Katie Friday, USDA Forest Service, 60 Nowelo St., Hilo, HI 96720, 808-854-2620 (phone), 808-785-5197 (mobile), kathleen.friday@usda.gov

Pacific Northwest, and Alaska Regions

Regions 6 and 10

(AK, OR, WA)

Candice Polisky, USDA Forest Service, 1220 SW Third Ave., Portland, OR 97204, 503-808-2355 (phone), 971-710-2346 (mobile), candice.polisky@usda.gov

Southern Region

Region 8

(AL, AR, FL, GA, KY, LA, MS, NC, OK, SC, TN, TX, VA)

Susan Granbery, USDA Forest Service, 1720 Peachtree Rd., NW, Suite 700, Atlanta, GA 30309, 770-883-8925 (mobile), susan.granbery@usda.gov

International Institute of Tropical Forestry

(PR, VI)

Magaly Figueroa, USDA Forest Service, Jardín Botánico Sur, 1201 Calle Ceiba, San Juan, PR 00926-1119, 787-764-7718 (phone), 787-309-9565 (mobile), magaly.figueroa@usda.gov

Eastern Region

Region 9

(CT, DC, DE, IA, IL, IN, MA, MD, ME, MI, MN, MO, NH, NJ, NY, OH, PA, RI, VT, WI, WV)

Neal Bungard, USDA Forest Service, 271 Mast Road, Durham, NH 03824, 603-868-7719 (phone), 603-833-3287 (mobile), neal.bungard@usda.gov

FOR FURTHER INFORMATION CONTACT: For questions regarding the grant application or administrative regulations, contact Scott Stewart, Program Coordinator, 202-465-5038, scott.stewart@usda.gov and Nausheen Iqbal, 202-594-7554, nausheen.iqbal@usda.gov. Additional information about the Community Forest and Open Space Program may be obtained at <https://www.fs.usda.gov/managing-land/private-land/community-forest>.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

CFDA number 10.689: To address the goals of Section 7A of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103d) as amended, the Forest Service is requesting proposals for community forest projects that protect forest land that has been identified as a national, regional, or local priority for protection and to assist communities in acquiring forestland that will provide public recreation, environmental and economic benefits, and forest-based educational programs.

Detailed information regarding what to include in the application, definitions of terms, eligibility, and necessary prerequisites for consideration can be

found in the final program rule, published October 20, 2011 (76 FR 65121), which is available at <https://www.fs.usda.gov/managing-land/private-land/community-forest/program>.

Grant Application Requirements

1. Eligibility Information

a. *Eligible Applicants.* A local governmental entity federally recognized Indian Tribe (including Alaska Native Corporations), or a qualified nonprofit organization that is qualified to acquire and manage land. Individuals are not eligible to receive funds through this program.

b. *Eligible land.* Lands must be private forest that is at least five acres in size, suitable to sustain natural vegetation, and at least 75 percent forested. The lands must also be threatened by conversion to non-forest uses, must not be held in trust by the United States on behalf of any Indian Tribe, must not be Tribal allotment lands, must be offered for sale by a willing seller, and if acquired by an eligible entity, must provide defined community benefits under CFP and allow public access.

c. *Cost Sharing (Matching Requirement).* All applicants must demonstrate a 50 percent match of the total project cost. The match can include cash, in-kind services, or donations, which shall be from a non-Federal source. For additional information, please see § 230.6 of the final rule.

d. *DUNS Number.* All applicants shall include a Data Universal Numbering System (DUNS) number in their application. For this requirement, the applicant is the entity that meets the eligibility criteria and has the legal authority to apply for and receive the grant. For assistance in obtaining a DUNS number at no cost, call the DUNS number request line 1-866-705-5711 or register on-line at <http://fedgov.dnb.com/webform>.

e. *System for Award Management.* All prospective awardees shall be registered in the System for Award Management prior to award, during performance, and through final payment of any grant resulting from this solicitation. Further information can be found at: <https://www.sam.gov/SAM/>. For assistance, contact Federal Service Desk 1-866-606-8220.

2. Award Information

Funds have not yet been appropriated for CFP in FY 2021. Individual grant applications may not exceed \$600,000, which does not include technical assistance requests. The Federal

Government's obligation under this program is contingent upon the availability of appropriated funds.

No legal liability on the part of the Government shall be incurred until funds are committed by the grant officer for this program to the applicant in writing. The initial grant period shall be for two years, and acquisition of lands should occur within that timeframe. Lands acquired prior to the grant award are not eligible for CFP funding. The grant may be reasonably extended by the Forest Service when necessary to accommodate unforeseen circumstances in the land acquisition process. Written annual financial performance reports and semi-annual project performance reports shall be required and submitted to the appropriate grant officer.

Technical assistance funds, totaling not more than 10 percent of all funds, may be allocated to State Foresters and equivalent officials of the Indian tribe. Technical assistance, if provided, will be awarded at the time of the grant. Applicants shall work with State Foresters and equivalent officials of the Indian Tribe to determine technical assistance needs and include the technical assistance request in the project budget.

As funding allows, applications submitted through this request may be funded in future years, subject to the availability of funds and the continued feasibility and viability of the project.

3. Application Information

Application submission. All local governments and qualified nonprofit organizations' applications must be submitted to the State Forester where the property is located by January 11th, 2021. All Tribal applications must be submitted to the equivalent Tribal officials by January 11th, 2021. Applications may be submitted either electronically or hardcopy to the appropriate official. The State Foresters' contact information may be found at: <https://www.stateforesters.org/who-we-are/our-membership/>.

All applicants must also send an email to SM.FS.CFP@usda.gov to confirm an application has been submitted to the State Forester or equivalent Tribal official for funding consideration.

All State Foresters and Tribal government officials must forward applications to the Forest Service by February 8th, 2021.

4. Application Requirements

The following section outlines grant application requirements:

a. The application can be no more than eight pages long, plus no more than

two maps (eight and half inches by eleven inches in size), the grant forms specified in (b), and the draft community forest plan specified in (e).

b. The following grant forms and supporting materials must be included in the application:

(1) An Application for Federal Assistance (Standard Form 424);
(2) Budget information (Standard Form SF 424c—Construction Programs); and

(3) Assurances of compliance with all applicable Federal laws, regulations, and policies (Standard Form 424d—Construction Programs).

c. Documentation verifying that the applicant is an eligible entity and that the land proposed for acquisition is eligible (see § 230.2 of the final rule).

d. Applications must include the following, regarding the property proposed for acquisition:

(1) A description of the property, including acreage and county location;
(2) A description of current land uses, including improvements;
(3) A description of forest type and vegetative cover;

(4) A map of sufficient scale to show the location of the property in relation to roads and other improvements as well as parks, refuges, or other protected lands in the vicinity;

(5) A description of applicable zoning and other land use regulations affecting the property;

(6) A description of the type of community being served and the extent of community benefits, including to underserved communities (see selection criteria);

(7) A description of relationship of the property within and its contributions to a landscape conservation initiative, as well as any environmental justice initiatives, if applicable; and

(8) A description of any threats of conversion to non-forest uses, including any encumbrances on the property that prevent conversion to non-forest uses.

e. Information regarding the proposed establishment of a community forest, including:

(1) A description of the benefiting community, including demographics, availability of and access to green spaces and other inequalities faced by the community;

(2) A description of the associated benefits provided by the proposed land acquisition;

(3) A description of community involvement, including marginalized communities, to-date in the planning of the community forest acquisition, and of community participation anticipated in long-term management;

(4) An identification of persons and organizations that support the project

and their specific role in establishing and managing the community forest; and

(5) A draft community forest plan. The eligible entity is encouraged to work with the State Forester or equivalent Tribal government official for technical assistance when developing or updating the Community Forest Plan. In addition, the eligible entity is encouraged to work with technical specialists, such as professional foresters, recreation specialists, wildlife biologists, or outdoor education specialists, when developing the Community Forest Plan.

f. Information regarding the proposed land acquisition, including:

(1) A proposed project budget not exceeding \$600,000 and technical assistance needs as coordinated with the State Forester or equivalent Tribal government official (section § 230.6 of the final program rule);

(2) The status of due diligence, including signed option or purchase and sale agreement, title search, minerals determination, and appraisal;

(3) Description and status of cost share (secure, pending, commitment letter, etc.) (section § 230.6 of the final rule);

(4) The status of negotiations with participating landowner(s) including purchase options, contracts, and other terms and conditions of sale;

(5) The proposed timeline for completing the acquisition and establishing the community forest; and;

(6) Long term management costs and funding source(s).

g. Applications must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards also referred to as the Omni Circular (2 CFR part 200).

h. Applications must also include the forms required to process a Federal grant. Section 6 *Grant Requirements* references the grant forms that must be included in the application and the specific administrative requirements that apply to the type of Federal grant used for this program. Grant forms are all available on the *Grants.gov* website at: <https://www.grants.gov/web/grants/forms.html>.

In order to assist applicants, a Community Forest Road Map can be found on the CFP website at <https://www.fs.usda.gov/managing-land/private-land/community-forest/program>. A sample application is located at https://www.fs.fed.us/spf/coop/library/sample_cfp_template.pdf and the scoring guidance is at <https://www.fs.usda.gov/sites/default/files/>

[media_wysiwyg/cfp-panel-review-guidance.pdf](#).

5. Forest Service's Project Selection Criteria

a. Using the criteria described below, to the extent practicable, the Forest Service will give priority to applications that maximize the delivery of community benefits, as defined in the final rule (see section § 230.2 of the final rule); and

b. The Forest Service will evaluate all applications received by the State Foresters or equivalent Tribal government officials and award grants based on the following criteria:

(1) Type and extent of community benefits provided, including to underserved communities. Community benefits are defined in the final program rule as:

(i) Economic benefits, such as timber and non-timber products resulting from sustainable forest management, recreation and tourism;

(ii) Environmental benefits, including clean air and water, stormwater management, and wildlife habitat;

(iii) Benefits from forest-based experiential learning, including K–12 conservation education programs; vocational education programs in disciplines such as forestry and environmental biology; and environmental education through individual study or voluntary participation in programs offered by organizations such as 4–H, Boy or Girl Scouts, Master Gardeners, etc.;

(iv) Benefits from serving as replicable models of effective forest stewardship for private landowners; and

(v) Recreational benefits such as hiking, hunting, and fishing secured through public access.

(2) Extent and nature of community engagement, including participation by marginalized communities, in the establishment and long-term management of the community forest;

(3) Amount of cost share leveraged;

(4) Extent to which the community forest contributes to a landscape conservation initiative, as well as any applicable environmental justice initiatives;

(5) Extent of due diligence completed on the project, including cost share committed and status of appraisal;

(6) Likelihood that, unprotected, the property would be converted to non-forest uses; and

(7) Costs to the Federal Government.

6. Grant Requirements

a. Once an application is selected, funding will be obligated to the grant recipient through a grant adhering to the

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards also referred to as the Omni Circular (2 CFR part 200).

b. Forest Service must approve any amendments to a proposal or request to reallocate funding within a grant proposal. If negotiations on a selected project fail, the applicant cannot substitute an alternative site.

c. The grant recipient must comply with the requirements in section § 230.8 in the final rule before funds will be released.

d. After the project has closed, as a requirement of the grant, grant recipients will be required to provide the Forest Service with a Geographic Information System (GIS) shapefile: A digital, vector-based storage format for storing geometric location and associated attribute information, of CFP project tracts and cost share tracts, if applicable.

e. Any funds not expended within the grant period must be de-obligated and revert to the Forest Service.

f. All media, press, signage, and other documents discussing the creation of the community forest must reference the partnership and financial assistance by the Forest Service through the CFP.

Additional information may be found in section § 230.9 of the final rule.

Rick Cooksey,

Acting Associate Deputy Chief, State and Private Forestry.

[FR Doc. 2020-17838 Filed 8-13-20; 8:45 am]

BILLING CODE 3411-15-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the New Mexico Advisory Committee to the Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the New Mexico Advisory Committee (Committee) will hold a series of meetings via teleconference on Wednesday, October 7, 21, and Wednesday, November 4, 18, and Monday, November 30, 2020 at 2:00 p.m. Mountain Time for the purpose of discussing a draft of the Committee's Advisory Memorandum on Wage Theft and Subminimum Wages.

DATES: These meetings will be held on:

- Wednesday, October 7, 2020 at 2:00 p.m. Mountain Time

- Wednesday October 21, 2020 at 2:00 p.m. Mountain Time
- Wednesday, November 4, 2020 at 2:00 p.m. Mountain Time
- Wednesday, November 18, 2020 at 2:00 p.m. Mountain Time
- Monday, November 30, 2020 at 2:00 p.m. Mountain Time

Public Call Information: Dial: 800-437-2398, Conference ID: 5499756

FOR FURTHER INFORMATION CONTACT:

Brooke Peery, Designated Federal Officer (DFO), at bpeery@usccr.gov or (202) 701-1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the above listed toll-free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 300 N. Los Angeles St., Suite 2010, Los Angeles, CA 90012 or emailed to Brooke Peery at bpeery@usccr.gov.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: <https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlGAAQ>.

Please click on the "Meeting Details" and "Documents" links. Persons interested in the work of this Committee are also directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Unit office at the above email or street address.

Agenda

- I. Welcome and Introductions
- II. Approval of Minutes
- III. Discussion on Memo Draft
- IV. Public Comment
- V. Adjournment

Dated: August 10, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020-17774 Filed 8-13-20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Arizona Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a teleconference meeting of the Arizona Advisory Committee (Committee) to the Commission will be held at 12:00 p.m. (Arizona Time) Tuesday, September 8, 2020. The purpose of the meeting is for the Committee to discuss potential topics of study.

DATES: The meeting will be held on Tuesday, September 8, 2020 at 12:00 p.m. Arizona Time.

PUBLIC CALL INFORMATION:

Dial: 800-367-2403

Conference ID: 5740796

FOR FURTHER INFORMATION CONTACT:

Brooke Peery, Designated Federal Officer, (DFO) at bpeery@usccr.gov or (202) 701-1376.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800-367-2403, conference ID number: 5740796. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written

comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons who desire additional information may contact the Regional Programs Unit at (213) 894-3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at <https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzl2AAA>.

Please click on the "Committee Meetings" tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, <https://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda

- I. Welcome & Introductions
- II. Discussion of Concept Stage
- III. Public Comment
- IV. Adjournment

Dated: August 10, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020-17772 Filed 8-13-20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; 2020 Census Count Question Resolution Operation; Correction

AGENCY: Census Bureau, Commerce.

ACTION: Notice of information collection, request for comment; correction.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The Census Bureau published a document in the **Federal**

Register on August 4, 2020, concerning a request for comments on the 2020 Census Count Question Resolution Operation (CQR). This notice contained two errors referenced within the document: One incorrect date and one misused word. The corrections are explained below.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or specific questions related to collection activities should be directed to Robin A. Pennington, Decennial Census Management Division, Program Management Office, by phone 301-763-8132 or by email robin.a.pennington@census.gov.

SUPPLEMENTARY INFORMATION:

Correction

The **Federal Register** of August 4, 2020, Vol. 85, Number 150, pp. 47162-47165, FR Doc No.: 2020-16962 listed an incorrect date for the population counts sent to the President (located in the first column/paragraph on page 47163). The Census Bureau plans to deliver the population counts to the President on the originally established deadline, December 31, 2020. In addition, the same sentence used “identify” erroneously; the appropriate word is “identity”. As such, we request an amendment to the text of the **Federal Register** as follows:

“The CQR does not revise the population counts sent to the President by December 31, 2020, which determine the apportionment to the U.S. House of Representatives or revise the population counts relating to differential privacy, which is the new mathematical approach developed to protect the identity of individual respondents in the 2020 Census population counts.”

Dated: August 11, 2020.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020-17797 Filed 8-13-20; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-489-840]

Common Alloy Aluminum Sheet From The Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Determination of Critical Circumstances in Part, and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of common alloy aluminum sheet (aluminum sheet) from The Republic of Turkey (Turkey). The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable August 14, 2020.

FOR FURTHER INFORMATION CONTACT: Gene H. Calvert, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3586.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 7, 2020.¹ On May 19, 2020, Commerce postponed the preliminary determination of this investigation and the revised deadline is now August 7, 2020.² For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.³ A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix

¹ See *Common Alloy Aluminum Sheet from Bahrain, Brazil, India, and the Republic of Turkey: Initiation of Countervailing Duty Investigations*, 85 FR 19449 (April 7, 2020) (*Initiation Notice*).

² See *Common Alloy Aluminum Sheet from Bahrain, Brazil, India, and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 85 FR 29930 (May 19, 2020).

³ See Memorandum, “Decision Memorandum for the Preliminary Affirmative Determination in the Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the Republic of Turkey,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is common alloy aluminum sheet from Turkey. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce’s regulations,⁴ we set aside a period of time, as stated in the *Initiation Notice*, for parties to raise issues regarding product coverage (*i.e.*, scope).⁵ We received several comments concerning the scope of the antidumping duty (AD) and countervailing duty (CVD) investigations of aluminum sheet as it appeared in the *Initiation Notice*. We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determinations of the companion AD investigations, the deadline for which is October 6, 2020.⁶ We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determination for this investigation after considering any relevant comments submitted in scope case and rebuttal briefs.⁷

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines

⁴ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁵ See *Initiation Notice*, 85 FR at 19450.

⁶ See *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 85 FR 45576, 45577 (July 29, 2020).

⁷ The deadline for interested parties to submit scope case and rebuttal briefs will be established in the preliminary scope decision memorandum.

that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific.⁸

Commerce notes that, in making these findings, it relied, in part, on facts available and, because Commerce finds that one or more respondents did not act to the best of their ability to respond to Commerce’s requests for information, Commerce drew an adverse inference where appropriate in selecting from among the facts otherwise available.⁹ For further information, see “Use of Facts Otherwise Available and Application of Adverse Inferences” in the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of aluminum sheet from Turkey based on a request made by the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its individual members, Aleris Rolled Products, Inc., Arconic, Inc., Constellium Rolled Products Ravenswood, LLC, JW Aluminum Company, Novelis Corporation, and Texarkana Aluminum, Inc. (the petitioners).¹⁰ Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than December 21, 2020, unless postponed.

Preliminary Affirmative Determination of Critical Circumstances, in Part

In accordance with section 703(e)(1) of the Act, Commerce preliminarily determines that critical circumstances exist with respect to imports of aluminum sheet from Turkey for Assan Aluminyum Sanayi ve Ticaret A.S. (Assan), but do not exist with respect to Teknik Aluminyum Sanayi A.S. (Teknik) or for all other exporters or producers not individually examined. For a full description of the methodology and results of Commerce’s

analysis, see the Preliminary Decision Memorandum.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce preliminarily found a *de minimis* rate for Teknik. Therefore, the only rate that is not zero, *de minimis*, or based entirely on facts otherwise available is the rate calculated for Assan. Consequently, the rate calculated for Assan is also assigned as the rate for all other producers and exporters.

Preliminary Determination

Consistent with section 703(b)(4)(A) of the Act, Commerce has disregarded Teknik’s *de minimis* rate. Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (<i>ad valorem</i>) (percent)
Assan Aluminyum Sanayi ve Ticaret A.S. ¹¹	3.15
Teknik Aluminyum Sanayi A.S. ¹²	0.07
All Others	3.15

(*de minimis*).

Suspension of Liquidation

In accordance with section 703(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 703(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above. Because the

subsidy rate for Teknik is *de minimis*, Commerce intends to direct CBP not to suspend liquidation of entries of the merchandise produced by Teknik and exported by either Teknik or by TAC Metal. However, entries of subject merchandise in any other producer/exporter combination, *e.g.*, merchandise produced by a third party and exported by either Teknik or by TAC Metal, are subject to cash deposit requirements at the all-others rate.

Section 703(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) The date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which the notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of aluminum sheet from Turkey for Assan. In accordance with section 703(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of subject merchandise from Assan that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

All interested parties will have the opportunity to submit case and rebuttal briefs on the preliminary scope determination. The deadline to submit these comments will be established in the preliminary scope decision memorandum. Scope rebuttal briefs (which are limited to issues raised in the scope briefs) may be submitted no later than seven days after the deadline for the scope briefs. These deadlines apply to the AD and CVD aluminum sheet investigations, regardless of the deadlines of the preliminary determinations in the AD investigations.

⁸ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁹ See sections 776(a) and (b) of the Act.

¹⁰ See Petitioners’ Letter, “Countervailing Duty Investigations of Common Alloy Aluminum Sheet from Bahrain, Brazil, India, and the Republic of Turkey—Petitioners’ Request to Align Final Countervailing Duty Determinations with the Companion Antidumping Duty Final Determinations,” dated July 17, 2020.

¹¹ As discussed in the Preliminary Decision Memorandum, Commerce has preliminarily found Kibar Dis Ticaret A.S. (Kibar Dis) and Kibar Holding to be cross-owned, pursuant to 19 CFR 351.525(b)(6)(vi), with Assan Aluminyum Sanayi ve Ticaret A.S.

¹² Commerce has preliminarily found TAC Metal Ticaret A.S. (TAC Metal) to be cross-owned with Teknik Aluminyum Sanayi A.S. See the Preliminary Decision Memorandum.

For all scope briefs and rebuttals thereto, parties must file identical documents simultaneously on the records of all the ongoing AD and CVD aluminum sheet investigations. No new factual information or business proprietary information may be included in either scope briefs or rebuttal scope briefs.

Case briefs or other written comments on non-scope matters may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.¹³ Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.¹⁴ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.

¹³ See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).

¹⁴ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: August 7, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is common alloy aluminum sheet (common alloy sheet), which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core.

Common alloy sheet may be made to ASTM specification B209-14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H-19, H-41, H-48, or H-391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into

the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope Comments
- IV. Scope of the Investigation
- V. Preliminary Affirmative Determination of Critical Circumstances, In Part
- VI. Subsidies Valuation
- VII. Benchmarks and Interest Rates
- VIII. Use of Facts Otherwise Available and Application of Adverse Inferences
- IX. Analysis of Programs
- X. Conclusion

[FR Doc. 2020-17810 Filed 8-13-20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-896]

Common Alloy Aluminum Sheet From India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of common alloy aluminum sheet (aluminum sheet) from India. The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable August 14, 2020.

FOR FURTHER INFORMATION CONTACT: Benito Ballesteros AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-7425.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended

(the Act). Commerce published the notice of initiation of this investigation on April 7, 2020.¹ On May 13, 2020, Commerce postponed the preliminary determination to August 7, 2020.² For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.³ A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is aluminum sheet from India. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁴ we set aside a period of time, as stated in the *Initiation Notice*, for parties to raise issues regarding product coverage (*i.e.*, scope).⁵ We received several comments concerning the scope of the antidumping duty (AD) and countervailing duty (CVD) investigations of aluminum sheet as it appeared in the *Initiation Notice*. We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determinations of the

companion AD investigations, the deadline for which is October 6, 2020.⁶ We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determination for this investigation after considering any relevant comments submitted in scope case and rebuttal briefs.⁷

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an "authority" that gives rise to a benefit to the recipient, and that the subsidy is specific.⁸

Commerce notes that, in making these findings, it relied, in part, on facts available and, because Commerce finds that one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, Commerce drew an adverse inference where appropriate in selecting from among the facts otherwise available.⁹ For further information, see "Use of Facts Otherwise Available and Adverse Inferences" in the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determinations in the companion AD investigations of aluminum sheet from Bahrain, Brazil, India, and the Republic of Turkey based on a request made by the petitioners.¹⁰ Consequently, the

⁶ See *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 85 FR 45576, 45577 (July 29, 2020).

⁷ The deadline for interested parties to submit scope case and rebuttal briefs will be established in the preliminary scope decision memorandum.

⁸ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁹ See sections 776(a) and (b) of the Act.

¹⁰ See Petitioners' Letter, "Countervailing Duty Investigations of Common Alloy Aluminum Sheet from Bahrain, Brazil, India, and the Republic of Turkey—Petitioners' Request to Align Final Countervailing Duty Determinations with the Companion Antidumping Duty Final Determinations," dated July 17, 2020. The petitioners are the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its Individual Members, Aleris Rolled Products, Inc., Arconic, Inc., Constellium Rolled Products Ravenswood, LLC, JW Aluminum

final CVD determination will be issued on the same date as the final AD determinations, which are currently scheduled to be issued no later than December 21, 2020, unless postponed.

Preliminary Negative Determination of Critical Circumstances

The petitioners submitted an allegation that critical circumstances exist with respect to imports of aluminum sheet from India.¹¹ The petitioners alleged, based on trade statistics, that there is a reasonable basis to believe or suspect that critical circumstances exist with regard to imports of aluminum sheet.¹² Based on monthly shipment information requested from the mandatory respondents, Commerce is preliminarily determining that critical circumstances do not exist within the meaning of section 703(e)(1) of the Act. For further information, see the Preliminary Decision Memorandum.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce calculated estimated countervailable subsidy rates individually for Hindalco and MALCO, that are not zero, *de minimis*, or based entirely on facts otherwise available. Commerce calculated the all-others rate using a weighted average of the individual estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged values for the merchandise under consideration.¹³

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company, Novelis Corporation, and Texarkana Aluminum, Inc.

¹¹ See Petitioners' Letter, "Countervailing Duty Investigations of Common Alloy Aluminum Sheet from India and the Republic of Turkey—Petitioners' Allegation of Critical Circumstances," dated July 14, 2020.

¹² *Id.*

¹³ See Memorandum, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from India: Preliminary Determination Subsidy Rate for All-Others," dated August 7, 2020.

¹ See *Common Alloy Aluminum Sheet from Bahrain, Brazil, India, and the Republic of Turkey: Initiation of Countervailing Duty Investigations*, 85 FR 19449 (April 7, 2020) (*Initiation Notice*).

² See *Common Alloy Aluminum Sheet from Bahrain, Brazil, India, and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 85 FR 29930 (May 19, 2020).

³ See Memorandum, "Decision Memorandum for the Preliminary Determination: Countervailing Duty Investigation of Common Alloy Aluminum Sheet from India," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁵ See *Initiation Notice*, 85 FR at 19450.

Company	Subsidy rate <i>ad valorem</i> (percent)
Hindalco Industries Limited ¹⁴	34.84
Manaksia Aluminium Company Limited	4.55
All Others	29.76

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

All interested parties will have the opportunity to submit case and rebuttal briefs on the preliminary scope determination. The deadline to submit these comments will be established in the preliminary scope decision memorandum. Scope rebuttal briefs (which are limited to issues raised in the scope briefs) may be submitted no later than seven days after the deadline for the scope briefs. These deadlines apply to the AD and CVD aluminum sheet investigations, regardless of the deadlines of the preliminary determinations in the AD investigations. For all scope briefs and rebuttals thereto, parties must file identical documents simultaneously on the records of all the ongoing AD and CVD aluminum sheet investigations. No new factual information or business proprietary information may be included in either scope briefs or rebuttal scope briefs.

¹⁴ As discussed in the Preliminary Decision Memorandum, Commerce has found the following company to be cross-owned with Hindalco: Utkal Alumina International Limited.

Case briefs or other written comments on non-scope matters may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.¹⁵ Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.¹⁶ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

¹⁵ See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).

¹⁶ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

Dated: August 7, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The product covered by this investigation is common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a IXXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core.

Common alloy sheet may be made to ASTM specification B209-14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H-19, H-41, H-48, or H-391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope Comments
- IV. Scope of the Investigation
- V. Preliminary Affirmative Determination of Critical Circumstance, In Part
- VI. Subsidies Valuation
- VII. Benchmarks and Discount Rates
- VIII. Use of Facts Otherwise Available and Adverse Inferences
- IX. Analysis of Programs
- X. Conclusion

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–855]

Common Alloy Aluminum Sheet From Brazil: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of common alloy aluminum sheet (aluminum sheet) from Brazil for the period of investigation January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable August 14, 2020.

FOR FURTHER INFORMATION CONTACT: Jonathan Hall-Eastman, Samuel Brummitt, or Benjamin Smith, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1468; (202) 482–7851; or (202) 482–2181 respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 7, 2020.¹ On May 19, 2020, Commerce postponed the preliminary

¹ See *Common Alloy Aluminum Sheet from Bahrain, Brazil, India, and the Republic of Turkey: Initiation of Countervailing Duty Investigations*, 85 FR 19449 (April 7, 2020) (*Initiation Notice*).

determination of this investigation and the revised deadline is now August 7, 2020.² For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.³ A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is aluminum sheet from Brazil. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce’s regulations,⁴ we set aside a period of time, as stated in the *Initiation Notice*, for parties to raise issues regarding product coverage (*i.e.*, scope).⁵ We received several comments concerning the scope of the antidumping duty (AD) and countervailing duty (CVD) investigations of aluminum sheet as it appeared in the *Initiation Notice*. We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determinations of the companion AD investigations, the deadline for which is October 6, 2020.⁶

² See *Common Alloy Aluminum Sheet from Bahrain, Brazil, India, and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 85 FR 29930 (May 19, 2020).

³ See Memorandum, “Decision Memorandum for the Preliminary Affirmative Determination in the Countervailing Duty Investigation of Common Alloy Aluminum Sheet from Brazil,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁵ See *Initiation Notice*, 85 FR at 19450.

⁶ See *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Postponement*

We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determination for this investigation after considering any relevant comments submitted in scope case and rebuttal briefs.⁷

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific.⁸ In making these findings, Commerce relied, in part, on facts available. For further information, see “Use of Facts Otherwise Available and Adverse Inferences” in the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of common alloy aluminum sheet from Brazil based on a request made by the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its Individual Members, Aleris Rolled Products, Inc., Arconic, Inc., Constellium Rolled Products Ravenswood, LLC, JW Aluminum Company, Novelis Corporation, and Texarkana Aluminum, Inc. (collectively, the petitioners).⁹ Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled for no later than December 21, 2020, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall

of Preliminary Determinations in the Less-Than-Fair-Value Investigations, 85 FR 45576, 45577 (July 29, 2020).

⁷ The deadline for interested parties to submit scope case and rebuttal briefs will be established in the preliminary scope decision memorandum.

⁸ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁹ See Petitioners’ Letter, “Countervailing Duty Investigations of Common Alloy Aluminum Sheet from Bahrain, Brazil, India, and the Republic of Turkey—Petitioners’ Request to Align Final Countervailing Duty Determinations with the Companion Antidumping Duty Final Determinations,” dated July 17, 2020.

determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce preliminarily found a *de minimis* rate for Novelis do Brasil Ltda. (Novelis). Therefore, the only rate that is not zero, *de minimis* or based entirely on facts otherwise available is the rate calculated for Companhia Brasileira de Alumínio (CBA). Consequently, the rate calculated for CBA is also assigned as the rate for all other producers and exporters.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate <i>ad valorem</i> (percent)
Companhia Brasileira de Alumínio (CBA) ¹⁰	1.32
Novelis do Brasil Ltda. (Novelis) ¹¹	0.76
All Others	1.32

(*de minimis*).

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above. Because the subsidy rate for Novelis Brasil is *de minimis*, Commerce is directing CBP not to suspend liquidation of entries of the merchandise produced and exported by Novelis Brasil.

Disclosure

Commerce intends to disclose its calculations and analysis performed to

¹⁰ As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with CBA: Votorantim S.A. and its holding company; Votorantim Comercializadora de Energia Ltda.; CBA Machadinho Geração de Energia Ltda.; and CBA Energia Participações S.A.

¹¹ As discussed in the Preliminary Decision Memorandum, Commerce has found the following company to be cross-owned with Novelis: Novelis Inc.

interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

All interested parties will have the opportunity to submit case and rebuttal briefs on the preliminary scope determination. The deadline to submit these comments will be established in the preliminary scope decision memorandum. Scope rebuttal briefs (which are limited to issues raised in the scope briefs) may be submitted no later than seven days after the deadline for the scope briefs. These deadlines apply to the AD and CVD aluminum sheet investigations, regardless of the deadlines of the preliminary determinations in the AD investigations. For all scope briefs and rebuttals thereto, parties must file identical documents simultaneously on the records of all the ongoing AD and CVD aluminum sheet investigations. No new factual information or business proprietary information may be included in either scope briefs or rebuttal scope briefs.

Case briefs or other written comments on non-scope matters may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.¹² Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.¹³ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

¹² See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006 (March 26, 2020) (*Temporary Rule*).

¹³ See *Temporary Rule*; see also *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: August 7, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is aluminum common alloy sheet (aluminum sheet), which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Aluminum sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, aluminum sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, aluminum sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core.

Aluminum sheet may be made to ASTM specification B209-14—but can also be made to other specifications. Regardless of specification, however, all aluminum sheet meeting the scope description is included in the scope. Subject merchandise includes aluminum sheet that has been further processed in a third country, including but

not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the aluminum sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H-19, H-41, H-48, or H-391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its Start Printed Page 2159 movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under HTSUS subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Aluminum sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.9.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope Comments
- IV. Scope of the Investigation
- V. Subsidies Valuation
- VI. Benchmarks and Interest Rates
- VII. Use of Facts Otherwise Available and Adverse Inferences
- VIII. Analysis of Programs
- IX. Calculation of All-Others Rate
- X. Conclusion

[FR Doc. 2020-17845 Filed 8-13-20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-525-002]

Common Alloy Aluminum Sheet From Bahrain: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of common alloy aluminum sheet (aluminum sheet) from Bahrain. The period of investigation is January 1, 2019 to December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable August 14, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0410.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 7, 2020.¹ On May 19, 2020, Commerce postponed the preliminary determination of this investigation and the revised deadline is now August 7, 2020.² For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.³ A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's

¹ See *Common Alloy Aluminum Sheet from Bahrain, Brazil, India, and the Republic of Turkey: Initiation of Countervailing Duty Investigations*, 85 FR 19449 (April 7, 2020) (*Initiation Notice*).

² See *Common Alloy Aluminum Sheet from Bahrain, Brazil, India, and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 85 FR 29930 (May 19, 2020).

³ See Memorandum, "Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Common Alloy Aluminum Sheet from Bahrain," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is aluminum sheet from Bahrain. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁴ we set aside a period of time, as stated in the *Initiation Notice*, for parties to raise issues regarding product coverage (*i.e.*, scope).⁵ We received several comments concerning the scope of the antidumping duty (AD) and countervailing duty (CVD) investigations of aluminum sheet as it appeared in the *Initiation Notice*. We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determinations of the companion AD investigations, the deadline for which is October 6, 2020.⁶ We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determination for this investigation after considering any relevant comments submitted in scope case and rebuttal briefs.⁷

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an "authority" that

⁴ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁵ See *Initiation Notice*, 85 FR at 19450.

⁶ See *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 85 FR 45576, 45577 (July 29, 2020).

⁷ The deadline for interested parties to submit scope case and rebuttal briefs will be established in the preliminary scope decision memorandum.

gives rise to a benefit to the recipient, and that the subsidy is specific.⁸

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of aluminum sheet from Bahrain based on a request made by the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its Individual Members, Aleris Rolled Products, Inc., Arconic, Inc., Constellium Rolled Products Ravenswood, LLC, JW Aluminum Company, Novelis Corporation, and Texarkana Aluminum, Inc. (collectively, the petitioners).⁹ Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than December 21, 2020, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce calculated an individual estimated countervailable subsidy rate for Gulf Aluminium Rolling Mill B.S.C. (GARMCO), the only individually examined exporter/producer in this investigation. Because the only individually calculated rate is not zero, *de minimis*, or based entirely on facts otherwise available, the estimated subsidy rate calculated for GARMCO is the rate assigned to all other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

⁸ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁹ See Petitioners' Letter, "Countervailing Duty Investigations of Common Alloy Aluminum Sheet from Bahrain, Brazil, India, and the Republic of Turkey—Petitioners' Request to Align Final Countervailing Duty Determinations with the Companion Antidumping Duty Final Determinations," dated July 17, 2020.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Gulf Aluminium Rolling Mill B.S.C	9.49
All Others	9.49

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

All interested parties will have the opportunity to submit case and rebuttal briefs on the preliminary scope determination. The deadline to submit these comments will be established in the preliminary scope decision memorandum. Scope rebuttal briefs (which are limited to issues raised in the scope briefs) may be submitted no later than seven days after the deadline for the scope briefs. These deadlines apply to the AD and CVD aluminum sheet investigations, regardless of the deadlines of the preliminary determinations in the AD investigations. For all scope briefs and rebuttals thereto, parties must file identical documents simultaneously on the records of all the ongoing AD and CVD aluminum sheet investigations. No new factual information or business proprietary information may be included in either scope briefs or rebuttal scope briefs.

Case briefs or other written comments on non-scope matters may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.¹⁰ Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.¹¹ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

¹⁰ See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).

¹¹ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

Dated: August 7, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is common alloy aluminum sheet (common alloy sheet), which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core.

Common alloy sheet may be made to ASTM specification B209-14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H-19, H-41, H-48, or H-391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above. Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written

description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope Comments
- IV. Scope of the Investigation
- V. Subsidies Valuation
- VI. Benchmarks and Interest Rates
- VII. Analysis of Programs
- VIII. Conclusion

[FR Doc. 2020-17835 Filed 8-13-20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA358]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public online meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Budget Committee will hold a meeting to consider budget issues as outlined in the Budget Committee agenda for the September 2020 Council Meeting.

DATES: The online meeting will be held Wednesday, September 2, 2020, at 10 a.m. Pacific Daylight Time.

ADDRESSES: This meeting will be held online. To attend the meeting, you may join the meeting by going to the RingCentral website: <https://meetings.ringcentral.com/join>. The Meeting ID, directions on how to join the meeting, and system requirements will be provided in the meeting announcement on the Pacific Council's website (see www.pcouncil.org). You may send an email to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov) or contact him at (503) 820-2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

FOR FURTHER INFORMATION CONTACT: Patricia Crouse, Administrative Officer, Pacific Council; telephone: (503) 820-2408.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to consider and develop recommendations to the Pacific Council for the September 2020

Pacific Council meeting, particularly the Fiscal Matters agenda item.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov; (503) 820-2412) at least 10 days prior to the meeting date.

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

Dated: August 11, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020-17868 Filed 8-13-20; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA374]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Groundfish Subcommittee of the Pacific Fishery Management Council's (Pacific Council's) Scientific and Statistical Committee (SSC) will hold an online meeting to plan a later methodology review of elasmobranch harvest control rules and management reference points. The meeting is open to the public.

DATES: The SSC Groundfish Subcommittee online meeting will be held Wednesday, September 2, 2020 and will begin at 1:30 p.m. and continue until 3:30 p.m. Pacific Daylight Time or until business for the day has been completed.

ADDRESSES: The SSC's Groundfish Subcommittee meeting will be held online. Specific meeting information, including directions on how to join the

meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see www.pcouncil.org). You may send an email to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov) or contact him at (503) 820-2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Staff Officer, Pacific Fishery Management Council; telephone: (503) 820-2413.

SUPPLEMENTARY INFORMATION: The purpose of the SSC Groundfish Subcommittee meeting is to plan for a later methodology review of harvest control rules (HCRs) and management reference points for managing West Coast elasmobranch species in the Pacific Council process. The SSC Groundfish Subcommittee will plan the timing of the subsequent methodology review and the analyses needed to evaluate HCRs and management reference points to be used in deciding elasmobranch harvest specifications beginning in 2023.

No management actions will be decided by the SSC's Groundfish Subcommittee. The SSC Groundfish Subcommittee members' role will be development of a plan for a subsequent methodology review of elasmobranch HCRs and management reference points and a report for consideration by the SSC and Pacific Council at their September and/or November 2020 meetings.

Although nonemergency issues not contained in the meeting agendas may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent of the SSC Groundfish Subcommittee to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (503) 820-2412 at least 10 days prior to the meeting date.

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

Dated: August 11, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020-17870 Filed 8-13-20; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA318]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Citizen Science Operations Committee via webinar.

DATES: The Citizen Science Operations Committee meeting will be held via webinar on Monday, August 31, 2020, from 2 p.m. until 4 p.m.

ADDRESSES: *Meeting address:* The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julia Byrd (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar. There will be an opportunity for public comment at the beginning of the meeting.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julia Byrd, Citizen Science Program Manager, SAFMC; phone: (843) 302-8439 or toll free: (866) SAFMC-10; fax: (843) 769-4520; email: julia.byrd@safmc.net.

SUPPLEMENTARY INFORMATION: The Citizen Science Operations Committee serves as advisors to the Council's Citizen Science Program. Committee members include representatives from the Council's Citizen Science Advisory Panel, NOAA Fisheries' Southeast Regional Office, NOAA Fisheries' Southeast Fisheries Science Center, and the Council's Science and Statistical Committee. Their responsibilities include developing programmatic recommendations, reviewing policies, providing program direction/multi-partner support, identifying citizen

science research needs, and providing general advice.

Agenda items include:

1. Discussion of the Citizen Science Program evaluation, including Program evaluation plan options and draft evaluation questions. The Committee will provide recommendations as appropriate;

2. Citizen Science Program update;

3. Other Business.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: August 11, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020-17867 Filed 8-13-20; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA368]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad Hoc Ecosystem Workgroup (EWG) will hold an online meeting, which is open to the public.

DATES: The online meeting will be held Friday, August 28, 2020, from 10 a.m. to 11 a.m. or until business is completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see www.pcouncil.org). You may send an email to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov) or contact him at (503) 820-2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

FOR FURTHER INFORMATION CONTACT: Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820-2422.

SUPPLEMENTARY INFORMATION: The primary purpose of the EWG online meeting is to prepare for the Pacific Council's September 2020 meeting. The EWG will discuss items related to the Fishery Ecosystem Plan and administrative Pacific Council agenda items. A detailed agenda for the online meeting will be available on the Pacific Council's website prior to the meeting. The EWG may also address other assignments relating to ecosystem issues. No management actions will be decided by the EWG.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov; (503) 820-2412) at least 10 days prior to the meeting date.

Dated: August 11, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020-17869 Filed 8-13-20; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA382]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of webconference.

SUMMARY: The North Pacific Fishery Management Council (Council) Scientific and Statistical Committee Subgroup (SSC Subgroup) will be held on August 28, 2020.

DATES: The meeting will be held on Friday, August 28, 2020, from 9 a.m. to 3 p.m., Alaska Time.

ADDRESSES: The meeting will be a webconference. Join online through the link at <https://npfmc.adobeconnect.com/sscsubgroup/>.

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave, Anchorage, AK 99501-2252; telephone: (907) 271-2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; email: diana.evans@noaa.gov. For technical support, please contact our administrative staff; email: npfmc.admin@noaa.gov.

SUPPLEMENTARY INFORMATION:

Agenda

Friday, August 28, 2020

The SSC Subgroup will receive presentations from AFSC staff on planning for the 2021 Alaska surveys, and will discuss recommendations. The agenda is subject to change, and the latest version will be posted at <https://meetings.npfmc.org/Meeting/Details/1583> prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: <https://meetings.npfmc.org/Meeting/Details/1583>.

Public Comment

The SSC Subgroup will provide a short period for oral public testimony, public comment letters should be submitted electronically to <https://meetings.npfmc.org/Meeting/Details/1583>.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests should be directed to Shannon Gleason at (907) 903-3107 at least 7 working days prior to the meeting date.

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

Dated: August 11, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020-17871 Filed 8-13-20; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA376]

Endangered and Threatened Species; Notice of Initiation of a 5-Year Review of the Southern Right Whale

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

ACTION: Notice; request for information.

SUMMARY: NMFS announces the initiation of a 5-year review for the southern right whale (*Eubalaena australis*). NMFS is required by the Endangered Species Act (ESA) to conduct 5-year reviews to ensure that the listing classifications of species are accurate. The 5-year review must be based on the best scientific and commercial data available at the time of the review. We request submission of any such information on the southern right whale, particularly information on the status, threats, and recovery of the species that has become available since its last status review in 2015.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than October 13, 2020.

ADDRESSES: You may submit information on this document, identified by NOAA-NMFS-2020-0114, by either of the following methods:

- **Electronic Submission:** Submit electronic information via the Federal e-Rulemaking Portal. Go to www.regulations.gov and enter NOAA-NMFS-2020-0114. Click on the "Comment Now!" icon and complete the required fields. Enter or attach your comments.

- **Mail:** Submit written comments to Heather Austin, Endangered Species Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13634, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the specified period, may not be considered. 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, etc.), confidential business information, or otherwise sensitive or protected information submitted voluntarily by the sender will be publicly accessible. NMFS will

accept anonymous submissions (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Heather Austin at the above address, by phone at (301) 427-8422 or Heather.Austin@noaa.gov.

SUPPLEMENTARY INFORMATION: This notice announces our review of the southern right whale (*Eubalaena australis*) listed as endangered under the ESA. Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every 5 years. This will be the fourth review of this species since it was listed in 1970 under the Endangered Species Conservation Act, the precursor to the ESA. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing species currently under active review. On the basis of such reviews under section 4(c)(2)(B), we determine whether any species should be removed from the list (*i.e.*, delisted) or reclassified from endangered to threatened or from threatened to endangered (16 U.S.C. 1533(c)(2)(B)). As described by the regulations in 50 CFR 424.11(e), the Secretary shall delist a species if the Secretary finds that, after conducting a status review based on the best scientific and commercial data available: (1) The species is extinct; (2) the species does not meet the definition of an endangered species or a threatened species; and/or (3) the listed entity does not meet the statutory definition of a species. Any change in Federal classification would require a separate rulemaking process.

Background information on the species is available on the NMFS website at: <https://www.fisheries.noaa.gov/species/southern-right-whale>.

Public Solicitation of New Information

To ensure that the reviews are complete and based on the best available scientific and commercial information, we are soliciting new information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of *Eubalaena australis*. Categories of requested information include: (1) Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (2) habitat conditions including, but not limited to, amount, distribution, and important features for conservation; (3) status and trends of threats to the species and its habitats; (4)

conservation measures that have been implemented that benefit the species, including monitoring data demonstrating effectiveness of such measures; and (5) other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes and improved analytical methods for evaluating extinction risk.

If you wish to provide information for the review, you may submit your information and materials electronically or via mail (see **ADDRESSES** section). We request that all information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. We also would appreciate the submitter's name, address, and any association, institution, or business that the person represents; however, anonymous submissions will also be accepted.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: August 10, 2020.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020-17766 Filed 8-13-20; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Military Personnel Testing will take place.

DATES: Day 1—Open to the public Thursday, September 17, 2020 from 12:00 p.m. to 5:00 p.m., Eastern Time.

Day 2—Open to the public Friday, September 18, 2020 from 12:00 p.m. to 5:00 p.m., Eastern Time.

ADDRESSES: Virtual, Microsoft Teams, Link https://teams.microsoft.com/l/meetup-join/19%3ameeting_YWEzYzI0OTctNWMzYS00M2NjLTlkNzYtN2I3NWJiZjRlZGVj%40thread.v2/0?context=%7b%22Tid%22%3a%22ca9c4d2f-3529-4c0f-

[b5ad-059f3b26b20c%22%2c%22Oid%22%3a%22223e7d39-62a6-4864-9b9d-3547a173a97f%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_YWEzYzI0OTctNWMzYS00M2NjLTlkNzYtN2I3NWJiZjRlZGVj%40thread.v2/0?context=%7b%22Tid%22%3a%22ca9c4d2f-3529-4c0f-b5ad-059f3b26b20c%22%2c%22Oid%22%3a%22223e7d39-62a6-4864-9b9d-3547a173a97f%22%7d), Dial-In: 1 571-429-6145, Conference-ID: 160 597 151#. Meeting details will be posted on: <https://dacmpt.com>.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Dr. Sofiya Velgach, 703-697-9271 (Voice), 703-614-9272 (Facsimile), osd.pentagon.ousd-p-r.mbx.dacmpt@mail.mil (Email). Mailing address is Designated Federal Officer, Accession Policy, Office of the Under Secretary of Defense for Personnel and Readiness, Room 3D1066, The Pentagon, Washington, DC 20301-4000.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 Code of Federal Regulations (CFR) 102-3.140 and 102-3.150.

The agenda includes an overview of development timelines, test development strategies, test development status updates, and planned work and research.

Purpose of the Meeting: The purpose of the meeting is to review planned changes and progress in developing and administering selection and classification tests for military accession screening. Additional information can be found at <https://dacmpt.com>.

Agenda

Day 1, Thursday, September 17, 2020

- 12:00 p.m.–12:15 p.m., Welcome and Opening Remarks, Dr. Sofiya Velgach, OASD(M&RA)/AP*.
- 12:15 p.m.–12:30 p.m., Accession Policy Update, Ms. Stephanie Miller, OASD(M&RA)/Director, AP*.
- 12:30 p.m.–1:00 p.m., Milestones and Project Schedules, Dr. Mary Pommerich, OPA/DPAC*.
- 1:00 p.m.–1:15 p.m., Break.
- 1:15 p.m.–2:15 p.m., Device Evaluation Update and Future Use, Dr. Tia Fechter/Dr. Daniel Segall, OPA/DPAC*.
- 2:15 p.m.–2:45 p.m., ASVAB CEP* Update, Dr. Shannon Salyer, OPA/DPAC*.
- 2:45 p.m.–3:00 p.m., Break.
- 3:00 p.m.–3:45 p.m., CAT—ASVAB New Forms Update, Dr. Matt Trippe, HumRRO*.
- 3:45 p.m.–4:45 p.m., TAPAS* Evaluation Project Overview, Dr. Tim McGonigle, HumRRO*.
- 4:45 p.m.–5:00 p.m., *Public Comment*.

Day 2, Friday, September 18, 2020

12:00 p.m.–12:45 p.m., Use of Calculators, TBD.
 12:45 p.m.–1:15 p.m., Complex Reasoning, Dr. Scott Oppler, HumRRO*.
 1:15 p.m.–1:30 p.m., Break.
 1:30 p.m.–2:30 p.m., Adverse Impact, Dr. Gregory Manley, OPA/DPAC*.
 2:30 p.m.–4:00 p.m., Testing—Next Generation (Multi-Dimensional Evaluations and Future Vision), Dr. Mary Pommerich/Dr. Tia Fechter, OPA/DPAC*, Dr. Scott Oppler, HumRRO*.
 4:00 p.m.–4:15 p.m., Break.
 4:15 p.m.–4:30 p.m., Future Topics, Dr. Dan Segall, OPA/Director, DPAC*.
 4:30 p.m.–4:45 p.m., Public Comment.
 4:45 p.m.–5:00 p.m., Closing Comments, Dr. Michael Rodriguez, Chair.

Abbreviations key:

ASVAB = Armed Services Vocational Aptitude Battery
 ASVAB CEP = ASVAB Career Exploration Program, provided free to high schools nation-wide to help students develop career exploration skills and used by recruiters to identify potential applicants for enlistment

HumRRO = Human Resources Research Organization

OASD(M&RA)/AP = Office of the Assistant Secretary of Defense (Manpower & Reserve Affairs)/ Accession Policy

OPA/DPAC = Office of People Analytics/Defense Personnel Assessment Center

TAPAS = Tailored Adaptive Personality Assessment System

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is virtually open to the public. Dial-in availability is based on first-come, first-served basis. All members of the public who wish to attend the public meeting must contact the Designated Federal Officer, not later than 12:00 p.m. on Monday, September 7, 2020, as listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, interested persons may submit written statements to the Committee at any time about its approved agenda or at any time on the Committee's mission. Written statements should be submitted to the Committee's Designated Federal Officer at the address or facsimile number listed in the **FOR FURTHER INFORMATION CONTACT** section. If statements pertain to a specific topic being discussed at the planned meeting, then these statements

must be submitted no later than five (5) business days prior to the meeting in question. Written statements received after this date may not be provided to or considered by the Committee until its next meeting. The Designated Federal Officer will review all timely submitted written statements and provide copies to all the committee members before the meeting that is the subject of this notice. Please note that since the Committee operates under the provisions of the FACA, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection. Opportunity for public comments will be provided at the end of the meeting. Public comments will be limited to 5 minutes per person, as time allows.

Dated: August 10, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2020–17773 Filed 8–13–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Army Corps of Engineers

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS:

Mississippi River Commission

TIME AND DATE: 9:00 a.m., August 24, 2020.

PLACE: On board *Mississippi V* at Caruthersville City Front, Caruthersville, Missouri

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1)

Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the St. Louis and Memphis Districts; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., August 26, 2020.

PLACE: On board *Mississippi V* at Greenville City Front, Greenville, Mississippi

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1)

Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of

Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., August 28, 2020.

PLACE: On board *Mississippi V* at Morgan City Port Commission Dock, Morgan City, Louisiana

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1)

Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Charles A. Camillo, telephone 601–634–7023.

David B. Olson,

Federal Register Liaison Officer, U.S. Army Corps of Engineers.

[FR Doc. 2020–17925 Filed 8–12–20; 4:15 pm]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Statewide Family Engagement Centers Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final requirement.

SUMMARY: The Department of Education (Department) amends program requirement (a) in the Fiscal Year (FY) 2018 notice inviting applications (NIA) for the Statewide Family Engagement Centers (SFEC) program, Catalog of Federal Domestic Assistance (CFDA) number 84.310A. This final requirement provides current grantees the opportunity to request, on an annual basis, a reduction in their required 15 percent matching contribution in a project year due to economic circumstances related to the Novel Coronavirus Disease 2019 (COVID–19) pandemic.

DATES: August 14, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Beth Yeh, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E335, Washington, DC 20202. Telephone: (202) 205-5798. Email: beth.yeh@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the SFEC program, authorized under title IV, part E of the Elementary and Secondary Education Act of 1965, as amended (ESEA), is to provide financial support to organizations that provide technical assistance and training to State educational agencies (SEAs) and local educational agencies (LEAs) in the implementation and enhancement of systemic and effective family engagement policies, programs, and activities that lead to improvements in student development and academic achievement.

Program Authority: Sections 4501-4506 of the ESEA (20 U.S.C. 7241-46).

Background: Section 4502(c) of the ESEA requires grantees to obtain non-Federal matching contributions after the first year of the grant. In the NIA published in the **Federal Register** on June 28, 2018 (83 FR 30430), we established the specific match percentage in program requirement (a) under section 437(d)(1) of the General Education Provisions Act (GEPA). Under that requirement, each grantee must secure a non-Federal matching contribution of a minimum of 15 percent of its SFEC grant award in each of years two through five of the grant, which may be in cash or in-kind. The Department understands that, due to the national emergency caused by COVID-19, it is now very difficult for grantees to meet their match requirements. Many nonprofit organizations have lost funding or have changed their priorities to focus on the COVID-19 emergency. This could cause difficulties in meeting match requirements particularly in year two of the grant, possibly in subsequent years.

The Department is therefore providing flexibility for grantees to request, on an annual basis, a reduction of the matching requirement in a project year due to economic circumstances related to the COVID-19 pandemic. Recognizing that, in securing matching contributions, grantees might continue to experience the economic effects of the pandemic after it has subsided, the

Department will consider requests for up to one fiscal year following the fiscal year in which the national emergency declaration concerning the pandemic, issued on March 13, 2020, under the National Emergencies Act, is lifted.

Final Requirement: (a) Matching funds for grant renewal.

Each grantee must contribute non-Federal matching funds or in-kind donations equal to at least 15 percent of its SFEC grant award in project years two through five.

At its discretion, in response to a request from the grantee, the Department may reduce the percentage of the required non-Federal matching contribution for a grantee for the current project year (e.g., for project year two in FY 2020), if requested by the grantee due to circumstances related to the COVID-19 pandemic. Grantees interested in requesting a reduction of the 15 percent match must submit a written request to the Department.

The request must be addressed to Beth Yeh at beth.yeh@ed.gov, identify the new match percentage proposed, and explain why the reduction is needed, including a discussion of how COVID-19 has affected the grantee's ability to meet the 15 percent match. In addition, the grantee must demonstrate that the change in match will not affect achievement of the scope and objectives in the approved grant application.

Note: All information in the NIA for this grant program remains the same, except for the flexibility to request a reduction in the 15 percent matching program requirement.

Waiver of Notice and Comment Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed requirements. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency for good cause finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Here, there is good cause to waive notice and comment rulemaking, because going through the full rulemaking process would delay the Department's ability to provide relief to grantees requesting a reduction of their matching requirements in year two and subsequent years of the grant.

The good cause exception is appropriate "in emergency situations or where delay could result in serious harm." See *Jifry v. FAA*, 370 F.3d 1174, 1179 (D.C. Cir. 2004) (internal citations

omitted). "The public interest prong of the good cause exception to the APA notice and comment requirement is met only in the rare circumstance when ordinary procedures—generally presumed to serve the public interest—would in fact harm that interest." *Mack Trucks Inc. v. E.P.A.*, 682 F.3d 87, 95 (D.C. Cir. 2012).

The COVID-19 pandemic has escalated at a rapid pace and scale, resulting in extraordinary circumstances including widespread school closures and financial hardship in the nonprofit sector. Some grantees are having trouble meeting their matching requirements in year two due to financial difficulties of nonprofit organizations and reprogramming of nonprofit funds to focus on COVID-19. They may also have difficulties meeting their matching requirement in subsequent years. Due to the emergency nature of this situation, there is not time for notice and comment rulemaking. By allowing grantees to request a lower matching requirement, they will be able to continue to address the objectives in their grants, which are especially important during this difficult time for families, including financial hardship and virtual learning.

The APA also generally requires that regulations be published at least 30 days before their effective date but excepts from that requirement rules that grant or recognize an exemption or relieve a restriction (5 U.S.C. 553(d)(1)). Because this requirement relieves restrictions on the required matching funds, this exception to the delayed effective date under the APA applies.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f)(1) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a significant regulatory action must be fully offset by the elimination of existing costs through deregulatory actions. Because the final regulatory action is not significant, the requirements of Executive Order 13771 do not apply. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a "major rule," as defined by 5 U.S.C. 804(2).

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things, and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or

provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this final requirement only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this final regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with the Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Discussion of Costs, Benefits, and Need for Regulatory Action

The Department recognizes that SFEC grantees provide resources to support and improve parent and family engagement in education, which now more than ever is of critical importance. We also understand that matching requirements serve the significant purpose of leveraging non-Federal resources to increase the impact of Federal grantmaking. However, given the extraordinary economic circumstances surrounding the COVID-19 pandemic, the Department believes we must provide flexibility to SFEC grantees to request and implement a reduced matching contribution where needed. Absent this regulatory action, the Department would be obligated to take appropriate enforcement action against a grantee that fails to comply with the 15 percent matching requirement, which could include reducing the grantee's continuation award or terminating its grant. Such actions if taken would inflict greater harm on program beneficiaries than would adjustments to the provision of

project services occasioned by a reduced matching contribution.

Based on currently available information, the Department estimates that two of the 12 SFEC grantees will request a match reduction for the current fiscal year (project year two), to one percent.¹ Using an average project year two continuation award of approximately \$900,000, a reduction from 15 percent to one percent would mean that matching contributions would be reduced from \$135,000 to \$9,000, or by \$126,000, per grantee, for a total reduction of \$252,000 in FY 2020 if each request is approved. While this estimated reduction in matching contributions might be considered a cost attributable to this regulatory action, it is in any case minor relative to program funding (2.5 percent of \$10 million in FY 2020). Moreover, we note that, consistent with the final requirement, no reduction to a matching contribution may result in a change to the scope and objectives of a grantee's project. Lastly, we believe any costs associated with this action are outweighed by the benefits to stakeholders discussed in the previous paragraph.

Regulatory Flexibility Act Certification

The Regulatory Flexibility Act does not apply to this rulemaking because there is good cause to waive notice and comment under 5 U.S.C. 553.

Paperwork Reduction Act of 1995

This final regulatory action does not create any new information collection requirements.

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 contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

¹ Given uncertainty in the persistence of widespread economic impacts of the COVID-19 pandemic in FY 2021 and (if applicable) future years, the Department does not believe it can estimate with confidence the number of SFEC grantees that will request a match reduction in those years nor the reduction amounts.

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.

Betsy DeVos,

Secretary of Education.

[FR Doc. 2020-17872 Filed 8-13-20; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

[EERE-2013-BT-NOC-0005]

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Public Webinar

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

ACTION: Notice of meeting.

SUMMARY: The Department of Energy (“DOE”) announces a meeting via webinar of the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC). The Federal Advisory Committee Act requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.

DATES: DOE will hold a webinar on Tuesday, September 22, 2020 from 1 p.m. to 5 p.m.

ADDRESSES: Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE’s website: <https://www.energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee>. See the Public Participation section of this notice for additional information on this attending this webinar.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, ASRAC Designated Federal Officer, U.S. Department of Energy, Building Technologies Program, EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 287-1692. Email: asrac@ee.doe.gov.

SUPPLEMENTARY INFORMATION: The primary focus of this meeting will be the discussion and prioritization of topic areas on which ASRAC can assist the Appliance and Equipment Standards Program. DOE plans to hold this webinar to gather advice and recommendations on the development of standards and test procedures for consumer products and commercial and

industrial equipment. (The final agenda will be available for public viewing at <https://www.regulations.gov/docket?D=EERE-2013-BT-NOC-0005>.)

Public Participation

Attendance at Public Meeting

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE’s website: If you plan to attend the public meeting, please notify the ASRAC staff at asrac@ee.doe.gov.

Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586-1214 or by email: Regina.Washington@ee.doe.gov so that the necessary procedures can be completed.

Participants are responsible for ensuring their systems are compatible with the webinar software.

Signing Authority

This document of the Department of Energy was signed on August 10, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 11, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S.

Department of Energy.

[FR Doc. 2020-17802 Filed 8-13-20; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Energy Conservation Program for Consumer Products: Representative Average Unit Costs of Energy

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

ACTION: Notice.

SUMMARY: In this notice, the U.S. Department of Energy (DOE) is forecasting the representative average unit costs of five residential energy sources for the year 2020 pursuant to the Energy Policy and Conservation Act (Act). The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene.

DATES: The representative average unit costs of energy contained in this notice will become effective September 14, 2020 and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:

John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy Forrestal Building, Mail Station EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121, (202) 287-1692, ApplianceStandardsQuestions@ee.doe.gov.

Francine Pinto, Esq. U.S. Department of Energy, Office of General Counsel Forrestal Building, Mail Station GC-33, 1000 Independence Avenue SW, Washington, DC 20585-0103, (202) 586-7432, Francine.Pinto@hq.doe.gov.

SUPPLEMENTARY INFORMATION: Section 323 of the Energy Policy and Conservation Act requires that DOE prescribe test procedures for the measurement of the estimated annual operating costs or other measures of energy consumption for certain consumer products specified in the Act. (42 U.S.C. 6293(b)(3)) These test procedures are found in Title 10 of the Code of Federal Regulations (CFR) part 430, subpart B.

Section 323(b)(3) of the Act requires that the estimated annual operating costs of a covered product be calculated from measurements of energy use in a representative average use cycle or period of use and from representative average unit costs of the energy needed to operate such product during such cycle. (42 U.S.C. 6293(b)(3)) The section further requires that DOE provide information to manufacturers regarding the representative average unit costs of energy. (42 U.S.C. 6293(b)(4)) This cost information should be used by manufacturers to meet their obligations under section 323(c) of the Act. Most notably, these costs are used to comply with Federal Trade Commission (FTC)

requirements for labeling. Manufacturers are required to use the revised DOE representative average unit costs when the FTC publishes new ranges of comparability for specific covered products, 16 CFR part 305. Interested parties can also find information covering the FTC labeling requirements at <http://www.ftc.gov/appliances>.

DOE last published representative average unit costs of residential energy in a **Federal Register** notice entitled, “Energy Conservation Program for Consumer Products: Representative Average Unit Costs of Energy”, dated March 8, 2019, 84 FR 8516.

On September 14, 2020, the cost figures published in this notice will become effective and supersede those cost figures published on March 8, 2019. The cost figures set forth in this notice will be effective until further notice.

DOE’s Energy Information Administration (EIA) has developed the 2020 representative average unit after-tax residential costs found in this notice. These costs for electricity, natural gas, No. 2 heating oil, and propane are based on simulations used to produce the July 2020, EIA *Short-*

Term Energy Outlook (EIA releases the *Outlook* monthly). The representative average unit after-tax cost for kerosene is derived from its price relative to that of heating oil, based on the 2010 to 2013 averages of the U.S. refiner price to end users, which include all the major energy-consuming sectors in the U.S. for these fuels. The source for these price data is the June 2020, *Monthly Energy Review* DOE/EIA-0035(2020/6). The representative average unit after-tax cost for propane is derived from its price relative to that of heating oil, based on the 2020 averages of the U.S. residential sector prices found in the *Annual Energy Outlook 2020*, AEO2020 (January 29, 2020). The *Short-Term Energy Outlook*, the *Monthly Energy Review*, and the *Annual Energy Outlook* are available on the EIA website at <http://www.eia.doe.gov>. For more information on the data sources used in this Notice, contact the National Energy Information Center, Forrestal Building, EI-30, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-8800, email: infoctr@eia.doe.gov.

The 2020 representative average unit costs under section 323(b)(4) of the Act

are set forth in Table 1, and will become effective September 14, 2020. They will remain in effect until further notice.

Signing Authority

This document of the Department of Energy was signed on August 10, 2020, by Daniel R Simmons, Assistant Secretary for 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 August 11, 2020.

Treena V. Garrett,
Federal Register Liaison Officer, U.S. Department of Energy.

TABLE 1—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (2020)

Type of energy	Per million Btu ¹	In commonly used terms	As required by test procedure
Electricity	\$38.28	13.1¢/kWh ^{2,3}	\$0.131/kWh.
Natural Gas	10.13	\$1.013/therm ⁴ or \$10.52/MCF ^{5,6}	\$0.00001013/Btu.
No. 2 Heating Oil	17.97	\$2.47/gallon ⁷	\$0.00001797/Btu.
Propane	17.81	\$1.63/gallon ⁸	\$0.00001781/Btu.
Kerosene	21.28	\$2.87/gallon ⁹	\$0.00002128/Btu.

Sources: U.S. Energy Information Administration, *Short-Term Energy Outlook* (July, 2020), *Annual Energy Outlook* (January 29, 2020), and *Monthly Energy Review* (June, 2020).

Notes: Prices include taxes.

¹ Btu stands for British thermal units.

² kWh stands for kilowatt hour.

³ 1 kWh = 3,412 Btu.

⁴ 1 therm = 100,000 Btu.

⁵ MCF stands for 1,000 cubic feet.

⁶ For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,038 Btu.

⁷ For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 137,476 Btu.

⁸ For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.

⁹ For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. 2020-17803 Filed 8-13-20; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP20-1088-000]

Southwest Gas Storage Company; Notice of Petition for Declaratory Order

Take notice that on August 6, 2020, pursuant to Rule 207 of the Federal Energy Regulatory Commission’s

(Commission) Rules of Practice and Procedure and section 284.501 of the Commission’s regulations, Southwest Gas Storage Company (Southwest Gas Storage) filed a petition requesting that the Commission issue a declaratory order granting Southwest Gas Storage authorization to charge market-based rates for the natural gas storage services performed at its Borchers North Storage Field in Kansas and North Hopeton Storage Field in Oklahoma, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of

the Commission’s Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

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 TTY, (202) 502-8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern time on September 10, 2020.

Dated: August 10, 2020.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2020-17834 Filed 8-13-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD20-9-000]

Hybrid Resources; Notice Inviting Post-Technical Conference Comments

On July 23, 2020, Federal Energy Regulatory Commission (Commission) staff convened a technical conference to discuss technical and market issues prompted by growing interest in hybrid resources.

All interested persons are invited to file post-technical conference comments to address issues raised during the technical conference and identified in the Supplemental Notice of Technical Conference issued July 13, 2020. For reference, the questions included in the Supplemental Notice are included below. Commenters need not answer all of the questions, but commenters are

encouraged to organize responses using the numbering and order in the below questions. Commenters are also invited to reference material previously filed in this docket but are encouraged to avoid repetition or replication of previous material. Comments must be submitted on or before 45 days from the date of this Notice.

Comments may be filed electronically via the internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website <http://www.ferc.gov/docs-filing/efiling.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Questions

1. While this conference uses the term hybrid resources to refer to resources consisting of a generation resource and an electric storage resource paired together, we recognize that these resources can be configured differently, from the generation resource and energy storage resource being located at the same facility but operating separately ("co-located") to the generating facility and energy storage facility operating as one "hybrid" resource. How are these two terms used in the industry? What configurations are most common, and are there new configurations emerging?

2. What are some of the indicators of increasing interest by developers in hybrid resources? Where and in what circumstances does interest in hybrid resources appear to be greater? Approximately what percentage of interconnection requests for resources in interconnection queues are composed of hybrid resources? Has there been an increase in requests by hybrid resource developers to participate in energy, capacity and ancillary services markets operated by RTOs/ISOs?

3. How have the economics underlying hybrid technologies changed over the last three to five years? What future trends do you anticipate in this regard? Given these anticipated future trends, please comment on how you anticipate hybrid resources might be configured going forward. How could these changes impact interconnection requests?

4. We understand that increasing numbers of hybrid resources are participating as a single resource in energy, capacity and ancillary services

markets operated by RTOs/ISOs. What are the advantages to the hybrid resource participating as a single resource? What are the disadvantages?

5. What factors are driving developers' decisions in how to configure hybrid resources? For example, what factors do developers consider when deciding to either charge the storage component of the hybrid resource solely from a co-located generation resource or to charge from the grid? In addition, alternating current coupling and direct current coupling are two technical options for interconnection of hybrid or co-located resources. What factors influence developers to choose one form of coupling over another?

6. How can an interconnection customer in your region propose to interconnect a resource composed of two or more resource types, operated as a single resource at a single point of interconnection? What are the advantages and disadvantages of pairing resource types into a single interconnection request?

7. What are the benefits and challenges of adding an energy storage resource to an existing generation resource? What are the benefits and challenges of adding an energy storage resource to an existing interconnection request that is already in an interconnection queue? What additional studies would be required to do this, and would the process be the same or different depending on whether the addition is to an existing generation resource or to an existing interconnection request? Also, with respect to the addition of an energy storage resource to an existing generation resource, would the new storage resource be subject to the full interconnection study process, and, if so, would any aspect of the request or study process differ from a traditional interconnection request for a new generating facility? Under what circumstances would the addition of an energy storage resource to an existing interconnection request be considered a material modification that would require the interconnection customer to go through the interconnection process again or obtain a new queue position? Please describe how this request would be processed.

8. How is the maximum output of a hybrid resource calculated currently? How is the interconnection service request sized? For example, is it sized to the combined maximum output of each of the hybrid components, limited to a level of output that corresponds to how the resource is expected to operate, or some other amount?

9. If a hybrid resource opts not to be studied to charge from the grid, is the resource allowed to later change its decision? If so, is this change or possibility reflected in an interconnection agreement? If so, how? If a hybrid resource seeks to make this type of change, is there a requirement that the resource undergo an additional study or studies?

10. Are hybrid resources able to participate in the energy, capacity and ancillary services markets operated by RTOs/ISOs using existing frameworks or market rules? If so, how do they participate? Are market rule changes needed to enable the participation of hybrid resources? Are RTOs/ISOs exploring market rule changes, and if so, what changes are they pursuing?

11. Hybrid resources consisting of more than one technology type could potentially participate in the market as the separate component parts, or as a single integrated hybrid resource. Should hybrid resources have a choice of whether to participate in the energy, capacity and ancillary services markets operated by RTOs/ISOs as each of the resource types or as a single resource type? If so, why is this flexibility important?

12. Does operating a hybrid resource as separate components (*i.e.*, co-located) rather than as a single integrated resource create challenges for RTOs/ISOs in accurately modeling whether hybrid resources will provide operating reserves? If so, is this problem addressed if the resource operates as a single integrated hybrid resource?

13. What is the current ability of RTOs/ISOs to model hybrid resources? Is there a preferred approach?

14. Hybrid resources with certain characteristics may be able to provide essential reliability services. For example, when configured with advanced controls, these resources may be able to provide fast frequency response and dynamic voltage regulation. What considerations (*e.g.*, models, tools, training) are needed to improve planning and operations models and utility practices to account for the various controlled operating modes of hybrid and co-located resources?

15. In some cases, RTOs/ISOs require variable energy resources to provide data and forecasts of resource production based on weather and other factors. Would the same requirements apply to hybrid resources with a variable energy resource component, or how may these requirements differ?

16. Are existing dispatch systems in the RTOs/ISOs capable of dispatching hybrid resources as a single resource?

What are the challenges and/or limitations of such dispatch?

17. What are the technical considerations regarding state of charge of the electric storage component of hybrid resources? Are there different factors pertaining to state of charge that are dependent on whether the resource is co-located or is operates as a single integrated hybrid resource?

18. Do existing RTO/ISO market power mitigation rules appropriately recognize the particular operating characteristics of hybrid resources?

19. Are there established best practices for metering a hybrid resource for participation in wholesale markets? For example, with one meter, or with multiple meters that provide visibility into individual subcomponents or inverters, or some other configuration?

20. What are any other potential implications, advantages, and concerns for RTOs/ISOs regarding hybrid resources?

21. How do RTOs/ISOs currently calculate the capacity value of resources? Would those methods accommodate the characteristics of hybrid resources, or would new or modified methods be needed?

22. If new or modified methods are needed, how should the capacity value, including any seasonal variations, be determined for hybrid resources?

23. If an interconnection customer proposes to add an additional resource to an already existing resource or an existing interconnection request, should the capacity value of the existing resource or the existing interconnection request be modified? Why or why not? What options exist for determining such changes to capacity value?

24. What is the status of efforts in the RTOs/ISOs to define Effective Load Carrying Capability for hybrid resources?

For more information about this Notice, please contact: Kaitlin Johnson (Technical Information), Office of Energy Policy and Innovation, (202) 502-8542, Kaitlin.Johnson@ferc.gov.

Dated: August 10, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020-17825 Filed 8-13-20; 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: ER19-1888-002.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Southwestern Public Service Company Formula Rate Corrected Compliance Filing to be effective 2/1/2019.

Filed Date: 8/7/20.

Accession Number: 20200807-5095.

Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER20-2361-001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Errata to Original ISA, Service Agreement No. 5683; Queue No. AF1-199 to be effective 6/11/2020.

Filed Date: 8/10/20.

Accession Number: 20200810-5037.

Comments Due: 5 p.m. ET 8/31/20.

Docket Numbers: ER20-2425-001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2020-08-10 SA 3006 Duke-Jordan Creek Substitute 2nd Rev GIA (J515) to be effective 6/30/2020.

Filed Date: 8/10/20.

Accession Number: 20200810-5100.

Comments Due: 5 p.m. ET 8/31/20.

Docket Numbers: ER20-2592-001.

Applicants: WSPP Inc.

Description: Tariff Amendment: Amendment to 60 to be effective 7/28/2020.

Filed Date: 8/7/20.

Accession Number: 20200807-5119.

Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER20-2636-000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2020-08-07 LGIA Among SDG&E, Sun Streams Solar 2 and CAISO to be effective 10/7/2020.

Filed Date: 8/7/20.

Accession Number: 20200807-5111.

Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER20-2637-000.

Applicants: Chief Conemaugh Power, LLC.

Description: § 205(d) Rate Filing: Amendment to Joint Reactive Rate Schedule to be effective 12/31/9998.

Filed Date: 8/7/20.

Accession Number: 20200807-5114.

Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER20-2638-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 5729; Queue No. AF1-021 to be effective 7/9/2020. *Filed Date:* 8/10/20.

Accession Number: 20200810-5031. *Comments Due:* 5 p.m. ET 8/31/20.

Docket Numbers: ER20-2639-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 5730; Queue No. AF2-428 to be effective 7/20/2020.

Filed Date: 8/10/20.

Accession Number: 20200810-5038. *Comments Due:* 5 p.m. ET 8/31/20.

Docket Numbers: ER20-2640-000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits Second Quarter 2020 Capital Budget Report.

Filed Date: 8/10/20.

Accession Number: 20200810-5099. *Comments Due:* 5 p.m. ET 8/31/20.

Docket Numbers: ER20-2642-000.

Applicants: Montour, LLC.

Description: § 205(d) Rate Filing: Certificate of Concurrence to be effective 12/31/9998.

Filed Date: 8/10/20.

Accession Number: 20200810-5150. *Comments Due:* 5 p.m. ET 8/31/20.

Docket Numbers: ER20-2643-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 5731; Queue AF2-431 to be effective 7/27/2020.

Filed Date: 8/10/20.

Accession Number: 20200810-5153. *Comments Due:* 5 p.m. ET 8/31/20.

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 10, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020-17832 Filed 8-13-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR20-12-000]

Targa NGL Pipeline Company LLC; Notice of Petition for Declaratory Order

Take notice that on August 6, 2020, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2019), Targa NGL Pipeline Company LLC (Targa), filed a declaratory order petition seeking approval of the rate structure, terms of service, and prorationing methodology for a new committed service on its mixed natural gas liquids (NGLs) pipeline system from points in Oklahoma to Mont Belvieu, Texas, including an approximately 110 mile extension thereof (the Pipeline Extension.). Targa is developing the Pipeline Extension to enable it to transport NGLs from a planned interconnection with new third party-owned pipeline facilities in Kingfisher County, Oklahoma to Targa's affiliate's storage facilities at Mont Belvieu, Texas, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the eLibrary

link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 p.m. Eastern time on August 27, 2020.

Dated: August 10, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020-17833 Filed 8-13-20; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9052-3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202-564-5632 or <https://www.epa.gov/nepa>.

Weekly receipt of Environmental Impact Statements (EIS) Filed August 3, 2020, 10 a.m. EST Through August 10, 2020, 10 a.m. EST Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

EIS No. 20200163, Draft Supplement, BR, CA, B.F. Sisk Dam Raise and Reservoir Expansion Project Environmental Impact Report/ Supplemental Environmental Impact Statement, Comment Period Ends: 09/28/2020, Contact: Casey Arthur 530-892-6202.

EIS No. 20200164, Final Supplement, USFS, ND, Northern Great Plains Management Plans Revision Final Supplemental Environmental Impact Statement for Oil and Gas Leasing, Review Period Ends: 10/01/2020, Contact: Macario Herrera 701-989-7310.

EIS No. 20200165, Draft, USFS, ID, Stibnite Gold Project, Comment Period Ends: 09/28/2020, Contact: Brian Harris 208-879-6945.

EIS No. 20200166, Final, BLM, AK, Willow Master Development Plan Final Environmental Impact

Statement, Review Period Ends: 09/14/2020, Contact: Racheal Jones 907-290-0307.

EIS No. 20200167, Final, TVA, TN, Gallatin Impoundment Closure, Review Period Ends: 09/14/2020, Contact: Elizabeth Smith 865-632-3053.

Dated: August 11, 2020.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2020-17812 Filed 8-13-20; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-10013-61-OA]

Request for Nominations of Candidates for the EPA's Science Advisory Board (SAB) and SAB Standing Committees: Extension of Nomination Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for nominations; extension of nomination period.

SUMMARY: On April 1, 2020, the U.S. Environmental Protection Agency (EPA) invited nominations of scientific experts from a diverse range of disciplines to be considered for appointment to the EPA Science Advisory Board (SAB) and four SAB standing committees described in this notice. On April 15, a federal district court vacated the grants policy articulated in EPA's 2017 federal advisory committee membership directive. In light of that intervening decision, the EPA is extending the nomination period until August 31, 2020. Appointments will be announced by the Administrator and are anticipated to be filled by the start of Fiscal Year 2021 (October 2020).

DATES: Nominations should be submitted in time to arrive no later than August 31, 2020.

SUPPLEMENTARY INFORMATION:

Background: The SAB is a chartered Federal Advisory Committee, established in 1978, under the authority of the Environmental Research, Development and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical peer review, consultation, advice and recommendations to the EPA Administrator. Members of the SAB constitute distinguished bodies of non-EPA scientists, engineers, and economists who are nationally and internationally recognized experts in

their respective fields. Members are appointed by the EPA Administrator for a three-year term and serve as Special Government Employees who provide independent expert advice to the agency. Additional information about the SAB is available at <http://www.epa.gov/sab>.

On April 15, the U.S. District Court for the Southern District of New York (SDNY) vacated Section 1 of EPA's 2017 federal advisory committee membership directive (2017 Directive), which announced "a requirement that no member of an EPA federal advisory committee be currently in receipt of EPA grants." As a result of the vacatur, Section 1 is no longer in effect and EPA is following the relevant policies as they existed before the 2017 Directive. However, because the SAB was still seeking nominations when the SDNY vacated Section 1, EPA is reopening the SAB's membership solicitations and accepting further nominations.

Expertise Sought for the SAB: The chartered SAB provides scientific advice to the EPA Administrator on a variety of EPA science and research. All the work of SAB standing committees and ad-hoc panels is conducted under the auspices of the chartered SAB. The chartered SAB reviews all SAB standing committee and ad-hoc panel draft reports and determines whether each is of a high enough quality to deliver to the EPA Administrator. The SAB Staff Office invites nominations to serve on the chartered SAB in the following scientific disciplines as they relate to human health and the environment: *Analytical chemistry; benefit-cost analysis; causal inference; complex systems; ecological sciences and ecological assessment; economics; engineering; forestry geochemistry; health sciences; hydrology; hydrogeology; medicine; microbiology; modeling; pediatrics; public health; risk assessment; social, behavioral and decision sciences; statistics; toxicology; epidemiology; and uncertainty analysis.*

The SAB Staff Office is especially interested in scientists in the disciplines described above who have knowledge and experience in *air quality; agricultural sciences; atmospheric sciences; benefit-cost analysis; complex systems; drinking water; energy and the environment; epidemiology; dose-response, exposure, and physiologically based pharmacokinetic (PBPK) modeling; water quality; water quantity and reuse; ecosystem services; community environmental health; sustainability; and waste management.* For further information about the chartered SAB membership appointment process and schedule,

please contact Dr. Thomas Armitage, DFO, by telephone at (202) 564-2155 or by email at armitage.thomas@epa.gov.

The SAB Staff Office is also seeking nominations of experts for possible vacancies on four SAB standing committees: The Agricultural Science Committee, the Chemical Assessment Advisory Committee; the Drinking Water Committee; and the Radiation Advisory Committee.

(1) The SAB Agricultural Science Committee (ASC) provides advice to the chartered SAB on matters that have been determined to have a significant direct impact on farming and agriculture-related industries. The SAB Staff Office invites the nomination of scientists with expertise in one or more of the following disciplines: *Agricultural science; agricultural economics, including the valuation of ecosystem goods and services; agricultural chemistry; agricultural engineering; agronomy and soil science; animal science; aquaculture science; biofuel engineering; biotechnology; crop science and phytopathology; environmental chemistry; forestry; and hydrology.* For further information about the ASC membership appointment process and schedule, please contact Dr. Shaunta Hill-Hammond, DFO, by telephone at (202) 564-3343 or by email at hill-hammond.shaunta@epa.gov.

(2) The SAB Chemical Assessment Advisory Committee (CAAC) provides advice through the chartered SAB regarding selected toxicological reviews of environmental chemicals. The SAB Staff Office invites the nomination of scientists with experience in chemical assessments and expertise in one or more of the following disciplines: *Toxicology, including, developmental/reproductive toxicology, and inhalation toxicology; carcinogenesis; dose-response, exposure, and physiologically based pharmacokinetic (PBPK) modeling; biostatistics; uncertainty analysis; epidemiology and risk assessment.* For further information about the CAAC membership appointment process and schedule, please contact Dr. Suhair Shallal, DFO, by telephone at (202) 564-2057 or by email at shallal.suhair@epa.gov.

(3) The SAB Drinking Water Committee (DWC) provides advice on the scientific and technical aspects of EPA's national drinking water program. The SAB Staff Office is seeking nominations of experts with experience on drinking water issues. Members should have expertise in one or more of the following disciplines: *Environmental engineering; epidemiology; microbiology; public health; toxicology, including new and*

emerging contaminants; uncertainty analysis; and risk assessment. For further information about the DWC membership appointment process and schedule, please contact Dr. Bryan Bloomer, DFO, by telephone at (202) 564-4222 or by email at bloomer.bryan@epa.gov.

(4) The Radiation Advisory Committee (RAC) provides advice on radiation protection, radiation science, and radiation risk assessment. The SAB Staff Office invites the nomination of experts to serve on the RAC with demonstrated expertise in the following disciplines: *Radiation carcinogenesis; radiochemistry; radiation dosimetry; radiation epidemiology; radiation exposure; radiation health and safety; radiological risk assessment; uncertainty analysis; and radionuclide fate and transport.* For further information about the RAC membership appointment process and schedule, please contact Dr. Diana Wong, DFO, by telephone at (202) 564-2049 or by email at wong.diana-m@epa.gov.

Selection Criteria for the SAB and the SAB Standing Committees includes:

- Demonstrated scientific credentials and disciplinary expertise in relevant fields;
- Willingness to commit time to the committee and demonstrated ability to work constructively and effectively on committees;
- Background and experiences that would help members contribute to the diversity of perspectives on the committee, *e.g.*, geographical, social, cultural, educational backgrounds, professional affiliations; and other considerations; and
- For the committee as a whole, the collective breadth and depth of scientific expertise is considered.

As the SAB and its standing committees and ad-hoc panels undertake specific advisory activities, the SAB Staff Office will consider two additional criteria for each new activity: Absence of financial conflicts of interest and absence of an appearance of a loss of impartiality.

How to Submit Nominations: Any interested person or organization may nominate qualified persons to be considered for appointment to these advisory committees. Individuals may self-nominate. Nominations should be submitted in electronic format (preferred) using the online nomination form under the “Nomination of Experts” category at the bottom of the SAB home page at <http://www.epa.gov/sab>. To be considered, all nominations should include the information requested

below. EPA values and welcomes diversity. All qualified candidates are encouraged to apply regardless of gender, race, disability or ethnicity.

Nominators are asked to identify the specific committee for which nominee is to be considered. The following information should be provided on the nomination form: Contact information for the person making the nomination; contact information for the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee’s *curriculum vitae*; and a biographical sketch of the nominee indicating current position, educational background; research activities; sources of research funding for the last two years; and recent service on other national advisory committees or national professional organizations. To help the agency evaluate the effectiveness of its outreach efforts, please indicate how you learned of this nomination opportunity. Persons having questions about the nomination process or the public comment process described below, or who are unable to submit nominations through the SAB website, should contact the DFO for the committee, as identified above. The DFO will acknowledge receipt of nominations and in that acknowledgement, will invite the nominee to provide any additional information that the nominee feels would be useful in considering the nomination, such as availability to participate as a member of the committee; how the nominee’s background, skills and experience would contribute to the diversity of the committee; and any questions the nominee has regarding membership. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** notice, and any additional experts identified by the SAB Staff Office, will be posted in a List of Candidates on the SAB website at <http://www.epa.gov/sab>. Public comments on each List of Candidates will be accepted for 21 days from the date the list is posted. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

Candidates invited to serve will be asked to submit the “Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency” (EPA Form 3110-48). This confidential form allows EPA to determine whether there is a statutory conflict between that

person’s public responsibilities as a Special Government Employee and private interests and activities, or the appearance of a loss of impartiality, as defined by Federal regulation. The form may be viewed and downloaded through the “Ethics Requirements for Advisors” link on the SAB home page at <http://www.epa.gov/sab>. This form should not be submitted as part of a nomination.

V. Khanna Johnston,
Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2020-17742 Filed 8-13-20; 8:45 am]

BILLING CODE 6560-50-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Notice

TIME AND DATE: Tuesday, August 18, 2020, 1:00 p.m. Eastern Time.

PLACE: Because of the COVID-19 pandemic, the meeting will be held as an audio-only conference. The public may observe/listen to the audio-only conference by following the instructions that will be posted on www.eeoc.gov 24 hours before the meeting. Closed captioning services will be available.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: The following item will be considered at the meeting: Notice of Proposed Rulemaking on Conciliation.

Note: In accordance with the Sunshine Act, the public will be able to observe/listen to the Commission’s deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides information about Commission meetings on its website, www.eeoc.gov, and provides a recorded announcement a week in advance on future Commission sessions.)

Please telephone (202) 663-7100 (voice) or email commissionmeetingcomments@eeoc.gov at any time for information on this meeting.

CONTACT PERSON FOR MORE INFORMATION: Bernadette B. Wilson, Executive Officer on (202) 663-4077.

Bernadette B. Wilson,
Executive Officer, Executive Secretariat.

[FR Doc. 2020-17850 Filed 8-12-20; 11:15 am]

BILLING CODE 6570-01-P

FEDERAL ELECTION COMMISSION**Sunshine Act Meeting**

TIME AND DATE: Tuesday, August 18, 2020 AT 10:00 a.m.

PLACE: 1050 First Street NE, Washington, DC (This meeting will be a virtual meeting).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Information for which disclosure would constitute an unwarranted invasion of privacy.

Investigatory records compiled for law enforcement purposes and production would disclose investigative techniques.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer Telephone: (202) 694-1220.

Vicktorija J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2020-17836 Filed 8-12-20; 11:15 am]

BILLING CODE 6715-01-P

FEDERAL MARITIME COMMISSION**Sunshine Act Meeting**

TIME AND DATE: August 18, 2020; 10:00 a.m.

PLACE: 800 N Capitol Street NW, First Floor Hearing Room, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Closed Session.

1. Enforcement Process and Pending Matters.

CONTACT PERSON FOR MORE INFORMATION: Rachel Dickon, Secretary, (202) 523-5725.

Rachel Dickon,

Secretary.

[FR Doc. 2020-17843 Filed 8-12-20; 11:15 am]

BILLING CODE 6731-AA-P

GENERAL SERVICES ADMINISTRATION

[Notice-PBS-2020-07; Docket No. 2020-0002; Sequence No. 28]

Notice of Availability for the Final Environmental Assessment for the Appraisers Building and U.S. Custom House Limited Scope Repair & Alteration Project in San Francisco, California

AGENCY: General Services Administration (GSA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Final Environmental Assessment (EA) for the proposed Appraisers Building and U.S. Custom House Limited Scope Repair & Alteration Project, San Francisco, California. The Final EA analyzes the potential environmental impacts resulting from proposed limited scope repairs and alterations associated with the Appraisers Building (630 Sansome Street) and U.S. Custom House (555 Battery Street). The proposed action would repair, modify, or replace certain building improvements and systems to improve certain building systems to current building code and safety standards, as well as to prolong their useful life. Based on its finding of no significant impacts, GSA has determined that an Environmental Impact Statement need not be prepared.

DATES: The availability period for the Final EA ends on September 30th, 2020.

ADDRESSES: The Final EA is available electronically for public review at <https://www.gsa.gov/about-us/regions/welcome-to-the-pacific-rim-region-9/buildings-and-facilities/california/us-appraisers-building> and <https://www.gsa.gov/about-us/regions/welcome-to-the-pacific-rim-region-9/buildings-and-facilities/california/us-custom-house-san-francisco> (The Final EA is located under the "Current Projects" section).

Questions or comments concerning the Final EA should be directed to: Osmahn Kadri, Regional Environmental Quality Advisor/NEPA Project Manager, c/o Melanie Hernandez, 169 Saxony Road, Suite 214, Encinitas, CA 92024, or via email to osmahn.kadri@gsa.gov.

FOR FURTHER INFORMATION CONTACT: Osmahn Kadri, Regional Environmental Quality Advisor/NEPA Project Manager, GSA, at osmahn.kadri@gsa.gov or 415-522-3617.

SUPPLEMENTARY INFORMATION:**Background**

The Project is located at 630 Sansome Street (Appraisers Building) and 555

Battery Street (U.S. Custom House), San Francisco, California. The Project involves two adjacent historical buildings in Downtown San Francisco, California—the Appraisers Building located at 630 Sansome Street, and the U.S. Custom House located at 555 Battery Street. The Project is proposed in order to improve certain systems of the Appraisers Building and U.S. Custom House up to current building code, safety standards and serviceable condition and to prolong their useful life. Both buildings contain certain building elements and building systems that, due to age, advancement in technologies, failure, or need for operational upgrades, must be addressed.

The Final EA analyzes an Action Alternative and a No Action Alternative. The Action Alternative would repair, modify, or replace certain building improvements and systems to improve certain building systems to current building code and safety standards, as well as to prolong their useful life. The limited scope repairs would address deficiencies in the following categories: Electrical; Fire Protection; Architectural Barriers Act Accessibility Standard (ABAAS) Compliance; Curtain Walls; Windows; Roofing; Overhang Canopy; Elevators; Exterior Cladding; Subbasement Water Intrusion; Building Systems—Mechanical & Plumbing; and Window Washing System. Under the No Action Alternative, the limited scope repairs and alterations to the existing Appraisers Building and U.S. Custom House would not occur.

The Draft EA was made publicly available on January 31, 2020 for a 30-day period. The public review period closed on March 2, 2020. The Notice of Availability for the Draft EA was published in the **Federal Register** at 85 FR 5660 on January 31, 2020. The Draft EA was also available for review at the Chinatown Library, 1135 Powell Street, San Francisco, CA 94108. In preparing this Final EA, GSA did not receive any public comments on the Draft EA during the public review period.

After careful consideration of the environmental analysis and associated environmental effects of the Proposed Action Alternative and No Action Alternative, the purpose and need for the Project, and no comments received on the Draft EA, GSA will be implementing the Proposed Action Alternative.

Finding

Pursuant to the provision of GSA Order ADM 1095.1F, the PBS NEPA Desk Guide, and the regulations issued by the Council of Environmental

Quality, (40 CFR parts 1500 to 1508), this notice advises the public of our finding that the Proposed Action will not significantly affect the quality of the human environment.

Basis for Finding

The environmental impacts of the proposed repairs and alterations were considered in the Final EA pursuant to the National Environmental Policy Act (NEPA) and the CEQ regulations implementing NEPA. No significant impacts on the environment would occur with implementation of best management practices and avoidance, minimization, and mitigation measures identified in the Final EA.

The Final EA and Finding of No Significant Impact (FONSI) can be viewed on the GSA website at <https://www.gsa.gov/about-us/regions/welcome-to-the-pacific-rim-region-9/buildings-and-facilities/california/us-appraisers-building> and <https://www.gsa.gov/about-us/regions/welcome-to-the-pacific-rim-region-9/buildings-and-facilities/california/us-custom-house-san-francisco> (The Final EA is located under the "Current Projects" section).

The FONSI will be signed thirty (30) days after the publication of this notice, provided that no information leading to the contrary finding is received or comes to light during this period.

Dated: August 11, 2020.

Jared Bradley,

Director, Portfolio Management Division,
Pacific Rim Region, Public Buildings Service.

[FR Doc. 2020-17804 Filed 8-13-20; 8:45 am]

BILLING CODE 6820-YF-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC-2020-0093]

Advisory Committee on Immunization Practices

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting and request for comment.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC), announces the following meeting of the Advisory Committee on Immunization Practices (ACIP). This meeting is open to the public. Time will be available for public

comment. The meeting will be webcast live via the World Wide Web.

DATES: The meeting will be held on September 22, 2020 from 10:00 a.m. to 4:00 p.m., EDT (times subject to change).

Written comments must be received on or before September 23, 2020.

ADDRESSES: For more information on ACIP please visit the ACIP website: <http://www.cdc.gov/vaccines/acip/index.html>.

You may submit comments, identified by Docket No. CDC-2020-0093 by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments.
- **Mail:** Docket No. CDC-2020-0093, c/o Attn: September ACIP Meeting, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H24-8, Atlanta, GA 30329-4027.

Instructions: All submissions received must include the Agency name and Docket Number. All relevant comments received in conformance with the <https://www.regulations.gov> suitability policy will be posted without change to <https://www.regulations.gov>, including any personal information provided. For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Stephanie Thomas, ACIP Committee Management Specialist, Centers for Disease Control and Prevention, National Center for Immunization and Respiratory Diseases, 1600 Clifton Road, NE, MS-H24-8, Atlanta, GA 30329-4027; Telephone: 404-639-8367; Email: ACIP@cdc.gov.

SUPPLEMENTARY INFORMATION:

Purpose: The committee is charged with advising the Director, CDC, on the use of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding dosing interval, dosage, and contraindications to administration of vaccines. Further, under provisions of the Affordable Care Act, section 2713 of the Public Health Service Act, immunization recommendations of the ACIP that have been approved by the Director of the Centers for Disease Control and Prevention and appear on CDC immunization schedules must be covered by applicable health plans.

Matters to be Considered: The agenda will include discussions on COVID-19 vaccines. No recommendation votes are

scheduled. Agenda items are subject to change as priorities dictate. For more information on the meeting agenda visit <https://www.cdc.gov/vaccines/acip/meetings/meetings-info.html>.

Meeting Information: The meeting will be webcast live via the World Wide Web; for more information on ACIP please visit the ACIP website: <http://www.cdc.gov/vaccines/acip/index.html>.

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. Comments received are part of the public record and are subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted into the docket. CDC does not accept comment by email.

Oral Public Comment: This meeting will include time for members of the public to make an oral comment. Oral public comment will occur before any scheduled votes including all votes relevant to the ACIP's Affordable Care Act and Vaccines for Children Program roles. Priority will be given to individuals who submit a request to make an oral public comment before the meeting according to the procedures below.

Procedure for Oral Public Comment: All persons interested in making an oral public comment at the August ACIP meeting must submit a request at <http://www.cdc.gov/vaccines/acip/meetings/> no later than 11:59 p.m., EDT, September 16, 2020 according to the instructions provided.

If the number of persons requesting to speak is greater than can be reasonably accommodated during the scheduled time, CDC will conduct a lottery to determine the speakers for the scheduled public comment session. CDC staff will notify individuals regarding their request to speak by email by September 18, 2020. To accommodate the significant interest in participation in the oral public comment session of ACIP meetings, each speaker will be limited to 3

minutes, and each speaker may only speak once per meeting.

Written Public Comment: Written comments must be received on or before September 23, 2020. Written public comments submitted by 72 hours prior to the ACIP meeting will be provided to ACIP members before the meeting.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020-17765 Filed 8-13-20; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10418, CMS-10199, CMS-R-52 and CMS-R-26]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to

minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by 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.

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 Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Annual MLR and Rebate Calculation Report and MLR Rebate Notices; *Use:* Under Section 2718 of the Affordable Care Act and implementing regulation at 45 CFR part 158, a health insurance issuer (issuer) offering group or individual health insurance coverage must submit a report

to the Secretary concerning the amount the issuer spends each year on claims, quality improvement expenses, non-claims costs, Federal and State taxes and licensing and regulatory fees, the amount of earned premium, and beginning with the 2014 reporting year, the amounts related to the transitional reinsurance, risk corridors, and risk adjustment programs established under sections 1341, 1342, and 1343, respectively, of the Affordable Care Act. An issuer must provide an annual rebate if the amount it spends on certain costs compared to its premium revenue (excluding Federal and States taxes and licensing and regulatory fees) does not meet a certain ratio, referred to as the medical loss ratio (MLR). Each issuer is required to submit annually MLR data, including information about any rebates it must provide, on a form prescribed by CMS, for each State in which the issuer conducts business. Each issuer is also required to provide a rebate notice to each policyholder that is owed a rebate and each subscriber of policyholders that are owed a rebate for any given MLR reporting year. Additionally, each issuer is required to maintain for a period of seven years all documents, records and other evidence that support the data included in each issuer's annual report to the Secretary.

Based upon CMS' experience in the MLR data collection and evaluation process, CMS is updating its annual burden hour estimates to reflect the actual numbers of submissions, rebates and rebate notices. The 2019 MLR Reporting Form and Instructions reflect changes for the 2018 reporting year and beyond. The 2019 MLR Reporting Form and instructions are also modified to eliminate the reporting elements that were required under the risk corridors data submission requirements in 45 CFR 153.530 for the 2014 through 2016 benefit years. For 2019, it is expected that issuers will submit fewer reports and on average, send fewer notices and rebate checks in the mail to policyholders and subscribers, which will reduce burden on issuers. In addition, issuers of qualified health plans will no longer have to submit on the annual report the data for the risk corridors program established under section 1342 of the Patient Protection and Affordable Care Act. *Form Number:* CMS-10418 (OMB control number: 0938-1164); *Frequency:* Annually; *Affected Public:* Private Sector, Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 494; *Number of Responses:* 1,896; *Total Annual Hours:* 232,427. For policy questions regarding this collection

contact Stephanie Watson at 301-492-4238.

2. Type of Information Collection Request: Extension of a currently approved collection; **Title of Information Collection:** Data Collection for Medicare Facilities Performing Carotid Artery Stenting with Embolic Protection in Patients at High Risk for Carotid Endarterectomy; **Use:** CMS provides coverage for carotid artery stenting (CAS) with embolic protection for patients at high risk for carotid endarterectomy and who also have symptomatic carotid artery stenosis between 50 percent and 70 percent or have asymptomatic carotid artery stenosis ≥ 80 percent in accordance with the Category B IDE clinical trials regulation (42 CFR 405.201), a trial under the CMS Clinical Trial Policy (NCD Manual § 310.1, or in accordance with the National Coverage Determination on CAS post approval studies (Medicare NCD Manual 20.7 CMS also covers CAS with embolic protection for patients at high risk for carotid endarterectomy and who also have symptomatic carotid artery stenosis ≥ 70 percent performed in facilities that have been determined to be competent in performing the evaluation, procedure and follow-up necessary to ensure optimal patient outcomes. In accordance with this criteria, we consider coverage for CAS reasonable and necessary (section 1862 (A)(1)(a) of the Social Security Act). **Form Number:** CMS-10199 (OMB control number: 0938-1011); **Frequency:** Yearly; **Affected Public:** Business or other for-profit and Not-for-profit institutions; **Number of Respondents:** 1,420; **Total Annual Responses:** 3,313; **Total Annual Hours:** 30,057. (For policy questions regarding this collection contact Sarah Fulton at 410-786-2749.)

3. Type of Information Collection Request: Reinstatement of a previously approved collection; **Title of Information Collection:** Conditions for Coverage of Suppliers of End Stage Renal Disease (ESRD) Services and Supporting Regulations; **Use:** The information collection requirements described herein are part of the Medicare and Medicaid Programs; Conditions for Coverage for End-Stage Renal Disease Facilities. The requirements fall into three categories: Record keeping, reporting, and disclosure. With regard to the record keeping requirements, CMS uses these conditions for coverage to certify health care facilities that want to participate in the Medicare or Medicaid programs. For the reporting requirements, the information is needed to assess and ensure proper distribution and effective

utilization of ESRD treatment resources while maintaining or improving quality of care. All of the reports specified in this document are geared toward ensuring that facilities achieve quality and cost-effective service provision. Collection of this information is authorized by Section 1881 of the Act and required by 42 CFR 405.2100 through 405.2171 (now at 42 CFR 414.330, 488.60, and 494.100-494.180). Depending on the outcome of litigation, disclosures may be required by Medicare-certified dialysis facilities that make payments of premiums for individual market health plans. **Form Number:** CMS-R-52 (OMB Control Number: 0938-0386); **Frequency:** Annually; **Affected Public:** Private sector—Business or other for-profit; **Number of Respondents:** 8,246; **Total Annual Responses:** 171,795; **Total Annual Hours:** 1,260,491. (For policy questions regarding this collection contact Eric Laib at 410-786-9759.)

4. Type of Information Collection Request: Extension of a currently approved collection; **Title of Information Collection:** Clinical Laboratory Improvement Amendments (CLIA) Regulations; **Use:** The information is necessary to determine an entity's compliance with the Congressionally-mandated program with respect to the regulation of laboratory testing (CLIA). In addition, laboratories participating in the Medicare program must comply with CLIA requirements as required by section 6141 of OBRA 89. Medicaid, under the authority of section 1902(a)(9)(C) of the Social Security Act, pays for services furnished only by laboratories that meet Medicare (CLIA) requirements. **Form Number:** CMS-R-26 (OMB Control Number: 0938-0612); **Frequency:** Monthly, occasionally; **Affected Public:** Business or other for-profits and Not-for-profit institutions, State, Local or Tribal Governments, and the Federal government; **Number of Respondents:** 34,579; **Total Annual Responses:** 74,476,376; **Total Annual Hours:** 14,514,802. (For policy questions regarding this collection contact Raelene Perfetto at 410-786-6876).

Dated: August 11, 2020.

William N. Parham, III,
Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020-17852 Filed 8-13-20; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA-2019-D-1649 and FDA-2019-D-1651]

Safety and Performance Based Pathway Device-Specific Guidances; Guidances for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of two final device-specific guidance documents for the Safety and Performance Based Pathway—specifically, “Cutaneous Electrode for Recording Purposes—Performance Criteria for Safety and Performance Based Pathway; Guidance for Industry and Food and Drug Administration Staff” and “Conventional Foley Catheters—Performance Criteria for Safety and Performance Based Pathway; Guidance for Industry and Food and Drug Administration Staff.” The device-specific guidances identified in this notice were developed in accordance with the finalized guidance entitled “Safety and Performance Based Pathway.”

DATES: The announcement of the guidance is published in the **Federal Register** on August 14, 2020.

ADDRESSES: You may submit either electronic or written comments on Agency guidances 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-2019-D-1649 for “Cutaneous Electrode for Recording Purposes—Performance Criteria for Safety and Performance Based Pathway; Guidance for Industry and Food and Drug Administration Staff” and Docket No. FDA-2019-D-1651 for “Conventional Foley Catheters—Performance Criteria for Safety and Performance Based Pathway; Guidance for Industry and Food and Drug Administration Staff.” Received comments will be placed in the dockets 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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidances is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidances. Submit written requests for a single hard copy of the guidance document entitled “Cutaneous Electrode for Recording Purposes—Performance Criteria for Safety and Performance Based Pathway; Guidance for Industry and Food and Drug Administration Staff” or “Conventional Foley Catheters—Performance Criteria for Safety and Performance Based Pathway; Guidance for Industry and Food and Drug Administration Staff” to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Jason Ryans, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1613, Silver Spring, MD 20993-0002, 301-796-4908.

SUPPLEMENTARY INFORMATION:

I. Background

These device-specific guidance documents provide performance criteria for premarket notification (510(k)) submissions to support the optional Safety and Performance Based Pathway, as described in the guidance entitled “Safety and Performance Based

Pathway.”¹ As described in that guidance, substantial equivalence is rooted in comparisons between new devices and predicate devices. However, the Federal Food, Drug, and Cosmetic Act does not preclude FDA from using performance criteria to facilitate this comparison. If a legally marketed device performs at certain levels relevant to its safety and effectiveness, and a new device meets those levels of performance for the same characteristics, FDA could find the new device as safe and effective as the legally marketed device. Instead of reviewing data from direct comparison testing between the two devices, FDA could support a finding of substantial equivalence with data demonstrating the new device meets the level of performance of an appropriate predicate device(s). Under this optional Safety and Performance Based Pathway, a submitter could satisfy the requirement to compare its device with a legally marketed device by, among other things, independently demonstrating that the device’s performance meets performance criteria as established in the above-listed guidances, rather than using direct predicate comparison testing for some of the performance characteristics.

A notice of availability of the draft guidances appeared in the **Federal Register** of September 20, 2019 (84 FR 49528). FDA did not receive comments on the “Cutaneous Electrode for Recording Purposes” guidance; FDA considered comments received on the “Conventional Foley Catheters” guidance and revised the guidance as appropriate, including by clarifying, in the discussion of Biocompatibility Evaluation, when material mediated pyrogenicity testing is recommended.

These guidances are being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidances represent the current thinking of FDA on performance criteria for the “Cutaneous Electrode for Recording Purposes” and “Conventional Foley Catheters.” They do not establish any rights for any person and are 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. Electronic Access

Persons interested in obtaining a copy of the guidances may do so by downloading an electronic copy from the internet. A search capability for all

¹ Available at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/safety-and-performance-based-pathway>.

Center for Devices and Radiological Health guidance documents is available at <https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products>. These guidance documents are also available at <https://www.regulations.gov>. Persons unable to download an electronic copy of either “Cutaneous Electrode for Recording Purposes—Performance Criteria for Safety and Performance Based Pathway; Guidance for Industry and Food and Drug Administration Staff

(document number 19014)” or “Conventional Foley Catheters—Performance Criteria for Safety and Performance Based Pathway; Guidance for Industry and Food and Drug Administration Staff (document number 19010)” may send an email request to CDRH-Guidance@fda.hhs.gov to receive an electronic copy of the document. Please use the document number and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

These guidances contains no collections of information. Therefore,

clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required.

However, these guidances refer to previously approved collections of information. These collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations and guidance have been approved by OMB as listed in the following table:

21 CFR part; guidance	Topic	OMB control No.
807, subpart E “Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff”.	Premarket notification Q-submissions	0910–0120 0910–0756

Dated: August 7, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–17771 Filed 8–13–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1648]

Pediatric Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments; Amendment of Notice

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Pediatric Advisory Committee. This meeting was announced in the **Federal Register** of July 23, 2020. The amendment is being made to reflect a change in the *Procedure* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Marieann Brill, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5154, Silver Spring, MD 20993, 240–402–3838, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 23, 2020, 85 FR 44541, FDA announced that a meeting of the Pediatric Advisory Committee would be held on September 15, 2020. On page 44542, in the third column, the *Procedure* portion of the document is changed to read as follows:

Oral presentations from the public will be scheduled between approximately 11:30 a.m. to 12:30 p.m. Eastern Time.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: August 10, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–17775 Filed 8–13–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1677]

Agency Information Collection Activities; Proposed Collection; Comment Request; Recordkeeping and Reporting Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing Material From Cattle

AGENCY: Food and Drug Administration, Health and Human Services (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 the information collection provisions of existing FDA regulations concerning FDA-regulated human food, including dietary supplements, and cosmetics manufactured from, processed with, or otherwise containing material derived from cattle.

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-2020-N-1677 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Recordkeeping and Reporting Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing Material From Cattle." 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:

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, PRASStaff@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.

Recordkeeping and Reporting Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing Material from Cattle—21 CFR 189.5 and 700.27

OMB Control Number 0910-0623—Extension

FDA's regulations in §§ 189.5 and 700.27 (21 CFR 189.5 and 700.27) set forth bovine spongiform encephalopathy (BSE)-related restrictions applicable to FDA-regulated human food and cosmetics. The regulations designate certain materials from cattle as "prohibited cattle materials," including specified risk materials (SRMs), the small intestine of cattle not otherwise excluded from being a prohibited cattle material, material from nonambulatory disabled cattle, and mechanically separated (MS) beef. Sections 189.5(c) and 700.27(c) set forth the requirements for recordkeeping and records access for FDA-regulated human food, including dietary supplements, and cosmetics manufactured from, processed with, or otherwise containing material derived from cattle. We issued these recordkeeping regulations under the adulteration provisions in sections 402(a)(2)(C), (a)(3), (a)(4), (a)(5), 601(c), and 701(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 342(a)(2)(C), (a)(3), (a)(4), (a)(5), 361(c), and 371(a)). Under section 701(a) of the FD&C Act, we are authorized to issue regulations for the FD&C Act's efficient

enforcement. With regard to records concerning imported human food and cosmetics, we relied on our authority under sections 701(b) and 801(a) of the FD&C Act (21 U.S.C. 371(b) and 381(a)). Section 801(a) of the FD&C Act provides requirements with regard to imported human food and cosmetics and provides for refusal of admission of human food and cosmetics that appear to be adulterated into the United States. Section 701(b) of the FD&C Act authorizes the Secretaries of Treasury and Health and Human Services to jointly prescribe regulations for the efficient enforcement of section 801 of the FD&C Act.

These requirements are necessary because once materials are separated from an animal it may not be possible, without records, to know the following: (1) Whether cattle material may contain SRMs (brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia from animals 30 months and older and tonsils and distal ileum of the small intestine from all animals of all ages); (2) whether the source animal for cattle material was inspected and passed; (3) whether the source animal for cattle material was nonambulatory disabled, or MS beef; and (4) whether tallow in human food or cosmetics contain less than 0.15 percent insoluble impurities.

FDA's regulations in §§ 189.5(c) and 700.27(c) require manufacturers and processors of human food and cosmetics manufactured from, processed with, or otherwise containing material from cattle establish and maintain records sufficient to demonstrate that the human food or cosmetics are not manufactured from, processed with, or otherwise contain prohibited cattle materials. These records must be retained for 2 years at the manufacturing or processing establishment or at a

reasonably accessible location. Maintenance of electronic records is acceptable, and electronic records are considered to be reasonably accessible if they are accessible from an onsite location. Records required by these sections and existing records relevant to compliance with these sections must be available to FDA for inspection and copying. Existing records may be used if they contain all of the required information and are retained for the required time period.

Because we do not easily have access to records maintained at foreign establishments, FDA regulations in §§ 189.5(c)(6) and 700.27(c)(6), respectively, require that when filing for entry with U.S. Customs and Border Protection, the importer of record of human food or cosmetics manufactured from, processed with, or otherwise containing, cattle material must affirm that the human food or cosmetics were manufactured from, processed with, or otherwise contains, cattle material and must affirm that the human food or cosmetics were manufactured in accordance with the applicable requirements of §§ 189.5 or 700.27. In addition, if human food or cosmetics were manufactured from, processed with, or otherwise contains cattle material, the importer of record must provide within 5 business days records sufficient to demonstrate that the human food or cosmetics were not manufactured from, processed with, or otherwise contains prohibited cattle material, if requested.

Under FDA's regulations, we may designate a country from which cattle materials inspected and passed for human consumption are not considered prohibited cattle materials, and their use does not render human food or cosmetics adulterated. Sections 189.5(e) and 700.27(e) provide that a country seeking to be designated must send a written request to the Director of the Center for Food Safety and Applied

Nutrition. The information the country is required to submit includes information about a country's BSE case history, risk factors, measures to prevent the introduction and transmission of BSE, and any other information relevant to determining whether SRMs, the small intestine of cattle not otherwise excluded from being a prohibited cattle material, material from nonambulatory disabled cattle, or MS beef from the country seeking designation should be considered prohibited cattle materials. We use the information to determine whether to grant a request for designation and to impose conditions if a request is granted.

Sections 189.5 and 700.27 further state that countries designated under §§ 189.5(e) and 700.27(e) will be subject to future review by FDA to determine whether their designations remain appropriate. As part of this process, we may ask designated countries to confirm their BSE situation and the information submitted by them, in support of their original application, has remained unchanged. We may revoke a country's designation if we determine that it is no longer appropriate. Therefore, designated countries may respond to periodic FDA requests by submitting information to confirm their designations remain appropriate. We use the information to ensure their designations remain appropriate.

Description of Respondents: Respondents to this information collection include manufacturers, processors, and importers of FDA-regulated human food, including dietary supplements, and cosmetics manufactured from, processed with, or otherwise containing material derived from cattle, as well as, with regard to §§ 189.5(e) and 700.27(e), foreign governments seeking designation under those regulations.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
189.5(c)(6) and 700.27(c)(6); affirmation of compliance ..	54,825	1	54,825	0.033 (2 minutes).	1,809
189.5(e) and 700.27(e); request for designation	1	1	1	80	80
189.5(e) and 700.27(e); response to request for review by FDA.	1	1	1	26	26
Total .....	.....	.....	.....	.....	1,915

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN ¹

Type of respondent	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeper	Total hours
Domestic facilities	697	52	36,244	0.25 (15 minutes)	9,061
Foreign facilities	916	52	47,632	0.25 (15 minutes)	11,908
Total					20,969

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 10, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020-17876 Filed 8-13-20; 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: Office for the Advancement of Telehealth Outcome Measures, OMB No. 0915-0311—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA’s ICR only after the 30 day comment period for this notice has closed.

DATES: Comments on this ICR should be received within 30 days of this notice 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 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 the HRSA Information Collection Clearance Officer at paperwork@hrsa.gov or call (301) 443-1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: HRSA Telehealth Outcome Measures OMB No. 0915-0311—Revision.

Abstract: In order to help carry out its mission, the Office for the Advancement of Telehealth (OAT) created a set of performance measures that grantees can use to evaluate the effectiveness of their services programs and monitor their progress through the use of performance reporting data.

A 60-day Notice was published in the **Federal Register** on March 26, 2020, vol. 85, No. 59; p. 17089. There were no comments.

Need and Proposed Use of the Information: As required by the Government Performance and Results Act of 1993, all federal agencies must develop strategic plans describing their overall goal and objectives. The Federal Office of Rural Health Policy, OAT, has worked with its grantees to develop performance measures to be used to

evaluate and monitor the progress of the grantees. Grantee goals are to: Improve access to needed services; reduce rural practitioner isolation; improve health system productivity and efficiency; and improve patient outcomes. In each of these categories, specific indicators were designed to be reported through a performance monitoring website. New measures are being added to the Telehealth Network Grant Program to capture awardee-level and aggregate data that illustrate the impact and scope of federal funding along with assessing these efforts. The measures speak to OAT’s progress toward meeting the goals, specifically telehealth services delivered through Emergency Departments.

Likely Respondents: Telehealth Network Grantees.

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 Information Collection Request 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
Performance Improvement Measurement System (PIMS) ..	29	1	29	7	203
Total	29		29		203

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020-17787 Filed 8-13-20; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made against Rahul Dev Jayant, Ph.D. (Respondent), Assistant Professor Pharmaceutical Sciences, School of Pharmacy, Texas Tech University Health Science Center (TTUHSC). Dr. Jayant engaged in research misconduct in research supported by U.S. Public Health Service (PHS) funds, specifically National Institute on Drug Abuse (NIDA), National Institutes of Health (NIH), grant R03 DA044877. The administrative actions, including supervision for a period of three (3) years, were implemented beginning on July 27, 2020, and are detailed below.

FOR FURTHER INFORMATION CONTACT: Elisabeth A. Handley, Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852, (240) 453-8200.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Rahul Dev Jayant, Ph.D., Texas Tech University Health Science Center: Based on the report of an inquiry conducted by TTUHSC and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Jayant, Assistant Professor Pharmaceutical Sciences, School of Pharmacy, TTUHSC, engaged in research misconduct in research supported by PHS funds, specifically NIDA, NIH, grant R03 DA044877.

ORI found that Respondent engaged in research misconduct by intentionally plagiarizing, falsifying, and/or fabricating data included in the following grant applications submitted for PHS funds:

- R21 DA051845-01, "DAT-CNS Organoid-Chip Model to Characterize the Effects of Buprenorphine on Fetal Neurodevelopment," submitted to NIDA, NIH, on October 16, 2019.
- R01 DA051894-01, "Novel 3D Printed CNS-Organoid Chip Model to

Elucidate HAND," submitted to NIDA, NIH, on November 12, 2019.

- R21 AA052445-01, "3D Printed Microfluidic Chip Cerebral Organoids (3D-MCCO) to Decode Neurodevelopmental Deficits with Oxycodone Exposure," submitted to NIDA, NIH, on February 10, 2020.
- R21 AA028877-01, "3D Printed CNS-Organoid Chip Model to Identify Biomarkers for Prenatal Alcohol Exposure," submitted to the National Institute on Alcohol Abuse and Alcoholism (NIAAA), NIH, on February 13, 2020.

ORI found that Respondent engaged in research misconduct by intentionally:

- Plagiarizing four (4) images of brain organoids and one (1) graph from *Nat Protoc.* 2014 Oct; 9(10):2329-40 (hereafter referred to as "NP 2014") without author attribution and including the plagiarized material in Figure 3iia-c of R21 DA051845-01, Figure 2iia-c of R01 DA051894-01, Figure 3iia-c of R21 DA052445-01, Figure 3iia-c of R21 AA028877-01, and the graph in Figure 2iv of R01 DA051894-01.

- Plagiarizing one (1) image of brain organoids from *Nature Communications* 2018 Oct 9; 9(1):4167 (hereafter referred to as "NC 2018") without author attribution and including the plagiarized material in Figure 2iiid of R01 DA051894-01.

- Falsifying and fabricating three (3) figures representing experiments measuring caspase3 expression in human brain organoids by reusing data from one experiment to represent different experimental treatments in Figure 4Bii of R21 DA051845-01, Figure 4iv of R21 DA052445-01, and Figure 3iii of R21 DA051894-01.

- Fabricating nine (9) bar graphs representing experiments measuring gene expression in control and experimental samples of human brain organoids treated with drugs of abuse in Figures 2i and 3i-iii of R21 DA051894-01, Figures 3ii, 4Ai-ii, and 4Bii of R21 AA028877-01, Figures 3ii and 4i-iii of R21 DA052445-01, and Figures 4A, 4Bi, and 5 of R21 DA051845-01.

Specifically, ORI found that Respondent intentionally:

- Plagiarized confocal images of immuno-stained samples of human brain organoids from Figure 4 of NP 2014, and the plagiarized images were cropped, rotated, contrast enhanced and labeled with scale bars in:
 - Figure 3iia-c in R21 DA051845-01
 - Figure 2iia-c in R01 DA051894-01
 - Figure 3iia-c in R21 DA052445-01
 - Figure 3iia-c in R21 AA028877-01
- Plagiarized confocal images of immuno-stained samples of human

brain organoids from Figure 1e of NC 2018 in Figure 2iiid in R01 DA051894-01. The plagiarized image was cropped and rotated and the contrast was altered.

- Plagiarized the graph in Figure 2iv in R01 DA051894-01 representing measurements of gene expression and associated statistics in cultured human brain organoids. The source of the plagiarized graph is unknown.
- Plagiarized the graph in Figure 2iv in R01 DA051894-01 representing measurements of gene expression and associated statistics in cultured human brain organoids. The source of the plagiarized graph is unknown.

- Falsified and fabricated control and experimental data representing measurements of caspase3 mRNA expression in human brain organoids treated with drugs of abuse. The identical images were falsely relabeled to represent different experimental treatments that were never done. The identical panels are:

—Figure 4Bii, labeled as "Buprenorphine (5 μ M)," in R21 DA051845-01
 —Figure 4iv, labeled as "Oxy 10 μ M," in R21 DA052445-01
 —Figure 3iii, labeled as "Meth-10 μ M," in R21 DA051894-01

- Falsified Figure 4Bi in R21 AA028877-01 to represent control and experimental data measuring neurite outgrowth in cultured human neurons treated with ethanol. The panels in Figure 4Bi in R21 DA051894-01, labeled as control or treated with 10ng/ml Tat for 1 or 7 days, are identical to those in Figure 4Bi in R21 AA028877-01, which were falsely relabeled as control or treated with 10 or 40 mM EtOH.

- Fabricated quantitative data and associated statistics representing measurements of gene expression levels in cultured human brain organoids over time or treated with drugs of abuse.

The fabricated bar graphs are:

—Figures 2i and 3i-iii in R21 DA051894-01
 —Figures 3ii, and 4Ai-ii, and 4Bii in R21 AA028877-01
 —Figures 3ii and 4i-iii in R21 DA052445-01
 —Figures 4A, Bi, and 5 in R21 DA051845-01

Dr. Jayant entered into a Voluntary Settlement Agreement and agreed to the following:

- (1) Respondent agreed to have his research supervised for a period of three (3) years beginning on July 27, 2020. Respondent agreed that prior to the submission of an application for PHS support for a research project on which Respondent's participation is proposed

and prior to Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of Respondent's duties is submitted to ORI for approval. The supervision plan must be designed to ensure the scientific integrity of Respondent's research contribution. Respondent agreed that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI. Respondent agreed to maintain responsibility for compliance with the agreed upon supervision plan.

(2) The requirements for Respondent's supervision plan are as follows:

i. A committee of 2–3 senior faculty members at the institution who are familiar with Respondent's field of research, but not including Respondent's supervisor or collaborators, will provide oversight and guidance for three (3) years from the effective date of the Agreement. The committee will review primary data from Respondent's laboratory on a quarterly basis and submit a report to ORI at six (6) month intervals, setting forth the committee meeting dates and Respondent's compliance with appropriate research standards and confirming the integrity of Respondent's research.

ii. The committee will conduct an advance review of any PHS grant applications (including supplements, resubmissions, etc.), manuscripts reporting PHS-funded research submitted for publication, and abstracts. The review will include a discussion with Respondent of the primary data represented in those documents and will include a certification to ORI that the data presented in the proposed application/publication is supported by the research record.

(3) Respondent agreed that for a period of three (3) years beginning on July 27, 2020, any institution employing him shall submit, in conjunction with each application of PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract.

(4) If no supervisory plan is provided to ORI, Respondent agreed to provide certification to ORI at the conclusion of the supervision period that he has not engaged in, applied for, or had his name included on any application, proposal,

or other request for PHS funds without prior notification to ORI.

(5) Respondent agreed to exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of three (3) years, beginning on July 27, 2020.

Dated: August 11, 2020.

Elisabeth A. Handley,

Director, Office of Research Integrity, Office of the Assistant Secretary for Health.

[FR Doc. 2020–17800 Filed 8–13–20; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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/or contract proposals 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 Child Health and Human Development Initial Review Group Pediatrics Subcommittee Pediatrics Subcommittee.

Date: October 8, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NICHD/NIH, 6710B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joanna Kubler-Kielb, Ph.D., Scientific Review Officer, Scientific Review Branch (SRB), DER, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Rm 2125C, Bethesda, MD 20817, 301–435–6916, kielbj@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 11, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–17826 Filed 8–13–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 Allergy and Infectious Diseases Special Emphasis Panel Emergency Awards: Rapid Investigation of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) and Coronavirus Disease 2019 (COVID-19).

Date: September 2–3, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G41B, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Zhuqing (Charlie) Li, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G41B, Bethesda, MD 20892–9834, (240) 669–5068, zhuqing.li@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 11, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–17859 Filed 8–13–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Cancer Institute; Notice of Meeting**

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Institute Council of Research Advocates.

The meeting will be held as a virtual meeting and is open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<http://videocast.nih.gov>).

Name of Committee: National Cancer Institute Council of Research Advocates.

Date: September 14, 2020.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: Welcome and Chairman's Remarks, NCI Updates, Legislative Update, and Director's Update.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Amy Williams, NCI Office of Advocacy Relations, National Cancer Institute, NIH, 31 Center Drive, Building 31, Room 10A28, Bethesda, MD 20892, (301) 496-9723, william@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: NCRA: <http://deainfo.nci.nih.gov/advisory/ncra/ncra.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 11, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-17805 Filed 8-13-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; HIV/AIDS associated cardiovascular disorders.

Date: August 27, 2020.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jingsheng Tuo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7852, Bethesda, MD 20892, (301) 451-8754, tuo@nei.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 10, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-17752 Filed 8-13-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Center for Advancing Translational Sciences; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; CTSA Collaborative Innovation Awards Review Meeting.

Date: September 29, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1073, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: M. Lourdes Ponce, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Democracy 1, Room 1073, Bethesda, MD 20892, 301-435-0810, lourdes.ponce@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: August 11, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-17873 Filed 8-13-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of Allergy and Infectious 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 Allergy and Infectious Diseases Special Emphasis Panel; Emergency Awards: Rapid Investigation of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) and Coronavirus Disease 2019 (COVID-19).

Date: September 4, 2020

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F52, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Jennifer H. Meyers, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, MSC-9823, Rockville, MD 20852, 301-761-6602, jennifer.meyers@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 11, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-17861 Filed 8-13-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 Allergy and Infectious Diseases (NIAID) Special Emphasis Panel NIAID Investigator Initiated Program Project Applications (P01).

Date: October 20, 2020.

Time: 11:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G41, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Kelly L. Hudspeth, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, MSC-9823, Rockville, MD 20852, 240-669-5067, kelly.hudspeth@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 11, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-17860 Filed 8-13-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Mechanism for Time Sensitive Research Opportunities in Environmental Health Sciences.

Date: September 3, 2020.

Time: 11:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Science, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Janice B Allen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC-30/ Room 3170 B, Research Triangle Park, NC 27709, 984-287-3232, allen9@niehs.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk

Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 11, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-17862 Filed 8-13-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Center for Advancing Translational Sciences Advisory Council.

The meeting will be open to the public as indicated below, viewing virtually by WebEx. Individuals can register to view and access the meeting by the links below:

September 17, 2020 WebEx: <https://nih.webex.com/nih/onstage/g.php?MTID=ec5429a67a9f4966244b7335797c7f08b>.

September 18, 2020 WebEx: <https://nih.webex.com/nih/onstage/g.php?MTID=e7326f004e32dc19cccaad8405367464b>.

1. Go to “Event Status” on the left-hand side of page, then click “Register”. On the registration form, enter your information and then click “Submit” to complete the required registration.

2. You will receive a personalized email with the live event link.

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 Center for Advancing Translational Sciences Advisory Council.

Date: September 17–18, 2020.

Closed: September 17, 2020, 11:00 a.m. to 12:30 p.m.

Agenda: To discuss internal operations, review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 9th Floor, Conference Rooms 987/989, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Open: September 17, 2020, 1:00 p.m. to 3:00 p.m.

Agenda: To view and discuss Clearance of Concepts.

Place: National Institutes of Health, One Democracy Plaza, 9th Floor, Conference Rooms 987/989, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Open: September 18, 2020, 11:00 a.m. to 3:00 p.m.

Agenda: Report from the Institute Director and other staff.

Place: National Institutes of Health, One Democracy Plaza, 9th Floor, Conference Rooms 987/989, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anna L. Ramsey-Ewing, Ph.D., Executive Secretary, National Center for Advancing Translational Sciences, 1 Democracy Plaza, Room 1072, Bethesda, MD 20892, 301-435-0809, anna.ramseyewing@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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: August 11, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-17858 Filed 8-13-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel and Translational Science Awards (CTSA) Review.

Date: September 9–10, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1080, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Victor Henriquez, Ph.D., Scientific Review Officer, Office of Scientific Director, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health 6701 Democracy Blvd., Democracy 1, Room 1080, Bethesda, MD 20892-4878, 301-435-0813, henriqvu@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: August 11, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-17839 Filed 8-13-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention's (CSAP) Drug Testing Advisory Board (DTAB) will convene via web conference on September 1st, 2020, from 10:00 a.m. EDT to 5:30 p.m. EDT.

The board will meet in open-session September 1st, 2020, from 10:00 a.m. EDT to 1:00 p.m. EDT to discuss the Mandatory Guidelines for Federal Workplace Drug Testing Programs with

updates from the Department of Transportation and the Nuclear Regulatory Commission. Other discussion topic include an update on marijuana studies and efforts. The board will meet in closed-session on September 1st, 2020, from 2:00 p.m. EDT to 5:30 p.m. EDT to discuss confidential issues surrounding the proposed Mandatory Guidelines for Federal Workplace Drug Testing Programs (hair), preliminary and unpublished studies from the Johns Hopkins University Behavioral Pharmacology Research Unit (BPRU), additional drugs (fentanyl and methadone) that may be tested for in the future, and lastly, emerging issues on marijuana. Therefore, the portion of the meeting on September 1st, 2020, from 2:00 p.m. EDT to 5:30 p.m. EDT, is closed to the public, as determined by the Assistant Secretary for Mental Health and Substance Use, SAMHSA, in accordance with 5 U.S.C. 552b(c)(4) and (9)(B), and 5 U.S.C. App. 2, Section 10(d).

Meeting registration information can be completed at <http://snacregister.samhsa.gov/MeetingList.aspx>. Web conference and call information will be sent after completing registration. Meeting information and a roster of DTAB members may be obtained by accessing the SAMHSA Advisory Committees website, <https://www.samhsa.gov/about-us/advisory-councils/meetings> or by contacting the Designated Federal Officer, Jennifer Fan.

Committee Name: Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention, Drug Testing Advisory Board.

Dates/Time/Type: September 1, 2020, from 10:00 a.m. to 1:00 p.m. EDT: OPEN. September 1, 2020, from 2:00 p.m. to 5:30 p.m. EDT: CLOSED.

Place: Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857.

Contact: Jennifer Fan, Senior Pharmacist, Center for Substance Abuse Prevention, 5600 Fishers Lane, Room 16N06D, Rockville, Maryland 20857, Telephone: (240) 276-1759, Email: jennifer.fan@samhsa.hhs.gov.

Anastasia Marie Donovan,

Policy Analyst.

[FR Doc. 2020-17789 Filed 8-13-20; 8:45 am]

BILLING CODE 4162-20-P

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR–6224–N–01]

**Fair Market Rents for the Housing
Choice Voucher Program, Moderate
Rehabilitation Single Room Occupancy
Program, and Other Programs Fiscal
Year 2021**

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Fiscal Year (FY) 2021 Fair Market Rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 (USHA), as amended by the Housing Opportunities Through Modernization Act of 2016 (HOTMA), requires the Secretary to publish FMRs not less than annually, adjusted to be effective on October 1 of each federal fiscal year (FFY). This notice describes the methods used to calculate the FY 2021 FMRs and enumerates the procedures for Public Housing Agencies (PHAs) and other interested parties to request reevaluations of their FMRs as required by HOTMA. The trend factors used in the FY 2021 FMRs include updated economic assumptions to reflect the economic downturn caused by the COVID–19 pandemic.

DATES:

Comment Due Date: September 30, 2020.

Applicable Date: October 1, 2020 unless HUD receives a valid request for reevaluation of specific area FMRs as described below.

ADDRESSES: HUD invites interested persons to submit comments regarding the FMRs and to request reevaluation of the FY 2021 FMRs to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10276, Washington, DC 20410–0001. Communications must refer to the above docket number and title and should contain the information specified in the “Request for Comments/Request for Reevaluation” section. There are two methods for submitting public comments.

1. *Submission of Comments by Mail.* Comments or requests for reevaluation may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at all federal agencies, however, submission of comments by standard mail often results in delayed delivery. To ensure

timely receipt of comments or reevaluation requests, HUD recommends that comments or requests submitted by standard mail be submitted at least two weeks in advance of the deadline. HUD will make all comments or reevaluation requests received by mail available to the public at <https://www.regulations.gov>.

2. *Electronic Submission of Comments.* Interested persons may submit comments or reevaluation requests electronically through the Federal eRulemaking Portal at <https://www.regulations.gov>. HUD strongly encourages commenters to submit comments or reevaluation requests electronically. Electronic submission of comments or reevaluation requests allows the author maximum time to prepare and submit a comment or reevaluation request, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments or reevaluation requests submitted electronically through the <https://www.regulations.gov> website can be viewed by other submitters and interested members of the public. Commenters or reevaluation requestors should follow instructions provided on that site to submit comments or reevaluation requests electronically.

Note: To receive consideration as public comments or reevaluation requests, comments or requests must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments or Reevaluation Requests. Facsimile (FAX) comments or requests for FMR reevaluation are not acceptable.

Public Inspection of Public Comments and Reevaluation Requests. All properly submitted comments and reevaluation requests and communications regarding this notice submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments and reevaluation requests must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (toll-free number). Copies of all comments and reevaluation requests submitted are available for inspection and downloading at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800–245–2691 or access the information on the HUD USER website <https://www.huduser.gov/portal/datasets/fmr.html>. FMRs are listed at the 40th percentile in the Schedule of Metropolitan and Non-Metropolitan Area FMRs. For informational purposes, 50th percentile rents for all FMR areas will be published at <https://www.huduser.gov/portal/datasets/50per.html>.

Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. Questions on how to conduct FMR surveys may be addressed to Marie L. Lihn or Peter B. Kahn of the Program Parameters and Research Division, Office of Economic Affairs, Office of Policy Development and Research at HUD headquarters, 451 7th Street SW, Room 8208, Washington, DC 20410; telephone number 202–402–2409 (this is not a toll-free number), or they may be reached at pprd@hud.gov. Persons with hearing or speech impairments may access HUD numbers through TTY by calling the Federal Relay Service at 800–877–8339 (toll-free number).

Electronic Data Availability. This **Federal Register** notice will be available electronically from the HUD User page at <https://www.huduser.gov/portal/datasets/fmr.html>. **Federal Register** notices also are available electronically from <https://www.federalregister.gov/> the U.S. Government Printing Office website. Complete documentation of the methods and data used to compute each area’s FY 2021 FMRs is available at https://www.huduser.gov/portal/datasets/fmr.html#2021_query. FY 2021 FMRs are available in a variety of electronic formats at <https://www.huduser.gov/portal/datasets/fmr.html>. FMRs may be accessed in PDF as well as in Microsoft Excel. Small Area FMRs for all metropolitan FMR areas are available in Microsoft Excel format at: <https://www.huduser.gov/portal/datasets/fmr/smallarea/index.html>.

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the USHA (42 U.S.C. 1437f) authorizes housing assistance to aid lower-income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different geographic areas. In the Housing Choice

Voucher (HCV) program, the FMR is the basis for determining the “payment standard amount” used to calculate the maximum monthly subsidy for an assisted family. See 24 CFR 982.503. HUD also uses the FMRs to determine initial renewal rents for some expiring project-based Section 8 contracts, initial rents for housing assistance payment contracts in the Moderate Rehabilitation Single Room Occupancy program, rent ceilings for rental units in both the HOME Investment Partnerships program and the Emergency Solution Grants program, calculation of maximum award amounts for Continuum of Care recipients and the maximum amount of rent a recipient may pay for property leased with Continuum of Care funds, and calculation of flat rents in Public Housing units. In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities and is typically set at the 40th percentile of the distribution of gross rents. HUD’s FMR calculations represent HUD’s best effort to estimate the 40th percentile gross rent¹ paid by recent movers into standard quality units in each FMR area. In addition, all rents subsidized under the HCV program must meet reasonable rent standards.

II. Procedures for the Development of FMRs

Section 8(c)(1) of the USHA, as amended by HOTMA (Pub. L. 114–201, approved July 29, 2016), requires the Secretary of HUD to publish FMRs not less than annually. Section 8(c)(1)(A) states that each FMR “shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply . . .” Section 8(c)(1)(B) requires that HUD publish, not less than annually, new FMRs on the World Wide Web or in any other manner specified by the Secretary, and that HUD must also notify the public of when it publishes FMRs by **Federal Register** notice. After notification, the FMRs “shall become effective no earlier than 30 days after the date of such publication,” and HUD must provide a procedure for the public to comment and request a reevaluation of the FMRs in a jurisdiction before the FMRs

¹ HUD also calculates and posts 50th percentile rent estimates for the purposes of Success Rate Payment Standards as defined at 24 CFR 982.503(e) (estimates available at: <https://www.huduser.gov/portal/datasets/50per.html>), which policy was not changed by the Small Area FMR rule.

become effective. Consistent with the statute, HUD is issuing this notice to notify the public that FY 2021 FMRs are available at <https://www.huduser.gov/portal/datasets/fmr.html> and will become effective on October 1, 2020. This notice also provides procedures for FMR reevaluation requests.

III. FMR Methodology

This section provides a brief overview of how HUD computes the FY 2021 FMRs. HUD is making no changes to the estimation methodology for FMRs as used by HUD for the FY 2020 FMRs. For complete information on how HUD derives each area’s FMRs, see the online documentation at https://www.huduser.gov/portal/datasets/fmr.html#2021_query.

In conjunction with the use of 2018 American Community Survey (ACS) data, HUD has implemented the following geography change, the designation of the two counties comprising newly created Twin Falls, ID MSA as metropolitan counties. These two counties will be designated as Twin Falls County, ID HUD Metro FMR Area and Jerome County, ID HUD Metro FMR Area. Although the FMRs for these counties will be calculated separately, the metropolitan area designation impacts the FMR calculations since the areas will use the Idaho metropolitan state-based recent mover factor instead of the Idaho state non-metropolitan recent mover factor.

A. Base Year Rents

For FY 2021 FMRs, HUD uses the U.S. Census Bureau’s 5-year ACS data collected between 2014 and 2018 and released in December 2019 as the base rents for the FMR calculations. The ACS data released at the end of 2019 is the most current ACS data available at the time the FY 2021 FMRs are calculated. HUD pairs a “margin of error” test² with an additional requirement based on the number of survey observations supporting the estimate to improve the statistical reliability of the ACS data used in the FMR calculations. The Census Bureau does not provide HUD with an exact count of the number of observations supporting the ACS estimate; rather, the Census Bureau provides HUD with categories of the number of survey responses underlying the estimate, including whether the estimate is based on more than 100 observations. Using these categories, HUD requires that, in addition to the “margin of error” test, ACS rent

² HUD’s margin of error test requires that the margin of error of the ACS estimate is less than half the size of the estimate itself.

estimates must be based on at least 100 observations to be used as base rents.

For areas in which the 5-year ACS data for two-bedroom, standard quality gross rents do not pass the statistical reliability tests (*i.e.*, have a margin of error ratio greater than 50 percent or fewer than 100 observations), HUD will use an average of the base rents over the three most recent years³ (provided that there is data available for at least two of these years),⁴ or if such data is not available, using the two-bedroom rent data within the next largest geographic area, which for a non-metropolitan area would be the state non-metro area rent data.

HUD has updated base rents each year using annually updated 5-year data made available since FY 2012. HUD also updates base rents for Puerto Rico FMRs using data collected between 2014 and 2018 through the Puerto Rico Community Survey (PRCS); HUD first updated the Puerto Rico base rents in FY 2014 based on 2007–2011 PRCS data collected through the ACS program.

HUD historically based FMRs on gross rents for recent movers (those who have moved into their current residence in the last 24 months) measured directly. However, due to the way Census constructs the 5-year ACS data, HUD developed a new method for calculating recent-mover FMRs in FY 2012, which HUD continues to use in FY 2021. Under this method, HUD assigns all areas a base rent, which is the two-bedroom standard quality 5-year gross rent estimate from the ACS; then, because HUD’s regulations mandate that FMRs must be published as recent mover gross rents, HUD applies a recent-mover factor to the base rents assigned from the 5-year ACS data.⁵ The calculation of the recent mover factor is described below.

³ For FY 2021, the three years of ACS data in question are 2016, 2017 and 2018. The 2016 data are adjusted to be denominated in 2018 dollars using the growth in Consumer Price Index (CPI)-based gross rents measured between 2016 and 2018. Similarly, the 2017 gross rent data is adjusted to 2018 denominated dollars using the growth in CPI-based gross rents measured between 2017 and 2018.

⁴ To be used in the three-year average calculation, the 5-year estimates must be minimally statistically qualified; that is, the margin of error of the estimates must be less than half the size of the estimate.

⁵ HUD’s regulations at 24 CFR 888.113(a) incorporate recent-mover data into FMR calculations because the gross rents of those who most recently moved into their units likely depicts the most current market conditions observable through the ACS. Rents paid by renters renewing existing leases may not reflect the most current market conditions, in part because these renters may have clauses within their leases that predetermine the annual increases in rents paid (*i.e.*, rent escalator clauses).

B. Recent-Mover Factor

Following the assignment of the standard quality two-bedroom rent described above, HUD applies a recent-mover factor to these rents. HUD calculates the recent-mover factor as the change between the 5-year 2014–2018 standard quality two-bedroom gross rent and the 1-year 2018 recent mover gross rent for the recent mover factor area. HUD does not allow recent-mover factors to lower the standard quality base rent; therefore, if the 5-year standard quality rent is larger than the comparable 1-year recent mover rent, the recent-mover factor is set to 1 so the base rent is updated and trended. When the recent-mover factor is greater than one, the base rent is effectively replaced with the recent-mover rent for that area and that is what is updated and trended. For virtually all metropolitan areas, one-year recent-mover data is the basis for the updated and trended FMRs.

The calculation of the recent-mover factor for FY 2021 continues to use statistical reliability requirements that are similar to those for base rents. That is, for a recent-mover gross rent estimate to be considered statistically reliable, the estimate must have a margin of error ratio that is less than 50 percent, and the estimate must be based on 100 or more observations.

When an FMR area does not have statistically reliable two-bedroom recent-mover data, the “all-bedroom” 1-year recent-mover ACS data for the FMR area is tested for statistical reliability.⁶ An “all-bedroom” recent-mover factor from the FMR area will be used, if statistically reliable, before substituting a two-bedroom recent-mover factor from the next larger geography. Incorporating “all-bedroom” rents into the recent-mover factor calculation when statistically reliable two-bedroom data is not available preserves the use of local information to the greatest extent possible.

However, where statistically reliable “all-bedroom” data is not available, HUD will continue to base FMR areas’ recent-mover factors on larger geographic areas, following the same procedures used historically: HUD tests data from differently sized geographic areas in the following order (from small to large), and bases the recent-mover factor on the first statistically reliable recent-mover rent estimate in the geographic hierarchy listed below.

- For metropolitan areas that are sub-areas of larger metropolitan areas, the order is the FMR area, metropolitan

area, aggregated metropolitan parts of the state, and state.

- For metropolitan areas that are not divided, the order is the FMR area, aggregated metropolitan parts of the state, and state.

- In non-metropolitan areas, the order is the FMR area, aggregated non-metropolitan parts of the state, and state.

The process for calculating each area’s recent mover factor is detailed in the FY 2021 FMR documentation system available at:

https://www.huduser.gov/portal/datasets/fmr.html#2021_query.

Applying the recent-mover factor to the standard quality base rent produces an “as of” 2018 recent mover two-bedroom gross rent for the FMR area.

C. Other Rent Survey Data

HUD calculated base rents for the insular areas using data collected during the 2010 decennial census of American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands beginning with the FY 2016 FMRs.⁷ This 2010 base year data is updated through 2018 for the FY 2021 FMRs using the growth in national ACS data.

HUD does not use ACS data to establish the base rent or recent-mover factor for 21 areas where the FY 2021 FMRs are based on locally collected survey data which are more recent than the 2018 ACS. For larger metropolitan areas that have valid ACS one-year recent-mover data, survey data may not be any older than the mid-point of the calendar year for the ACS one-year data. Since the ACS one-year data used for the FY 2021 FMRs is from 2018, larger areas may not use survey data collected before June 30, 2018 for the FY 2021 FMRs. Smaller areas without statistically reliable 1-year ACS data may continue to use local survey data until the mid-point of the 5-year ACS data is more recent than the local survey. The following list enumerates the areas with local areas surveys and the year of the survey data:

- Survey data from 2017 is used to adjust the FMRs for Hood River County, OR; Wasco County, OR; Hawaii County, HI; and Jonesboro, AR HMFA.

- Survey data from 2018 is used to adjust the FMR for Portland-Vancouver-Hillsboro, OR-WA; Burlington-South Burlington, VT; Coos County, OR; Curry County, OR; Oakland-Fremont, CA HUD

⁷ The ACS is not conducted in the Pacific Islands (Guam, Northern Marianas and American Samoa) or the US Virgin Islands. As part of the 2010 Decennial Census, the Census Bureau conducted “long-form” sample surveys for these areas. The results gathered by this long form survey have been incorporated into the FY 2020 FMRs.

Metro FMR Area; San Francisco, CA HUD Metro FMR Area; San Jose-Sunnyvale-Santa Clara, CA HUD Metro FMR Area; Boston-Cambridge-Quincy, MA-NH HUD Metro FMR Area; Douglas County, OR; and San Diego-Carlsbad, CA MSA.

- Survey data from 2019 is used to adjust the FMRs for Kauai County, HI; Asheville, NC HUD Metro FMR Area; Eugene-Springfield, OR MSA; Portland, ME HUD Metro FMR Area; Santa Maria-Santa Barbara, CA MSA; Worcester, MA HUD Metro FMR Area; and Guam.

- Survey data from 2020 is used to calculate the FMRs for Santa Cruz-Watsonville, CA MSA.

D. Updates From 2018 to 2019

HUD updates the ACS-based “as of” 2018 rent through 2019 using the annual change in gross rents measured through the Consumer Price Index (CPI) from 2018 to 2019 (CPI update factor). As in previous years, HUD uses local CPI data coupled with Consumer Expenditure Survey data for FMR areas within Class A metropolitan areas covered by local CPI data. In 2018, the Bureau of Labor Statistics (BLS) changed the area definitions of its Class A metropolitan areas from the 1990 definition of Consolidated Metropolitan Statistical Areas (CMSA) to smaller Core-Based Statistical Area (CBSA) MSAs. In addition, BLS eliminated some areas from this Class A collection: Pittsburgh, PA MSA; Cleveland-Elyria, OH MSA; Cincinnati, OH-KY-IN MSA; Kansas City, MO-KS MSA; Milwaukee-Waukesha-West Allis, WI MSA; and Portland-Vancouver-Hillsboro, OR-WA MSA. HUD estimated these areas’ FMRs using regional CPI beginning with the FY 2020 FMRs and continues the use of regional CPI factors in FY 2021. HUD uses CPI data aggregated at the Census region level for all Class B and C size metropolitan areas and non-metropolitan areas. Additionally, HUD uses CPI data collected locally in Puerto Rico as the basis for CPI adjustments from 2018 to 2019 for all Puerto Rico FMR areas.

E. Trend Factor Forecasts

Following the application of the appropriate CPI update factor, HUD trends the gross rent estimate from 2019 to FY 2021 using local and regional forecasts of the CPI gross rent data. Riverside-San Bernardino-Ontario, CA MSA as a newly designated Class A city (it was previously part of the Los Angeles-Riverside-Orange County, CA CMSA) has data for a CPI update factor, but does not have enough data for a trend factor forecast; therefore, until there is sufficient history to create a

⁶ “All-bedroom” refers to estimates aggregated together regardless of the number of bedrooms in the dwelling unit.

credible local trend factor forecast its trend factor is the regional (West) trend factor. The actual model used for each trend factor has been chosen based on which model generates the lowest Root Mean Square Error (RMSE) statistic. As detailed in the June 5, 2019 **Federal Register** notice (84 FR 26141), the trend factors were selected from a series of time series models based on national inputs (National Input Model or NIM), local inputs (Local Input Model or LIM) and historical values of the predicted series (Pure Time Series—PTS). HUD will hold the type of model selected (NIM, LIM, or PTS) constant for 5 years and will reassess the model selections during the calculation of the FY 2025 FMRs. For instances when HUD changes the functional form of the model (NIM, PTS, LIM) for a geographic area that is different from the previous model selection, HUD will ensure the change is not due to overfitting the model or outliers in the data. HUD will update and run the gross rent forecast models annually with updated actual data and newly created input forecasts. For FY 2021, in the NIM models, HUD is using economic projections that account for the COVID-19 impacts on the economy.⁸

E. Bedroom Rent Adjustments

HUD updates the bedroom ratios used in the calculation of FMRs annually. The bedroom ratios which HUD used in the calculation of FY 2021 FMRs have been updated using average data from three five-year ACS data series (2012–2016, 2013–2017, and 2014–2018). The bedroom ratio methodology used in this update is unchanged from previous calculations using 2000 Census data. HUD only uses estimates with a margin of error ratio of less than 50 percent. If an area does not have reliable estimates in at least two of the previous three ACS releases, bedroom ratios for the area's larger parent geography are used.

HUD uses two-bedroom units for its primary calculation of FMR estimates. This is generally the most common size of rental unit and, therefore, the most reliable to survey and analyze. After estimating two-bedroom FMRs, HUD calculates bedroom ratios for each FMR area which relate the prices of smaller and larger units to the cost of two-bedroom units. To ensure an adequate distributional fit in these bedroom ratio calculations in particular FMR areas, HUD establishes bedroom interval ranges which set upper and lower limits for bedroom ratios nationwide, based on an analysis of the range of such intervals

for all areas with large enough samples to permit accurate bedroom ratio determinations.

In the calculation of FY 2021 FMR estimates, HUD set the bedroom interval ranges as follows: Efficiency FMRs are constrained to fall between 0.66 and 0.86 of the two-bedroom FMR; one-bedroom FMRs must be between 0.76 and 0.88 of the two-bedroom FMR; three-bedroom FMRs (prior to the adjustments described below) must be between 1.14 and 1.32 of the two-bedroom FMR; and four-bedroom FMRs (again, prior to adjustment) must be between 1.26 and 1.61 of the two-bedroom FMR. Given that these interval ranges partially overlap across unit bedroom counts, HUD further adjusts bedroom ratios for a given FMR area, if necessary, to ensure that higher bedroom-count units have higher rents than lower bedroom-count units within that area. The bedroom ratios for Puerto Rico follow these constraints.

HUD also further adjusts the rents for three-bedroom and larger units to reflect HUD's policy to set higher rents for these units.⁹ This adjustment is intended to increase the likelihood that the largest families, who have the most difficulty in leasing units, will be successful in finding eligible program units. The adjustment adds 8.7 percent to the unadjusted three-bedroom FMR estimates and adds 7.7 percent to the unadjusted four-bedroom FMR estimates.

HUD derives FMRs for units with more than four bedrooms by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. Similarly, HUD derives FMRs for single-room occupancy units by subtracting 25 percent from the zero-bedroom FMR (*i.e.*, they are set at 0.75 times the zero-bedroom (efficiency) FMR).¹⁰

F. Limit on FMR Decreases

Within the Small Area FMR final rule published on November 16, 2016, HUD amended 24 CFR 888.113 to include a limit on the amount that FMRs may annually decrease. The current year's FMRs resulting from the application of

the bedroom ratios, as discussed in section (E) above, may be no less than 90 percent of the prior year's FMRs for units with the same number of bedrooms. Accordingly, if the current year's FMRs are less than 90 percent of the prior year's FMRs as calculated by the above methodology, HUD sets the current year's FMRs equal to 90 percent of the prior year's FMRs. For areas where use of Small Area FMRs in the administration of their voucher programs is required, the FY 2021 Small Area FMRs may be no less than 90 percent of the FY 2020 Small Area FMRs. For all other metropolitan areas, for which Small Area FMRs are calculated so that they may be used for other allowable purposes if desired (*e.g.*, exception payment standards, public housing flat rents), the FY 2021 Small Area FMRs may be no less than 90 percent of the greater of the FY 2020 metropolitan area-wide FMRs or the applicable FY 2020 Small Area FMR.

G. Other Limits on FMRs

All FMRs are subject to a state or national minimum. HUD calculates a population-weighted median two-bedroom 40th percentile rent across all non-metropolitan portions of each state, which, for the purposes of FMRs, is the state minimum rent. State-minimum rents for each FMR area are available in the FY 2021 FMR Documentation System, available at https://www.huduser.gov/portal/datasets/fmr.html#2021_query. HUD also calculates the population-weighted median two-bedroom 40th percentile rent across all non-metropolitan portions of the country, which, for the purposes of FMRs, is the national minimum rent. For FY 2021, the national minimum rent is \$734. The applicable minimum rent for a particular area is the *lower* of the state or national minimum. Each area's two-bedroom FMR must be no less than the applicable minimum rent.

As in prior years, Small Area FMRs are subject to a maximum limit. HUD limits each two-bedroom Small Area FMR to be no more than 150 percent of the two-bedroom FMR for the metropolitan area where the ZIP code is located.

IV. Small Area FMRs

Small Area FMRs for all metropolitan areas are listed in the Small Area FMR Schedule. Other Metropolitan PHAs operating in areas where the Small Area FMR is not required to be used and interested in using Small Area FMRs in the operation of their Housing Choice Voucher program should contact their

⁸ Congressional Budget Office (CBO) economic projections, May 2020.

⁹ As mentioned above, HUD applies the interval ranges for the three-bedroom and four-bedroom FMR ratios prior to making these adjustments. In other words, the adjusted three- and four-bedroom FMRs can exceed the interval ranges, but the unadjusted FMRs cannot.

¹⁰ As established in the interim rules implementing the provisions of the Quality Housing and Work Responsibility Act of 1998 (Title V of the FY 1999 HUD Appropriations Act; Pub. L. 105–276). In 24 CFR 982.604.

local HUD field office to request approval from HUD to do so.

HUD calculates Small Area FMRs directly from the standard quality gross rents provided to HUD by the Census Bureau for ZIP Code Tabulation Areas (ZCTAs), when such data is statistically reliable. The ZCTA two-bedroom equivalent 40th percentile gross rent is analogous to the standard quality base rents set for metropolitan areas and non-metropolitan counties. For each ZCTA with statistically reliable gross rent estimates, using the expanded test of statistical reliability first used in FY 2018 (*i.e.*, estimates with margins of error ratios below 50 percent and based on at least 100 observations), HUD will calculate a two-bedroom equivalent 40th percentile gross rent using the first statistically reliable gross rent distribution data from the following data sets (in this order): Two-bedroom gross rents, one-bedroom gross rents, and three-bedroom gross rents. If either the one-bedroom or three-bedroom gross rent data is used because the two-bedroom gross rent data is not statistically reliable, the one-bedroom or three-bedroom 40th percentile gross rent will be converted to a two-bedroom equivalent rent using the bedroom ratios for the ZCTA's parent metropolitan area. To increase stability to these Small Area FMR estimates, HUD averages the latest three years of gross rent estimates.¹¹

For ZCTAs without usable gross rent data by bedroom size, HUD will continue to calculate Small Area FMRs using the rent ratio method similar to that HUD has used in past Small Area FMR calculations. To calculate Small Area FMRs using a rent ratio, HUD divides the median gross rent across all bedrooms for the small area (a ZIP code) by the similar median gross rent for the metropolitan area of the ZIP code. If a ZCTA does not have reliable rent data at the all bedroom level, HUD will then check to see if the ZCTA is bordered by ZCTAs that themselves have reliable rent data. If at least half of a ZCTA's "neighbors" have such data, the weighted average of those estimates will be used as the basis for the SAFMR rather than a county proxy, where the weight is the length of the shared boundary between the ZCTA and its neighbor. In small areas where the neighboring ZCTA median gross rents are not statistically reliable, HUD continues to substitute the median gross rent for the county containing the ZIP

code in the numerator of the rent ratio calculation. HUD multiplies this rent ratio by the current two-bedroom rent for the metropolitan area containing the small area to generate the current year two-bedroom rent for the small area.

HUD continues to use a rolling average of ACS data in calculating the Small Area FMR rent ratios. HUD believes coupling the most current data with previous year's data minimizes excessive year-to-year variability in Small Area FMR rent ratios due to sampling variance. Therefore, for FY 2021 Small Area FMRs, HUD has updated the rent ratios to use an average of the rent ratios calculated from the 2012–2016, 2013–2017, and 2014–2018 5-year ACS estimates.

V. Request for Public Comments and FMR Reevaluations

HUD will continue to accept public comments on the methods HUD uses to calculate FY 2021 FMRs, including Small Area FMRs, and the FMR levels for specific areas. Due to its current funding levels, HUD does not have sufficient resources to conduct local surveys of rents to address comments filed regarding the FMR levels for specific areas. PHAs may continue to fund such surveys independently, as specified below, using ongoing administrative fees or their administrative fee reserve if they so choose. HUD continually strives to calculate FMRs that meet the statutory requirement of using "the most recent available data" while also serving as an effective program parameter.

PHAs or other parties interested in requesting HUD's reevaluation of their area's FY 2021 FMRs, as provided for under section 8(c)(1)(B) of USHA, must follow the following procedures:

1. By the end of the comment period, such reevaluation requests must be submitted publicly through <https://www.regulations.gov/> or directly to HUD as described above. The area's PHA or, in multi-jurisdictional areas, PHA(s) representing at least half of the voucher tenants in the FMR area, must agree that the reevaluation is necessary.

2. For a re-evaluation to occur, the requestor(s) must supply HUD with data more recent than the 2018 ACS data used in the calculation of the FY 2021 FMRs. HUD requires data on gross rents paid in the FMR area for standard quality rental housing units occupied by recent movers. The data delivered must be sufficient for HUD to calculate a 40th and 50th percentile two-bedroom rent.¹²

Should this type of data not be available, requestors may gather this information using the survey guidance available at <https://www.huduser.gov/portal/datasets/fmr/NoteRevisedAreaSurveyProcedures.pdf> and <https://www.huduser.gov/portal/datasets/fmr/PrinciplesforPHA-ConductedAreaRentSurveys.pdf>.

3. On or about October 2, 2020 HUD will post a list, at <https://www.huduser.gov/portal/datasets/fmr.html>, of the areas requesting reevaluations and where FY 2020 FMRs remain in effect. 42 U.S.C. 1437f(c)(1)(B) includes the following: "The Secretary shall establish a procedure for public housing agencies and other interested parties to comment on such fair market rentals and to request, within a time specified by the Secretary, reevaluation of the fair market rentals in a jurisdiction before such rentals become effective." Therefore, areas where valid reevaluation requests are submitted continue to use FY 2020 FMRs whether the FY 2021 FMRs are lower or higher than the FY 2020 FMRs.

4. Data for reevaluations must be supplied to HUD no later than Friday January 8, 2021. On Monday January 11, 2021, HUD will post at <https://www.huduser.gov/portal/datasets/fmr.html> a listing of the areas that requested FMR reevaluations but did not deliver data and making the FY 2021 FMRs effective in these areas. All survey responses gathered as part of the survey efforts should be delivered to HUD. In addition to the survey data, HUD requires a current utility schedule in order to evaluate the survey responses. Finally, HUD encourages PHAs to evaluate their survey data to ensure the survey provides the expected results. Should PHAs or their contractors undertake this evaluation, HUD requests that this analysis also be submitted.

5. HUD will use the data delivered by January 8, 2021 to reevaluate the FMRs and following the reevaluation, will post revised FMRs with an accompanying **Federal Register** notice stating the revised FMRs are available, which will include HUD's responses to comments filed during the comment period for this notice.

6. Any data supporting a change in FMRs supplied after January 8, 2021 will be incorporated into FY 2022 FMRs.

7. PHAs operating in areas where the calculated FMR is lower than the published FMR (*i.e.*, those areas where HUD has limited the decrease in the annual change in the FMR to 10 percent) may request payment standards below the basic range (24 CFR

¹¹ For example, for FY 2021 Small Area FMRs, HUD averages the gross rents from 2016, 2017, and 2018 5-Year ACS estimates. The 2016 and 2017 gross rent estimates would be adjusted to 2018 dollars using the metropolitan area's gross rent CPI adjustment factors.

¹² Although there are no longer 50th percentile FMRs, HUD must calculate 50th percentile rents for the Success Rate Payment Standard under 24 CFR 982.503(e).

982.503(d) and reference the “unfloored” rents (*i.e.*, the unfinalized FMRs calculated by HUD prior to application of the 10-percent-decrease limit) depicted in the FY 2021 FMR Documentation System (available at: https://www.huduser.gov/portal/datasets/fmr.html#2021_query).

Questions on how to conduct FMR surveys may be addressed to Marie L. Lihn or Peter B. Kahn of the Program Parameters and Research Division, Office of Economic Affairs, Office of Policy Development and Research at HUD headquarters, 451 7th Street SW, Room 8208, Washington, DC 20410; telephone number 202-402-2409 (this is not a toll-free number), or they may be reached at pprd@hud.gov.

For small metropolitan areas without one-year ACS data and non-metropolitan counties, HUD has developed a method using mail surveys that is discussed on the FMR web page: https://www.huduser.gov/portal/datasets/fmr.html#survey_info. This method allows for the collection of as few as 100 one-bedroom, two-bedroom and three-bedroom recent mover (tenants that moved in last 24 months) units.

While HUD has not developed a specific method for mail surveys in areas with 1-year ACS data or in areas not covered by ACS data, HUD would apply the standard established for Random-Digit Dialing (RDD) telephone rent surveys. HUD will evaluate these survey results to determine whether they would establish a new FMR statistically different from the current FMR, which means that the survey confidence interval must not include the FMR. The survey should collect results based on 200 one-bedroom and two-bedroom eligible recent mover units to provide a small enough confidence interval for significant results in large market mail surveys. Areas with statistically reliable 1-year ACS data are not considered to be good candidates for local surveys due to the size and completeness of the ACS process.

Other survey methods are acceptable in providing data to support reevaluation requests if the survey method can provide statistically reliable, unbiased estimates of gross rents paid of the entire FMR area. In general, recommendations for FMR changes and supporting data must reflect the rent levels that exist within the entire FMR area and should be statistically reliable.

PHAs in non-metropolitan areas may survey three-bedroom units, in addition to one- and two-bedroom units and are only required to get 100 eligible survey responses. In certain circumstances,

PHAs may conduct surveys of groups of non-metropolitan counties. HUD must approve all county-grouped surveys in advance. PHAs are cautioned that the resulting FMRs may not be identical for the counties surveyed; each individual FMR area will have a separate FMR based on the relationship of rents in that area to the combined rents in the cluster of FMR areas. In addition, PHAs are advised that in counties where FMRs are based on the combined rents in the cluster of FMR areas, HUD will not revise their FMRs unless the grouped survey results show a revised FMR statistically different from the combined rent level.

Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn to be statistically representative of the entire rental housing stock of the FMR area. Surveys must include units at all rent levels and be representative by structure type (including single-family, duplex, and other small rental properties), age of housing unit, and geographic location. The current 5-year ACS data should be used as a means of verifying if a sample is representative of the FMR area's rental housing stock. Staff from HUD's Program Parameters and Research Division will work with PHAs in areas requesting reevaluations to provide the minimum number of survey cases required to ensure that data submitted for reevaluation represent a statistically valid sample.

A PHA or contractor that cannot obtain the recommended number of sample responses after reasonable efforts should consult with HUD before abandoning its survey; in such situations, HUD may find it appropriate to relax normal sample size requirements, but in no case will fewer than 100 eligible cases be considered.

HUD has developed guidance on how to provide data-supported comments on Small Area FMRs using HUD's special tabulations of the distribution of gross rents by unit bedroom count for ZIP Code Tabulation Areas. This guidance is available at <https://www.huduser.gov/portal/datasets/fmr.html> in the FY 2021 FMR section under the “Documents” tab and should be used by interested parties in commenting on whether or not the level of Small Area FMRs are too high or too low (*i.e.*, Small Area FMRs that are larger than the gross rent necessary to make 40 percent of the units accessible for an individual zip code or that are smaller than the gross rent necessary to make 40 percent of the units accessible for a given zip code). HUD will post revised Small Area FMRs

after confirming commenters' calculations.

As stated earlier in this notice, HUD is required to use the most recent data available when calculating FMRs. Therefore, in order to reevaluate an area's FMR, HUD requires more current rental market data than the 2018 ACS. HUD encourages a PHA or other interested party that believes the FMR in their area is incorrect to file a comment even if they do not have the resources to provide market-wide rental data. In these instances, HUD will use the comments, should survey funding be restored, when determining the areas HUD will select for HUD-funded local area rent surveys.

VI. Environmental Impact

This Notice involves the establishment of FMR schedules, which do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this Notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are available at <https://www.huduser.gov/portal/datasets/fmr.html>.

Dated: August 10, 2020.

Seth D. Appleton,

Assistant Secretary for Policy Development and Research.

Fair Market Rents for the Housing Choice Voucher Program Schedule B—General Explanatory Notes

1. Geographic Coverage

a. *Metropolitan Areas*—Most FMRs are market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental-housing units are in direct competition. HUD uses the metropolitan CBSAs, which are made up of one or more counties, as defined by OMB, with some modifications. HUD is generally assigning separate FMRs to the component counties of CBSA Micropolitan Areas.

b. *Modifications to OMB Definitions*—Following OMB guidance, the estimation procedure for the FY 2021 FMRs incorporates the OMB definitions of metropolitan areas based on the CBSA standards as implemented with 2000 Census data and updated by the 2010 Census in February 28, 2013, including incremental adjustments through August 15, 2017. The adjustments made to the 2000

definitions to separate subparts of these areas where FMRs or median incomes would otherwise change significantly are continued. In addition, to limit FMR changes based solely on geography and to provide FMRs at the smallest possible area of geography, no counties were added to existing metropolitan areas beginning with changes to metropolitan area definitions from the 2010 Census and implemented in the FY 2016 FMRs. All counties added to existing metropolitan areas are treated as separate counties for FMR calculations and new metropolitan areas of more than one county will have separate FMRs for each county in that new MSA. Rents from a county that is a sub-area will not be used in the remaining metropolitan sub-area rent determination. All metropolitan areas that have been subdivided by HUD will use ACS data which conforms to HUD's area definition if statistically reliable information exists. If statistically reliable data for the HUD defined area is not available, HUD uses information from the average of the last three years. If that is not available, then the FMR of the larger encompassing geography is used, which is the MSA for a metropolitan county and the non-metropolitan portion of a State for a non-metropolitan county.

The specific counties and New England towns and cities within each state in MSAs and HMFAs were not changed by the August 2017 OMB metropolitan area definitions. These areas are listed in Schedule B, available online at <https://www.huduser.gov/portal/datasets/fmr.html>.

2. Unit Bedroom Count Adjustments

The Metropolitan and Non-Metropolitan Area FMR Schedule s is available at <https://www.huduser.gov/portal/datasets/fmr.html> and shows the FMRs for zero-bedroom through four-bedroom units. The Small Area FMR Schedule shows Small Area FMRs for all metropolitan areas. FMRs for unit sizes larger than four bedrooms may be calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the zero-bedroom FMR.

3. Arrangement of FMR Areas and Identification of Constituent Parts

a. The Metropolitan and Non-Metropolitan FMR Area Schedule lists FMRs alphabetically by state, by metropolitan area and by non-

metropolitan county within each state and are available at <https://www.huduser.gov/portal/datasets/fmr.html>.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one state can be identified by consulting the listings for each applicable state.

c. Two non-metropolitan counties are listed alphabetically on each line of the non-metropolitan county listings.

d. The New England towns and cities included in a non-metropolitan county are listed immediately following the county name.

[FR Doc. 2020-17717 Filed 8-13-20; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX20LR000F60100; OMB Control Number 1028-0068/Renewal]

Agency Information Collection Activities; Ferrous Metals Surveys

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 13, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to gs-info_collections@usgs.gov. Please reference OMB Control Number 1028-0068 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Elizabeth S. Sangine by email at escottsangine@usgs.gov, or by telephone at 703-648-7720.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the

impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. 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.

Abstract: Respondents to these forms supply the USGS with domestic production and consumption data for 13 ores, concentrates, metals, and ferroalloys, some of which are considered strategic and critical, to assist in determining National Defense Stockpile goals. These data and derived information will be published as chapters in Minerals Yearbooks, monthly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications, for use by Government agencies, industry education programs, and the general public.

Title of Collection: Ferrous Metals Surveys.

OMB Control Number: 1028-0068.

Form Number: Various (15 forms).

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Business or Other-For-Profit Institutions: U.S. nonfuel minerals producers and consumers of ferrous and related metals.

Total Estimated Number of Annual Respondents: 954.

Total Estimated Number of Annual Responses: 2,208.

Estimated Completion Time per Response: For each form, we will include an average burden time ranging from 10 minutes to 1 hour.

Total Estimated Number of Annual Burden Hours: 1,158.

Respondent's Obligation: Voluntary.
Frequency of Collection: Monthly or Annually.

Total Estimated Annual Non-hour Burden Cost: There are no "non-hour cost" burdens associated with this IC.

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 authorities for this action are the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1601 *et seq.*), the National Mining and Minerals Policy Act of 1970 (30 U.S.C. 21(a)), the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 *et seq.*), and the Defense Production Act (50 U.S.C. 2061 *et seq.*).

Michael Magyar,

Acting Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2020-17829 Filed 8-13-20; 8:45 am]

BILLING CODE 4338-11-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAK001030/
AOA501010.999900253G]

Liquor Control Statute of the Ione Band of Miwok Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Liquor Control Statute (Statute) of the Ione Band of Miwok Indians. The Statute regulates and controls the possession, sale, manufacture, and distribution of alcohol in conformity with the laws of the State of California.

DATES: This ordinance shall take effect on September 14, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Harley Long, Tribal Government Officer, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Room W-2820, Sacramento, California 95825, telephone (916) 978-6000, fax: (916) 978-6099.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public

Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor control ordinances for the purpose of regulating liquor transactions in Indian country. The Ione Band of Miwok Indians adopted the Ione Band Liquor Control Statute on March 26, 2020.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs. I certify that the Ione Band of Miwok Indians duly adopted the Ione Band Liquor Control Statute on March 26, 2020.

Tara Sweeney,

Assistant Secretary-Indian Affairs.

The Liquor Control Statute of the Ione Band of Miwok Indians shall read as follows:

Liquor Control Statute of the Ione Band of Miwok Indians

Article One

Introduction

Section 1. Authority

This Statute is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83-277, 67 Stat. 586, 18 U.S.C. 1161) and by powers vested in the Ione Band of Miwok Indians Tribal Council ("Tribal Council") to promulgate and enforce civil and criminal ordinances governing the conduct, affairs, and transactions of members of the Ione Band of Miwok Indians of California ("Tribe"), and to the extent permitted by federal law, governing the conduct, affairs, and transactions of non-members of the Tribe, as authorized under Article VII, Section 1 of the Constitution of the Tribe, adopted by the Tribe on August 10, 2002, and approved by the Secretary of the Interior on September 6, 2002 ("Constitution").

Section 2. Purpose

The purpose of this Statute is to regulate and control the possession, sale, manufacture and distribution of liquor within Tribal Trust Lands (as hereafter defined), in order to permit alcohol sales by tribally owned and operated enterprises and private lessees, and at tribally approved special events. Enactment of a liquor control statute will help provide a source of revenue for the continued operation of the tribal government, the delivery of governmental services, and the economic viability of tribal enterprises.

Section 3. Short Title

This Statute shall be known and cited as the "Ione Band Liquor Control Statute."

Section 4. Jurisdiction

This Statute shall apply to all lands now or in the future under the governmental authority of the Tribe, including Tribal Trust Lands.

Section 5. Application of 18 U.S.C. 1161

By adopting this Statute, the Tribe hereby regulates the sale, distribution, and consumption of liquor while ensuring that such activity conforms with all applicable laws of the State of California as required by 18 U.S.C. 1161 and the United States.

Section 5. Declaration of Public Policy; Findings

The Tribal Council enacts this Statute, based upon the following findings:

(a) The distribution, possession, consumption and sale of liquor on the Tribal Trust Lands is a matter of special concern to the Tribe.

(b) The Tribe plans to construct and operate a gaming facility and related entertainment and lodging facilities on a portion of its Tribal Trust Lands.

(c) The Tribe's gaming facility will serve as an integral and indispensable part of the Tribe's economy, providing revenue to the Tribe's government and employment to tribal citizens and others in the local community.

(d) Federal law, as codified at 18 U.S.C. 1154 and 1161, currently prohibits the introduction of liquor into Indian country, except in accordance with State law and the duly enacted law of the Tribe.

(e) The Tribe recognizes the need for strict control and regulation of liquor transactions on Tribal Trust Lands because of potential problems associated with the unregulated or inadequate regulated sale, possession, distribution, and consumption of liquor.

(f) Regulating the possession, sale, distribution and manufacture of liquor within Tribal Trust Lands is also consistent with the Tribe's interest in ensuring the peace, safety, health, and general welfare of the Tribe and its citizens.

(g) Tribal control and regulation of liquor on Tribal Trust Lands is consistent with the Tribe's custom and tradition of controlling the possession and consumption of liquor on tribal lands and at tribal events.

(h) The purchase, distribution, and sale of liquor on Tribal Trust Lands shall take place only at duly licensed (i) tribally owned enterprises, (ii) other enterprises operating pursuant to a lease

with the Tribe, and (iii) tribally-sanctioned events.

(i) The sale or other commercial manufacture or distribution of liquor on Tribal Trust Lands, other than sales, manufacture, and distributions made in strict compliance with this Statute, is detrimental to the health, safety, and general welfare of the citizens of the Tribe, and is prohibited.

Article Two

Definitions

Section 1. Definitions

As used in this Statute, the terms below are defined as follows:

(a) *Alcohol* means ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, in any form, and regardless of source or the process used for its production.

(b) *Alcoholic beverage* means all alcohol, spirits, liquor, wine, beer and any liquid or solid containing alcohol, spirits, liquor, wine, or beer, and which contains one-half of one percent or more of alcohol by volume and that is fit for human consumption, either alone or when diluted, mixed, or combined with any other substance(s).

(c) *Compact* means a Tribal-State compact between the State and the Tribe that governs the conduct of class III gaming activities on that portion of the Tribal Trust Lands recognized as "Indian lands" pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. 2701, *et seq.*, or such other procedures prescribed by the Secretary under the Act pursuant to 25 U.S.C. 2710(d)(7)(B)(vii).

(d) *License* means, unless otherwise stated, a license issued by the Tribe in accordance with this Statute.

(e) *Liquor* means any alcoholic beverage, as defined under this Section.

(f) *Person* means any individual or entity, whether Indian or non-Indian, receiver, assignee, trustee in bankruptcy, trust, estate, firm, corporation, partnership, joint corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise, and any other Indian tribe, band or group. The term shall also include the businesses of the Tribe.

(g) *Sale and sell* means the transfer for consideration of any kind, including by exchange or barter.

(h) *Secretary* means the Secretary of the United States Department of the Interior.

(i) *State* means the State of California.

(j) *Tribal Trust Lands* means and includes all lands held by the United States in trust for the Tribe now or in the future.

(k) *Tribe* means the Ione Band of Miwok Indians of California, a federally recognized Tribe.

Article Three

Liquor Sales, Possession, & Manufacture

Section 1. Possession of Alcohol

The introduction and possession of alcoholic beverages shall be lawful within Tribal Trust Lands; provided that such introduction or possession is in conformity with the laws of the State.

Section 2. Retail Sales of Alcohol

The sale of alcoholic beverages shall be lawful within Tribal Trust Lands; provided that such sales are in conformity with the laws of the State and are made pursuant to a license issued by the Tribe.

Section 3. Manufacture of Alcohol

The manufacture of alcohol shall be lawful within Tribal Trust Lands, provided that such manufacture is in conformity with the laws of the State and pursuant to a license issued by the Tribe.

Section 4. Age Limits

The legal age for possession or consumption of alcohol within Tribal Trust Lands shall be the same as that of the State, which is currently 21 years. No person under the age of 21 years shall purchase, possess or consume any alcoholic beverage. If there is any conflict between State law and the terms of the Compact, if any, regarding the age limits for alcohol possession or consumption, the age limits in the Compact shall govern for purposes of this Statute.

Article Four

Licensing

Section 1. Licensing

The Tribal Council shall have the power to establish procedures and standards for tribal licensing of liquor sales within Tribal Trust Lands, including the setting of a license fee schedule, and shall have the power to publish and enforce such standards; provided that no tribal license shall issue except upon showing of satisfactory proof that the applicant is duly licensed by the State. The fact that an applicant for a tribal license possesses a license issued by the State shall not provide the applicant with an entitlement to a tribal license. The Tribal Council may in its discretion set standards which are more, but in no case less, stringent than those of the State.

Article Five

Enforcement

Section 1. Enforcement

The Tribal Council shall have the power to develop, enact, promulgate and enforce regulations as necessary for the enforcement of this Statute and to protect the public health, welfare and safety of the Tribe, provided that all such regulations shall conform to and not be in conflict with any applicable tribal, federal or state law. Regulations enacted pursuant to this Statute may include provisions for suspension or revocation of tribal liquor licenses, reasonable search and seizure provisions, and civil and criminal penalties for violations of this Statute to the full extent permitted by federal law and consistent with due process.

Tribal law enforcement personnel and security personnel duly authorized by the Tribal Council shall have the authority to enforce this Statute by confiscating any liquor sold, possessed, distributed, manufactured or introduced within Tribal Trust Lands in violation of this Statute or of any regulations duly adopted pursuant to this Statute.

The Tribal Council shall have the exclusive jurisdiction to hold hearings on violations of this Statute and any procedures or regulations adopted pursuant to this Statute; to promulgate appropriate procedures governing such hearings; to determine and enforce penalties or damages for violations of this Statute; and to delegate to a subordinate hearing officer or panel the authority to take any or all of the foregoing actions on its behalf.

Article Six

Taxes

Section 1. Taxation

Nothing contained in this Statute is intended to, nor does in any way, limit or restrict the Tribe's ability to impose any tax upon the sale or consumption of alcohol. The Tribe retains the right to impose such taxes by appropriate statute to the full extent permitted by federal law.

Article Seven

Miscellaneous Provisions

Section 1. Sovereign Immunity Preserved

Nothing contained in this Statute is intended to, nor does in any way, limit, alter, restrict, or waive the sovereign immunity of the Tribe or any of its agencies, agents or officials from unconsented suit or action of any kind.

Section 2. Conformance with Applicable Laws

All acts and transactions under this Statute shall be in conformity with the Compact, if any, and laws of the State to the extent required by 18 U.S.C. 1161 and with all Federal laws regarding alcohol in Indian Country.

Section 3. Effective Date

This Statute shall be effective as of the date on which the Secretary certifies this Statute and publishes the same in the **Federal Register**.

Section 4. Repeal of Prior Acts

All prior enactments of the Tribal Council, including tribal resolutions, policies, regulations, or statutes pertaining to the subject matter set forth in this Statute are hereby rescinded.

Section 5. Amendments

This Statute may only be amended pursuant to an amendment duly enacted by the Tribal Council and certification by the Secretary and publication in the **Federal Register**, if required.

Section 6. Severability and Savings Clause

If any part or provision of this Statute is held invalid, void, or unenforceable by a court of competent jurisdiction, such adjudication shall not be held to render such provisions inapplicable to other persons or circumstances. Further, the remainder of the Statute shall not be affected and shall continue to remain in full force and effect.

[FR Doc. 2020-17750 Filed 8-13-20; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO320000 L13300000.EP0000; OMB Control Number 1004-0103]

Agency Information Collection Activities; Mineral Materials Disposal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Land Management (BLM) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 13, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the U.S. Department of the

Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Attn. Faith Bremner, Washington, DC 20240; or by email to fbremner@blm.gov. Please reference Office of Management and Budget (OMB) Control Number 1004-0103 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Timothy L. Barnes by email at tbarnes@blm.gov, or by telephone at 541-416-6858. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1-800-877-8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the PRA and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

- (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;
- (2) The accuracy of our estimate of the burden for this 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) How might the agency 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 response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. 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.

Abstract: The BLM is required by the Materials Act of 1947 (30 U.S.C. 601 and 602) and Section 302 of the Federal Land Policy and Management Act (43 U.S.C. 1732) to manage the sale and free use of mineral materials that are not subject to mineral leasing or location under the mining laws (e.g., common varieties of sand, stone, gravel, pumice, pumicite, clay, and rock). The Materials Act authorizes the BLM to sell these mineral materials at fair market value and to grant free-use permits to government agencies and nonprofit organizations. To obtain a sales contract or free-use permit, an applicant must submit information to identify themselves, the location of the site, and the proposed method to remove the mineral materials. The BLM uses the information to process each request for disposal, determine whether the request to dispose of mineral materials meets statutory requirements, and whether to approve the request.

Title of Collection: Mineral Materials Disposal (43 CFR part 3600).

OMB Control Number: 1004-0103.

Form Number: 3600-9, Contract for the Sale of Mineral Materials.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: An estimated 265 businesses annually submit applications to purchase or use mineral materials from public lands.

Total Estimated Number of Annual Respondents: 265.

Total Estimated Number of Annual Responses: 3,870.

Estimated Completion Time per Response: Varies from 30 minutes to 30 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 5,833.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: \$53,400.

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 authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Faith M. Bremner,

Senior Regulatory Analyst.

[FR Doc. 2020-17794 Filed 8-13-20; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMA02000.L51010000.ER0000.19X
LVRWG19G1360; NMNM 136976]

Notice of Availability of the Record of Decision for the Final Environmental Impact Statement and Proposed Land Use Plan Amendment for Borderlands Wind Project in Catron County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a Record of Decision (ROD) to authorize a right-of-way (ROW) and amend the 2010 Socorro Field Office Resource Management Plan (RMP) for the Borderlands Wind Project (Project) and by this notice, is announcing the availability of the ROD.

DATES: The Assistant Secretary of the Department of the Interior signed the ROD on August 3, 2020.

ADDRESSES: Copies of the ROD are available for public inspection at the Socorro Field Office, Bureau of Land Management, 901 S Hwy. 85, Socorro, New Mexico 87801 or, via the internet at the project's ePlanning page at <https://www.blm.gov/programs/planning-and-nepa/plans-in-development/new-mexico/proposed-borderlands-wind-project>.

FOR FURTHER INFORMATION CONTACT: Virginia Alguire, BLM Socorro Field Office, 901 S Hwy. 85, Socorro, New Mexico 87801; phone (575) 838-1290, or email to valguire@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact Ms. Alguire during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Borderlands Wind, LLC submitted an application to the BLM requesting authorization to construct, operate, maintain, and terminate an up-to-100 megawatt commercial wind energy generation facility—Borderlands Wind Project (NMNM136976), in Catron County, New Mexico, within a boundary that encompasses land managed by the BLM, the New Mexico State Land Office (NMSLO), and private landowners. The project would be located south of U.S. Route 60 in Catron County near Quemado, New Mexico, and the Arizona-New Mexico border. Authorization of this proposal requires amendments to the 2010 Socorro Field Office RMP to modify the visual resource management class in the project area and to modify a ROW avoidance area.

The Final EIS analyzed the direct, indirect and cumulative environmental impacts of the Proposed Action, Alternative 1 (optimize the proposed wind facility components in order to minimize potential environmental impacts), Alternative 2 (change in the turbine generation types), and the No Action Alternative. Alternatives 1 and 2 would be constructed and operating and maintained with the same project area. The Proposed Action and Alternative 1 would construct 40 turbines. However, because of the difference in the types of turbines, Alternative 2, the BLM Preferred Alternative would only construct 36 turbines instead of 40 turbines within the same area as Alternative 1. The No Action Alternative would be a continuation of existing conditions.

On May 27, 2020, the U.S. Treasury Department and the Internal Revenue Service issued Notice 2020-41, providing an extension of the timeframe to claim tax credits for the development of renewable energy projects, which includes wind generating facilities. On June 22, 2020, the Proponent informed the BLM it must use GE 2.3 MW turbines instead of the GE 2.5 MW turbines for the Project to obtain the full tax incentive. As a result of these new circumstances, Alternative 2A is a modified version of Alternative 2 to include the construction of 30 GE 3.0 MW and 4 GE 2.3 MW turbines instead of the 4 GE 2.5 MW turbines. Alternative 2A would not result in significant effects outside the range of effects already analyzed in the EIS because use of the 4 GE 2.3 MW turbines was already evaluated in both the Proposed Action and Alternative 1. The difference in potential impacts between Alternative 2 and Alternative 2A would not be discernable because

the turbine generator model characteristics are technically similar with the exception of one physical aspect, which is the hub height on the GE 2.3 MW is 33 feet shorter than the GE 2.5 MW turbine model. The difference between the GE 2.3 MW and GE 2.5 MW turbine models are shown on Table 2-1 of the Final EIS. The environmental consequences of using the GE 2.3 MW turbines were discussed as part of the Proposed Action and Alternative 1. There are no other modifications or changes in the construction, maintenance, operation, or decommissioning activities associated with the modified Alternative 2 (known as Alternative 2A). The difference in potential impacts between the Alternative 2 and Alternative 2A are not substantial when taking two of the key resources into consideration—risks to eagles and visual resource impacts with the 33 feet hub height reduction for four turbines. Therefore, supplementation is not necessary because Alternative 2A is within the range of alternatives evaluated in the EIS and will not significantly alter the impacts from Alternative 2 as analyzed.

A Notice of Intent to prepare an EIS for the proposed Project was published in the **Federal Register** on November 9, 2018 (83 FR 56097). The public scoping period closed on December 10, 2018. The BLM held one public scoping meeting on November 14, 2018. The BLM received 51 public scoping comments during the 45-day scoping period. The scoping comments focused on wildlife; visual and cultural resources; light pollution, human health, local economic benefits; and property values.

A Notice of Availability (NOA) to publish the Draft EIS and RMP Amendment for the proposed Project was published in the **Federal Register** on August 9, 2019 (84 FR 39366). The BLM held one public comment meeting. The public comment period closed November 7, 2019. The BLM received 39 letters/comment forms/emails and 247 individual comments during the 90-day public comment period. The comments focused on effects to sensitive wildlife species specifically avian and bats, change to Visual Resource Management Class as a result of the impacts to visual resources and change to the existing rural landscape character; groundwater level changes during construction, lack of benefit to the local area, and decreased property value concerns. Comments on the Draft EIS and RMP Amendment EIS were considered and incorporated, as appropriate, into the Final EIS and Proposed RMP Amendment. Public

comments did not result in the addition of substantive revisions to the Draft EIS and RMP Amendment that was published in August 2019. Responses to all comments are in Appendix H of the Final EIS.

On April 10, 2020, an NOA of the Final EIS and Proposed RMP Amendment for the Project published in the **Federal Register** (84 FR 71455), which initiated a 30-day public protest period and a 60-day Governor's consistency review. The BLM received six (6) protest letters; the BLM considered each protest letter in its decision. The Protest Resolution Report was completed on July 21, 2020 and is available for public inspection at the addresses listed above. On May 14, 2020, the BLM received a written response from the Governor's office with no inconsistencies identified. After environmental analysis, consideration of public comments, and application of pertinent Federal laws, it is the decision of the Department of the Interior to authorize the Project in Catron County, New Mexico, and amend the 2010 Socorro Field Office RMP by selecting Alternative 2A, which was a modification of the agency's Preferred Alternative. Approval of these decisions constitutes the final decision of the Department of the Interior and, in accordance with the regulations at 43 CFR 4.410(a)(3), is not subject to appeal under Departmental regulations at 43 CFR part 4. Any challenge to these decisions, including the BLM Authorized Officer's issuance of the right-of-way as approved by this decision, must be brought to the Federal district court.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

Timothy R. Spisak,

New Mexico State Director.

[FR Doc. 2020-17431 Filed 8-13-20; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[20X.LLAK930100 L510100000.ER0000]

Notice of Availability of the Willow Master Development Plan Final Environmental Impact Statement, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management (BLM) has prepared a

Final Environmental Impact Statement (EIS) for the Willow Master Development Plan, and by this notice is announcing its publication.

DATES: The BLM will issue a Record of Decision for the project no earlier than 30 days from the date of the Final EIS Notice of Availability published by the Environmental Protection Agency.

ADDRESSES: To access the Final EIS or to request an electronic or paper copy, please reach out to:

- *Website:* <http://www.blm.gov/alaska/WillowEIS>.
- *Email:* rajones@blm.gov.
- *Mail:* Willow FEIS Comments, BLM Alaska State Office, 222 W 7th Ave. #13, Anchorage AK 99513.

FOR FURTHER INFORMATION CONTACT: Racheal Jones, Willow EIS Project Manager, telephone: 907-290-0307; address: 222 West 7th Avenue, #13, Anchorage, Alaska 99513. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Willow Master Development Plan Final EIS analyzes an oil and gas development project proposed by ConocoPhillips Alaska, Inc. on federal oil and gas leases it holds in the northeast region of the National Petroleum Reserve in Alaska (NPR-A), as well as alternatives to the proposed project and measures to avoid and mitigate impacts to surface resources and other uses including subsistence use. The BLM has identified Alternative B and Module Delivery Option 3 as its preferred alternative. If the Willow Master Development Plan is approved, ConocoPhillips Alaska, Inc. may submit applications to build up to five drill sites, a central processing facility, an operations center pad, gravel roads, ice roads and ice pads, 1 or 2 airstrips (varies by alternative), a freshwater reservoir, an ice bridge across the Colville River to transfer facility modules into the NPR-A, pipelines, and a gravel mine site. The project would have a peak production in excess of 160,000 barrels of oil per day (with a processing capacity of 200,000 barrels of oil per day) over its approximately 30-year life, producing up to approximately 590 million total barrels of oil. The project would help offset declines in production from the North Slope oil fields and contribute to the local, state, and national economies.

Authority: 40 CFR 1506.6(b).

Chad B. Padgett,

State Director, Alaska.

[FR Doc. 2020-17722 Filed 8-13-20; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NRNL-DTS#-30714; PPWOCRADIO, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before August 1, 2020, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by August 31, 2020.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line "Public Comment on <property or proposed district name, (County) State>." If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before August 1, 2020. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

ARIZONA**Yavapai County**

Cottonwood Commercial Historic District (Boundary Increase), North Main St. and East Pima St., Cottonwood, BC100005549

FLORIDA**Columbia County**

McKeithen Archaeological Site, Address Restricted, Wellborn vicinity, SG100005551

IOWA**Scott County**

Davenport Downtown Commercial Historic District, 2nd St. to 5th St., Perry St. to Western Ave., Davenport, SG100005546

OHIO**Athens County**

Stedman-Shafer Grocery Warehouse Building, 21 North Shafer St., Athens, SG100005540

UTAH**Millard County**

Scipio Cooperative Mercantile Institution Building, 130 North State St., Scipio, SG100005544

Salt Lake County

Taylor, Thomas & Margaret, House (Murray City, Utah MPS), 604 East Taylor Ln., Murray, MP100005545

A request for removal has been made for the following resources:

ARIZONA**Maricopa County**

Steinegger Lodging House (Phoenix Commercial MRA), 27 East Monroe St., Phoenix, OT86001369

UTAH**Cache County**

Holley-Globe Grain and Milling Company Elevator, 100 North and Center St., Hyrum, OT85003386

Additional documentation has been received for the following resources:

ARIZONA**Yavapai County**

Cottonwood Commercial Historic District (Additional Documentation), Approx. from 712 to 1124 North Main St., Cottonwood, AD00000497

UTAH**Davis County**

Clark Lane Historic District (Additional Documentation), 207–399 West State and 33 North 200 West, Farmington, AD94001208

WISCONSIN**Ozaukee County**

Tennie and Laura (Shipwreck) (Additional Documentation) (Great Lakes Shipwreck Sites of Wisconsin MPS), 9 mi. SE, of Port

Washington, Port Washington vicinity, AD08000288

(Authority: Section 60.13 of 36 CFR part 60)

Dated: August 4, 2020.

Sherry A. Frear,

*Chief, National Register of Historic Places/
National Historic Landmarks Program.*

[FR Doc. 2020–17796 Filed 8–13–20; 8:45 am]

BILLING CODE 4312–52–P

**INTERNATIONAL TRADE
COMMISSION**

[Investigation No. 337–TA–1169]

Certain Fish-Handling Pliers and Packaging Thereof; Notice of a Commission Final Determination of Violation of Section 337; Issuance of a General Exclusion Order; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. The Commission has issued a general exclusion order (“GEO”) barring entry of certain fish-handling pliers and packaging thereof that infringe the two trademarks asserted in this investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT:

Robert Needham, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 29, 2019, based on a complaint filed by complainant United Plastic Molders, Inc. of Jackson, Mississippi (“UPM”). 84 FR 36620–21 (July 29, 2019). The complaint, as supplemented,

alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain fish-handling pliers and packaging thereof by reason of infringement of claims 1–11 of U.S. Patent No. 6,256,923 (“the ‘923 patent”) and U.S. Trademark Registration Nos. 4,980,923 (“the ‘923 mark”) and 5,435,944 (“the ‘944 mark”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission’s notice of investigation named as respondents Yixing Five Union Industry & Trade Co., Ltd. of Yixing City, China (“Five Union”); NOEBY Fishing Tackle Co., Ltd. of Weihai, China (“NOEBY”); Weihai iLure Fishing Tackle Co., Ltd. of Weihai, China (“iLure”); SamsFX of Yangzhou City, China (“SamsFX”); and Weihai Lotus Outdoor Co., Ltd. of Weihai, China (“Lotus”) (collectively, “Respondents”). *Id.* The Office of Unfair Import Investigations (“OUII”) is participating in the investigation. *Id.*

All five Respondents defaulted. On December 18, 2019, the Commission found NOEBY, iLure, Weihai Lotus, and Five Union in default for failing to respond to the complaint and notice of investigation. Order No. 11 (Nov. 19, 2019), *not reviewed*, Notice (Dec. 18, 2019). Also on December 18, 2019, the Commission found SamsFX in default for failing to respond to the complaint and notice of investigation. Order No. 12 (Nov. 25, 2019), *not reviewed*, Notice (Dec. 18, 2019).

On December 5, 2019, UPM moved for a summary determination of violation and for a recommendation for the issuance of a general exclusion order (“GEO”). In its motion, UPM dropped its allegations with respect to claims 2–6 and 8–11 of the ‘923 patent, but continued to assert claims 1 and 7 of the ‘923 patent. On January 3, 2020, OUII filed a motion that largely supported UPM’s motion.

On April 10, 2020, the ALJ issued the subject ID, Order No. 14, granting in part UPM’s motion. Specifically, the ALJ issued a summary of determination of violation finding that SamsFX, Lotus, and NOEBY violated section 337 with respect to claims 1 and 7 of the ‘923 patent, as well as the ‘923 and ‘944 marks; that iLure violated section 337 with respect to claims 1 and 7 of the ‘923 patent; and that Five Union violated section 337 with respect to the ‘923 mark. The ALJ also found that UPM failed to show that iLure violated section 337 with respect to the ‘923 and ‘944 marks, as the only evidence of importation predates the registration of

those marks. No petitions for review of the ID were filed.

On May 27, 2020, the Commission determined to review in part the ID granting summary determination of a section 337 violation. 85 FR 33705–07 (Jun. 2, 2020). Specifically, the Commission determined to review the ID's finding of violation with respect to the '923 patent, the ID's finding that UPM satisfied the economic prong of the domestic industry requirement, and the ID's finding of violation with respect to Lotus and Five Union.

The Commission also requested written submissions on certain questions and the issues of remedy, the public interest, and bonding. 83 FR 51706 (Oct. 12, 2018). UPM and OUII filed initial written submissions, and OUII also filed a reply to UPM's submission. No other submissions were filed in response to the Commission notice.

Having reviewed the written submissions and the evidentiary record, the Commission has determined to: (1) Vacate the ID's finding of violation with respect to the '923 patent, as well as all other findings related solely to the '923 patent, based on that patent's expiration; (2) affirm the ALJ's findings on the economic prong of the domestic industry requirement; and (3) reverse the ID's findings of violation with respect to Five Union and Lotus based on UPM's failure to provide substantial, reliable, and probative evidence that those entities manufacture the accused SamsFX products. Based on the findings in the ID as modified above, the Commission has determined that UPM has shown a violation of section 337(a)(1)(C), 19 U.S.C. 1337(a)(1)(C), by NOEBY and SamsFX with respect to the '923 and '944 marks. The Commission finds that UPM failed to show a violation by the remaining defaulted respondents.

The Commission has determined that the appropriate remedy in this investigation is a GEO prohibiting the unlicensed importation of certain fish-handling pliers and packaging thereof that infringe the '923 and '944 marks. The Commission has further determined that the public interest factors enumerated in section 337(d) (19 U.S.C. 1337(d)) do not preclude issuance of the GEO. Finally, the Commission has determined that a bond in the amount of one hundred (100) percent of the entered value of the imported articles that are subject to the GEO is required to permit temporary importation of the articles in question during the period of Presidential review (19 U.S.C. 1337(j)). The investigation is hereby terminated in its entirety.

The Commission's order and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance. The Commission has also notified the Secretary of the Treasury and Customs and Border Protection of the order.

The Commission vote for these determinations took place on August 10, 2020.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

While temporary remote operating procedures are in place in response to COVID–19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant(s) complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

By order of the Commission.

Issued: August 10, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–17782 Filed 8–13–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1211]

Certain Vaporizer Cartridges and Components Thereof; Notice of Institution

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 10, 2020, under section 337 of the Tariff Act of 1930, as amended, on behalf of Juul Labs, Inc. of San Francisco, California. Supplements to the complaint were filed on July 21, 2020, and July 31, 2020. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain vaporizer cartridges and

components thereof by reason of infringement of U.S. Design Patent No. D842,536 (“the ‘D536 patent”); U.S. Design Patent No. D858,870 (“the ‘D870 patent”); U.S. Design Patent No. D858,869 (“the ‘D869 patent”); and U.S. Design Patent No. D858,868 (“the ‘D868 patent”). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2020).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 10, 2020, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of the claim of the 'D536 patent; the claim of the 'D870 patent; the claim of the 'D869 patent; and the claim of the 'D868 patent, and whether an industry in the United States exists

as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is "vaporizer cartridges and components thereof containing a space to hold a vaporizable liquid substance that can be vaporized after the cartridge is inserted into a vaporizer device";

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Juul Labs, Inc., 560 20th Street, San Francisco, CA 94107.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

101 Smoke Shop, Inc., 3266 Cahuenga Blvd. West, Los Angeles, CA 90068.
 2nd Wife Vape, 1195 Fm 156 S, Suite 140, Haslet, TX 76052.
 Access Vapor LLC, 6550 International Drive, Suite 103, Orlando, FL 32819.
 All Puff Store, 6801 Engle Rd., Suite E, Middleburg Heights, OH 44130.
 Alternative Pods, 4860 Rhiannon Ct, Palatine, IL 60067.
 Ana Equity LLC, 6550 International Drive, Suite 103, Orlando, FL 32819.
 Aqua Haze LLC, 12801 N Stemmons Fwy., Suite 809, Farmers Branch, TX 75234.
 Cali Pods, P.O. Box 41387, Houston, TX 77241.
 Canal Smoke Express, Inc., 383 Canal St., New York, NY 10013.
 CaryTown Tobacco, 1701 E Main St., Richmond, VA 23223.
 Cigar Road, Inc., 23315 Mulholland Drive, Woodland Hills, CA 91364.
 Cloud 99 Vapes, 50 2nd Ave., New York, NY 10003.
 DripTip Vapes LLC, 151 N Nob Hill Rd., #115, Plantation, FL 33325.
 Shenzhen Azure Tech USA LLC f/k/a DS, Vaping P.R.C., 10th Fl., ChongQing Rd., Fuyong, Shenzhen, Guangdong, China 518100.
 eCig-City, 1400 University Ave., Ste. A107, Riverside, CA 92507.
 Ejuicedb, 105 Route 109, Farmingdale, NY 11735.
 eLiquid Stop, 101 N Verdugo Rd., #11701, Glendale, CA 91226.
 Eon Pods LLC, 155 Washington St., Jersey City, NJ 07302.
 Evergreen Smokeshop, 3221 Foothill Blvd., Oakland, CA 94601.

EZFumes, 2900 Highway 121, Ste. 165, Bedford, TX 76021.

Guangdong Cellular Workshop Electronic Technology Co., Ltd., 888 BBK Avenue, Jiangbei Village, Wusha Community, Changan Town, Dongguan City, Guangdong, China 523068.

JC Pods, 1410 Kirk Street, Elk Grove Village, IL 60007.

Jem Pods, U.S.A., 8411 Lake Drive, Snellville, GA 30039.

JUULSite Inc., 411 Country Club Dr., Bensenville, IL 60106.

Keep Vapor Electronic Tech. Co., Ltd., Block D, XinLong Techno Park, Shaling Town, Bao'an District, Shenzhen, China 518101.

Limitless Accessories, Inc., 8712 Kathleen Lane, Tinley Park, IL 60487.

Midwest Goods, Inc., 1019 Entry Dr., Bensenville, IL 60106.

Modern Age Tobacco, 1122 W University Avenue, Gainesville, FL 32601.

Mr. Fog, 605 Country Club Drive, Bensenville, IL 60106.

Naturally Peaked Health Co., 16 Mt. Ebo Rd. S, Suite 13, Brewster, NY 10509.

Nilkant 167 Inc., 167 Newbury St., Boston, MA 02116.

Perfect Vape LLC, 2305 S Agnew Ave., Oklahoma City, OK 73108.

Price Point NY, 500 Smith Street, Farmingdale, NY 11735.

Puff E-Cig, 3 Mountain Dr., Imlay City, MI 48444.

Shenzhen Apoc Technology Co., Limited, 1402, Yunhua Shidai, Haoxiang Road, Shajing Town, Bao'an District, Shenzhen, China 518101.

Shenzhen Bauway Technology Ltd., Building B5, Linpokeng 1st Industrial Zone, Haosan, Nanpu Road, Shajing Street, Bao'an District, Shenzhen, Guangdong, China, 518104.

Shenzhen Ocity Times Technology Co., Ltd., 5th Floor, Unit B, Mingyou Industry Park, Baoyuan Road, Bao'an District, Shenzhen, Guangdong, China, 518102.

Shenzhen Yark Technology Co., Ltd., 3 Floor of No.14 SongShang West Road, BoGang Community Xinsha Road Of Shajing, District Bao'an, Shenzhen, China, 518125.

Sky Distribution LLC, P.O. Box 1325, Addison, IL 60101.

Smoker's Express, 3029 E Walton Blvd., Auburn Hills, MI 48326.

The Kind Group LLC, 1808 Brielle Ave., Ocean, NJ 07712.

Tobacco Alley of Midland, 1011 N Midkiff Road, Midland, TX 79701.

Valgous, 411 Country Club Dr., Bensenville, IL 60106.

Vape Central Group, 203 NE 1st Avenue, Hallandale, FL 33009.

Vape 'n Glass, 283 N Barrington Road, Streamwood, IL 60107.

Vaperistas, 591 N Edgewood Ave., Wood Dale, IL 60191.

Vapers&Papers, LLC, 714 Stanley St., Schenectady, NY 12307.

WeVapeUSA, 1479 E 15th St., Brooklyn, NY, 11230.

Wireless N Vapor Citi LLC, 393 Waller Avenue, Suite 3, Lexington, KY 40504.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.
 Issued: August 10, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020-17768 Filed 8-13-20; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–649 and 731–TA–1523 (Preliminary)]

Twist Ties From China**Determinations**

On the basis of the record¹ 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 twist ties from China, provided for in statistical reporting numbers 8309.90.0000 and 5609.00.3000 of the Harmonized Tariff Schedule of the United States that are alleged to be sold in the United States at less than fair value (“LTFV”) and to be subsidized by the government of China.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) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing

¹ The record is defined in § 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

² Subject merchandise may also enter under HTSUS statistical reporting numbers 3920.51.5000, 3923.90.0080, 3926.90.9990, 4811.59.6000, 4821.10.2000, 4821.10.4000, 4821.90.2000, 4821.90.4000, and 4823.90.8600. Twist Ties From the People’s Republic of China: Initiation of Less-Than-Fair Value Investigation 85 FR 45161, (July 27, 2020); and Twist Ties From the People’s Republic of China: Initiation of Countervailing Duty Investigation 85 FR 45188, (July 27, 2020).

the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On June 26, 2020, Bedford Industries Inc., Worthington, 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 twist ties from China and LTFV imports of twist ties from China. Accordingly, effective June 26, the Commission instituted countervailing duty investigation No. 701–TA–649 and antidumping duty investigation No. 731–TA–1523 (Preliminary).

Notice of the institution of the Commission’s investigations and of a public conference through written submissions 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 2, 2020 (85 FR 39933). 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) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on August 10, 2020. The views of the Commission are contained in USITC Publication 5104 (August 2020), entitled *Twist Ties from China: Investigation Nos. 701–TA–649 and 731–TA–1523 (Preliminary)*.

By order of the Commission.

Issued: August 10, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–17749 Filed 8–13–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1020 (Third Review)]

Barium Carbonate From China**Determination**

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that revocation of the antidumping duty order on barium carbonate from China 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 this review on January 2, 2020 (85 FR 125) and determined on April 6, 2020 that it would conduct an expedited review (85 FR 42918, July 15, 2020).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on August 10, 2020. The views of the Commission are contained in USITC Publication 5098 (August 2020), entitled *Barium Carbonate from China: Investigation No. 731–TA–1020 (Third Review)*.

By order of the Commission.

Issued: August 10, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–17769 Filed 8–13–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR**Office of the Secretary****Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application of the Employee Polygraph Protection Act**

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Wage and Hour Division (WHD)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995

¹ The record is defined in § 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

(PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before 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: Anthony May by telephone at 202–693–4129 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

The Wage and Hour Division (WHD) of the Department of Labor (DOL) administers the Employee Polygraph Protection Act of 1988 (EPPA), 29 U.S.C. 2001 *et seq.* The EPPA prohibits most private employers from using any lie detector tests either for pre-employment screening or during the course of employment. The Act contains an exemption applicable to Federal, State and local government employers. The EPPA also contains several limited exemptions authorizing polygraph tests under certain conditions, including testing: (1) By the Federal Government of experts, consultants, or employees of Federal contractors engaged in national security intelligence or counterintelligence functions; (2) of employees the employer reasonably suspects of involvement in a workplace incident resulting in economic loss or injury to the employer’s business; (3) of some prospective employees of private armored cars, security alarm and security guard firms; and (4) of some current and prospective employees of certain firms authorized to manufacture, distribute, or dispense controlled

substances. The WHD may assess civil money penalties against employers who violate any EPPA provision. This amount increases annually due to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 was signed into law to advance the effectiveness of civil money penalties and to strengthen their deterrent effect. Outdated penalties are a problem because civil penalties are less effective when they do not keep pace with the cost of living. The law directs agencies across the federal government to adjust their penalties for inflation each year in January. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 20, 2019 (84 FR 64109).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–WHD.

Title of Collection: Application of the Employee Polygraph Protection Act.

OMB Control Number: 1235–0005.

Affected Public: Private Sector: Businesses or other for-profits, farms, and not-for-profit institutions.

Total Estimated Number of Respondents: 299,900.

Total Estimated Number of Responses: 757,400.

Total Estimated Annual Time Burden: 68,739 hours.

Total Estimated Annual Other Costs Burden: \$0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: August 10, 2020.

Anthony May,

Management and Program Analyst.

[FR Doc. 2020–17792 Filed 8–13–20; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Gear Certification Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before 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.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie by telephone at 202–693–0456, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: Form OSHA–70 is used by applicants seeking accreditation from the OSHA to be able to test or examine certain equipment and material handling devices as required under the OSHA maritime regulations, 29 CFR part 1917 (Marine Terminals) and 29 CFR part 1918 (Longshoring). OSHA needs this information to accredit companies to inspect and provide certification for

cranes, derricks, and accessory gear used in the longshoring, marine terminal and shipyard industries. Certain types of vessel cargo gear and shore-based material handling devices used in maritime operations are required to have accredited companies conduct examinations. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 20, 2020 (85 FR 30738).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Gear Certification Standard.

OMB Control Number: 1218–0003.

Affected Public: Private Sector, Businesses or other for-profits.

Total Estimated Number of Respondents: 35.

Total Estimated Number of Responses: 5,035.

Total Estimated Annual Time Burden: 109 hours.

Total Estimated Annual Other Costs Burden: \$2,612,500.

Authority: 44 U.S.C. 3507(a)(1)(D).

Crystal Rennie,

Acting Departmental Clearance Officer.

[FR Doc. 2020–17751 Filed 8–13–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Housing Occupancy Certificates Under the Migrant and Seasonal Agricultural Worker Protection Act

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Wage and Hour Division (WHD)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before 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: Anthony May by telephone at 202–693–4129 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

The Wage and Hour Division (WHD) of the Department of Labor (DOL) administers the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1801 *et seq.* The MSPA protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures,

and recordkeeping. The MSPA also requires farm labor contractors and farm labor contractor employees to register with the U.S. Department of Labor and to obtain special authorization before housing, transporting, or driving covered workers. The MSPA requires that any person owning or controlling any facility or real property to be used for housing migrant agricultural workers shall not permit such housing to be occupied by any worker unless copy of a certificate of occupancy from the state, local, or federal agency that conducted the housing safety and health inspection is posted at the site of the facility or real property. The certificate attests that the facility or real property meets applicable safety and health standards. Form WH–520 is an information gathering form and the certificate of occupancy that the Wage and Hour Division issues when it is the federal agency conducting the safety and health inspection. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 27, 2020 (85 FR 4715).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–WHD.

Title of Collection: Housing Occupancy Certificates Under the Migrant and Seasonal Agricultural Worker Protection Act.

OMB Control Number: 1235–0006.

Affected Public: Private Sector: Farms.

Total Estimated Number of Respondents: 20.

Total Estimated Number of Responses: 20.

Total Estimated Annual Time Burden: 1 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: August 10, 2020.

Anthony May,

Management and Program Analyst.

[FR Doc. 2020-17793 Filed 8-13-20; 8:45 am]

BILLING CODE 4510-27-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA-20-0018; NARA-2020-057]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: NARA must receive comments by September 28, 2020.

ADDRESSES: You may submit comments by either of the following methods. You must cite the control number, which appears on the records schedule in parentheses after the name of the agency that submitted the schedule.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>
- *Mail:* Records Appraisal and Agency Assistance (ACR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740-6001.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at regulation_comments@nara.gov. For information about records schedules, contact Records Management Operations by email at request.schedule@nara.gov, by mail at the address above, or by phone at 301-837-1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records

schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule.

We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as “other” documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact request.schedule@nara.gov for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on *regulations.gov* a “Consolidated Reply” summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at <https://www.archives.gov/records-mgmt/rcs>, after the Archivist approves them. The

RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA’s approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records’ administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government’s activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist’s consideration process.

Schedules Pending

1. Department of the Air Force, Agency-wide, Base and Installation Files, 1942-1946 (DAA-AFU-2016-0001).
2. Department of Commerce, National Institute of Standards and Technology, Research Project Case Files and Research Notebooks (DAA-0167-2019-0001).
3. Department of Commerce, National Institute of Standards and Technology, Organization of Scientific Area Committees for Forensic Science (DAA-0167-2020-0002).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2020-17767 Filed 8-13-20; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL SCIENCE FOUNDATION**Sunshine Act Meeting; National Science Board**

The National Science Board (NSB), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Closed teleconference of the Committee on Strategy (CS) of the National Science Board, to be held Wednesday, August 19, 2020 at 3:00–3:45 p.m. EDT.

PLACE: This meeting will be held by videoconference organized through the National Science Foundation.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Chair's remarks; review and discussion of proposed CS recommendation of approval to the Board of the NSF, NSB and OIG FY 2022 budget submissions to the Office of Management and Budget (OMB).

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, (703) 292-7000, cblair@ns.gov. You may find meeting information and updates (time, place, subject matter or status of meeting) at <https://www.nsf.gov/nsb/meetings/notices.jsp#sunshine>.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2020-17883 Filed 8-12-20; 11:15 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION**Sunshine Act Meeting; National Science Board**

The National Science Board (NSB), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Closed teleconference of the Committee on Oversight (CO) of the National Science Board, to be held Monday, August 17, 2020 at 3:00–4:00 p.m. EDT.

PLACE: This meeting will be held by videoconference organized through the National Science Foundation.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Committee Chair's opening remarks, discussion of the Office of the Inspector General's FY 2022 OMB Budget Submission, and recommendation to the Committee on Strategy.

CONTACT PERSON FOR MORE INFORMATION:

Point of contact for this meeting is: Chris Blair, (703) 292-7000, cblair@ns.gov. You may find meeting information and updates (time, place, subject matter or status of meeting) at <https://www.nsf.gov/nsb/meetings/notices.jsp#sunshine>.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2020-17881 Filed 8-12-20; 11:15 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION**Sunshine Act Meeting; National Science Board**

The National Science Board (NSB), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Closed teleconference of the National Science Board (NSB) Committee on Strategy (CS) of the National Science Board, to be held Wednesday, August 19, 2020 at 3:45–4:00 p.m. EDT.

PLACE: This meeting will be held by videoconference organized through the National Science Foundation.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Chair's remarks; review and discussion of proposed CS recommendation of approval to the Board of the NSF, NSB and OIG FY 2022 budget submissions to the Office of Management and Budget (OMB).

CONTACT PERSON FOR MORE INFORMATION:

Point of contact for this meeting is: Chris Blair, (703) 292-7000, cblair@nsf.gov. You may find meeting information and updates (time, place, subject matter or status of meeting) at

<https://www.nsf.gov/nsb/meetings/notices.jsp#sunshine>.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2020-17884 Filed 8-12-20; 11:15 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2020-0171]

Setpoints for Safety-Related Instrumentation

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG), DG-1363, "Setpoints for Safety-Related Instrumentation." This DG is proposed Revision 4 of Regulatory Guide (RG) 1.105. The proposed revision describes an approach that is acceptable to the staff of the NRC to meet regulatory requirements ensuring that setpoints for safety related instrumentation are established and maintained within the technical specification limits. This proposed guide has been revised to incorporate additional information regarding American National Standards Institute (ANSI)/International Society of Automation (ISA) Standard 67.04.01-2018, "Setpoints for Nuclear Safety Related Instrumentation," since revision 3 of RG 1.105 was issued.

DATES: Submit comments by September 14, 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. This public review and comment period is 30 days in duration, although the public review and comment period for draft RGs is usually 60 days. The shortened comment period is provided because the NRC has previously interacted with stakeholders on related industry and NRC guidance and the proposed revision endorses ANSI/ISA 67.04.01-2018 without any exceptions or clarifications. As a result, the NRC does not anticipate significant public comment. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

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

• *Federal Rulemaking website*: Go to <https://www.regulations.gov> and search for Docket ID NRC–2020–0171. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9221; email: Jennifer.Borges@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to*: Office of Administration, Mail Stop: TWFN–7A06, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN: Program Management, Announcements and Editing Staff.

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

FOR FURTHER INFORMATION CONTACT: Dawnmathews Kalathiveetil, Office of Nuclear Reactor Regulation, telephone: 301–415–5905, email: Dawnmathews.Kalathiveetil@nrc.gov, and Michael Eudy, Office of Nuclear Regulatory Research, telephone: 301–415–3104, email: Michael.Eudy@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0171 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking Website*: Go to <https://www.regulations.gov> and search for Docket ID NRC–2020–0171.

• *NRC’s Agencywide Documents Access and Management System (ADAMS)*: You may access publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. DG–1363 is available in ADAMS under Accession No. ML20055G823 and the regulatory analysis for DG–1363 is available in ADAMS under Accession No. ML20055G824.

B. Submitting Comments

Please include Docket ID NRC–2020–0171 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 <http://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. Additional Information

The NRC is issuing for public comment a draft guide in the NRC’s “Regulatory Guide” series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency’s regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The DG, titled “Setpoints for Safety-Related Instrumentation,” is temporarily identified by its task number, DG–1363 (ADAMS Accession No. ML20055G823). The draft guide is proposed Revision 4 of Regulatory Guide 1.105. This revision of the guide (Revision 4) endorses ANSI/ISA Standard 67.04.01–2018 as a method acceptable to the NRC staff for satisfying the NRC’s regulations for ensuring that: (a) Setpoints for safety-related instrumentation are established to protect plant safety and analytical limits, and (b) the maintenance of instrument channels implementing these setpoints ensures they are functioning as required, consistent with the plant technical specifications. This DG applies to licensees and applicants subject to part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), “Domestic Licensing of Production and Utilization Facilities,” and 10 CFR part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants.”

The previous revision (Revision 3) of this RG endorsed ISA S67.04–1994, “Setpoints for Nuclear Safety-Related Instrumentation,” with several clarifications and exceptions. In July 2014, the NRC staff issued DG–1141, “Setpoints for Safety Related Instrumentation” (ADAMS Accession No. ML081630179), for public comment (79 FR 40163). This DG evaluated the 2006 revision of the standard ANSI/ISA 67.04.01, “Setpoints for Safety-Related Instrumentation.” DG–1141 described several concerns with the 2006 revision of the standard. These concerns included the need for additional definitions, analytical limit avoidance probability, use of the technical specification allowable value as a metric for determining instrument channel functionality and operability, and what to consider as an appropriate statistical confidence level. The ANSI/ISA S67.04 Standards Committee addressed these NRC staff concerns, as well as comments provided by industry stakeholders, and issued a revision to the ANSI/ISA standard in December 2018. The NRC staff elected not to finalize DG–1141 as a revision to RG 1.105 and chose instead to evaluate the 2018 ANSI/ISA standard revision for endorsement and issue DG–1363 as a replacement for DG–1141. The staff notes that DG–1363 considers and addresses technical issues and public comments related to the issuance of DG–1141.

The staff is also issuing for public comment a draft regulatory analysis (ADAMS Accession No. ML20055G824). The staff develops a regulatory analysis to assess the value of issuing or revising a regulatory guide as well as alternative courses of action.

III. Backfitting, Forward Fitting, and Issue Finality

DG–1363, if finalized, would endorse ANSI/ISA Standard 67.04.01–2018. Issuance of DG–1363, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, “Backfitting,” and as described in NRC Management Directive (MD) 8.4, “Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests”; constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52. As explained in DG–1363, applicants and licensees would not be required to comply with the positions set forth in DG–1363.

Dated: August 10, 2020.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Acting Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2020-17763 Filed 8-13-20; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-321 and 50-366; NRC-2020-0184]

Southern Nuclear Operating Company; Edwin I. Hatch Nuclear Plant, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License Nos. DPR-57 and NPF-5, issued to Southern Nuclear Operating Company, for operation of the Edwin I. Hatch Nuclear Plant (Hatch), Units 1 and 2, respectively. The proposed amendment would revise technical specification (TS) 3.8.1, "AC Sources—Operating," for Hatch, Units 1 and 2, to provide for a one-time extension of the completion time for the Hatch, Unit 1, emergency diesel generators.

DATES: Submit comments by September 14, 2020. A request for a hearing or petitions for leave to intervene must be filed by October 13, 2020.

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

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2020-0184. 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, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

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

FOR FURTHER INFORMATION CONTACT: John G. Lamb, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-415-3100, email: John.Lamb@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2020-0184 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2020-0184.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The license amendment request is available in ADAMS under Accession No. ML20213C715.

B. Submitting Comments

Please include Docket ID NRC-2020-0184 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. Introduction

The NRC is considering issuance of an amendment to Facility Operating License Nos. DPR-57 and NPF-5, issued

to Southern Nuclear Operating Company (SNC, the licensee), for operation of the Edwin I. Hatch Nuclear Plant (Hatch), Units 1 and 2, located in Appling County, Georgia.

The proposed amendment would revise TS 3.8.1, "AC Sources—Operating," for Hatch, Units 1 and 2, to provide a one-time extension of the completion time for the Hatch, Unit 1, emergency diesel generators.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in section 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change provides a one-time extension of the [diesel generator] DG restoration time allowed by [technical specification] TS. This change will have no effect on accident probabilities since the DGs are not considered accident initiators. The proposed DG [allowed outage time] AOT extension does not require any physical plant modifications. Since no individual precursors of an accident are affected, the proposed amendment does not increase the probability of a previously analyzed event. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. The consequences of an evaluated accident with an inoperable DG is not altered by the proposed change and will not affect the consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed). Operation in accordance with the revised TS and its limits precludes new challenges to systems, structures, or components that might introduce a new type of accident. Applicable design and performance criteria will continue to be met and no new single failure mechanisms will be created. The proposed change to extend the DG restoration time does not involve the alteration of plant equipment or introduce unique operational modes or accident precursors.

Therefore, the proposed change will not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is related to the ability of the fission product barriers to perform their design functions during and following an accident. These barriers include the fuel cladding, the reactor coolant system, and the containment. The performance of these fission product barriers is not adversely affected by the proposed change.

The proposed change provides a risk-informed, one-time extension of the DG restoration time allowed by TS. A deterministic evaluation of the proposed completion time extension demonstrates there is sufficient margin to safety during the extended DG AOT period. During the extended DG AOT period, sufficient controls will be established to maintain the defense-in-depth design philosophy to ensure the electrical power system meets its design safety function and risk management actions will be established to maintain the risk as low as reasonably achievable within the regulatory acceptance guidelines.

Operation in accordance with the revised TS ensures that the assumptions for initial conditions of key parameter values in the safety analyses remain valid. This ensures that applicable design and performance criteria associated with the safety analysis will continue to be met and that the margin of safety is not adversely affected.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves a no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the

expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave to Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at <https://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or

controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place

before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions set forth in this section. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic

Submissions to the NRC and on the NRC website at <https://www.nrc.gov/site-help/e-submittals.html>. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can

obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>, by email to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social

security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated July 31, 2020.

Attorney for licensee: Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P. O. Box 1295, Birmingham, AL 35201-1295. NRC Branch Chief: Michael T. Markley.

Dated: August 10, 2020.

For the Nuclear Regulatory Commission.

Michael T. Markley,

Chief, Plant Licensing Branch II-1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020-17770 Filed 8-13-20; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020-215 and CP2020-243]

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 18, 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): MC2020-215 and CP2020-243; Filing Title: USPS Request to Add Priority Mail Contract 648 to Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: August 10, 2020; Filing Authority: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; Public Representative:

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).

Kenneth R. Moeller; Comments Due: August 18, 2020.

This Notice will be published in the Federal Register.

Erica A. Barker, Secretary.

[FR Doc. 2020-17877 Filed 8-13-20; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89518; File No. SR-CboeBZX-2020-058]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 20.10 Concerning Off-Floor Transfers

August 10, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),1 and Rule 19b-4 thereunder,2 notice is hereby given that on July 29, 2020, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act3 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 BZX Exchange, Inc. (the "Exchange" or "BZX") proposes to amend Rule 20.10. The text of the proposed rule change is provided below. (additions are italicized; deletions are [bracketed])

* * * * *

Rules of Cboe BZX Exchange, Inc.

* * * * *

Rule 20.10. Off-Floor Transfers of Positions

(a)-(c) No change. (d) Prior Written Notice. A Member(s) and its Clearing Member(s) (to the extent that the Member is not self-clearing) must submit to the Exchange, in a manner determined by the

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).

Exchange, written notice prior to effecting an off-floor transfer from or to the account(s) of a Member(s), except that notification is not required for transfers [to correct errors] *effected* pursuant to subparagraph (a)(1) or (a)(2) of this Rule.

* * * * *

(g) Routine, Recurring Transfers. The off-floor transfer procedure set forth in this Rule is intended to facilitate non-routine, non-recurring movements of positions. The off-floor transfer procedure *and* is not to be used repeatedly or routinely [in circumvention of the normal auction market process], *except for transfers between accounts of the same person pursuant to subparagraph (a)(2). The off-floor transfer procedure may not be used in circumvention of the normal auction process.*

* * * * *

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 20.10 describes exceptions to the prohibition against off-floor transactions set forth in Rule 20.9, subject to certain conditions. The exception in Rule 20.10(a)(2) provides that off-floor transfers of positions are permissible if from one account to another account where no change in ownership is involved (*i.e.*, accounts of the same person),⁵ provided the accounts are not in separate aggregation units or

otherwise subject to information barrier or account segregation requirements. These transfers are subject to, among other things, the requirement to submit prior written notice of the transfers to the Exchange pursuant to paragraph (d) and the restriction on effecting these transfers repeatedly or routinely.

The proposed rule change excepts off-floor position transfers effected pursuant to Rule 20.10(a)(2) from the prior written notice requirement in paragraph (d) and from repeated, recurring use restriction in paragraph (g). Off-floor position transfers pursuant to Rule 20.10(a)(2) do not involve a change in ownership. In other words, such transfers may only occur between the same individual or legal entity. These types of transfers are merely transfers of positions from one account to another, both of which accounts are attributable to the same individual or legal entity, and thus the transferred option positions will continue to be attributable to the same person. A market participant effecting an off-floor position transfer pursuant to Rule 20.10(a)(2) is analogous to an individual transferring funds from a checking account to a savings account, or from an account at one bank to an account at another bank—the money still belongs to the same person, who is just holding it in a different account for personal financial reasons.

Because there is no change in ownership of positions transferred pursuant to Rule 20.10(a)(2), the Exchange believes it is appropriate to permit them to occur as routinely and repeatedly as a market participant would like. These transfers will continue to be subject to the prohibition on netting set forth in Rule 20.10(b), and thus may not result in the closing of any positions. While the off-floor position transfers permitted by Rule 20.10 were intended to accommodate non-routine and non-recurring transfers, the Exchange believes permitting routine, recurring off-floor position transfers that do not result in a change in ownership or reduction in open interest is consistent with the purpose of not being used to circumvent the normal auction purpose. Additionally, given that these transfers may occur on a regular basis in accordance with a market participants' business needs and procedures, the Exchange believes prior written notice would be onerous and would not serve any purpose given the lack of change in ownership and in open interest. The Exchange believes this will provide market participants with additional flexibility to structure their option position accounts as they believe is appropriate and move their positions

between accounts as they deem necessary and appropriate for their business and trading needs, including for risk management purposes.

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.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ 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)⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest because it will provide market participants with a more efficient process to transfer open positions between their own accounts in accordance with their own business and trading needs, including to respond to then-current market conditions. Because these transfers would not result in a change in ownership or a reduction in open interest, the Exchange believes the proposed rule change remains consistent with the purpose of Rule 20.10, which was to prohibit use of the off-floor transfer procedure in circumvention of the normal auction process, as the normal auction process involves the opening or closing of positions through a transaction among multiple market participants. Market participants may maintain different accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital

⁵ Rule 1.5(p) defines "person" as a natural person, partnership, corporation, limited liability company, entity, government, or political subdivision, agency or instrumentality of a government.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ *Id.*

purposes. Given that these transfers may occur on a regular basis in accordance with a market participants' business needs and procedures, the Exchange believes prior written notice would be onerous and would not serve any purpose given the lack of change in ownership and in open interest. Therefore, the proposed rule change will benefit investors by permitting market participants to manage the open positions in their accounts in a manner consistent with their businesses.

The Exchange recognizes the numerous benefits of executing options transactions on an exchange, including price transparency, potential price improvement, and a clearing guarantee. However, the Exchange believes it is appropriate to permit position transfers among accounts of the same individual or legal entity where there is no impact on open interest to occur off the exchange, as these benefits are inapplicable to those transfers. These transfers have a narrow scope and are intended to permit market participants to achieve their own business needs. These transfers are not intended to be a competitive trading tool. There is no need for price discovery or improvement, as the transfer merely moves positions to different accounts for the same person and does not open or close any positions. These transfers will result in no change in ownership. The transactions that resulted in the open positions to be transferred pursuant to Rule 20.10(a)(2) were already guaranteed by a clearing member of The Options Clearing Corporation ("OCC"), and the positions may not be closed pursuant to the transfer and will continue to be subject to OCC rules, as they will continue to be held in an account with an OCC clearing member.

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. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change will apply to all market participants in the same manner. All market participants will be able to effect off-floor position transfers pursuant to Rule 20.10(a)(2) on a recurring or routine basis without

providing the Exchange with notice of such transfers. The Exchange does not believe 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 it relates solely to the notice required for off-floor transfers that may occur today, and the frequency with which those transfers may occur. These transfers will continue to not result in a change in ownership or netting, and thus will have no impact on outstanding option positions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ 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 Act¹¹ and Rule 19b-4(f)(6)¹² thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2020-058 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2020-058. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2020-058 and should be submitted on or before September 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-17758 Filed 8-13-20; 8:45 am]

BILLING CODE 8011-01-P

¹³ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89512; File No. SR-Phlx-2020-37]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 3316 and Rule 3215 Commentary

August 10, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 31, 2020, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 3316 (PHLX Kill Switch) and Rule 3215 (Exchange Sharing of PSX Participant Risk Settings) Commentary to provide PSX Participants with additional optional settings and to make certain technical changes.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 purpose of the proposed rule changes under PSX Rule 3316 (PHLX Kill Switch) and Rule 3215 (Exchange Sharing of PSX Participant Risk Settings) Commentary is to provide PSX Participants with additional optional settings in order to assist them in their efforts to manage their risk levels and to make certain technical changes. Once the optional risk controls are set, the Exchange is authorized to take automated action if a designated risk level for a PSX Participant is exceeded. Such risk settings would provide PSX Participants with enhanced abilities to manage their risk with respect to orders on the Exchange.

The proposed pre-trade risk controls described below are meant to supplement, and not replace, the PSX Participant’s own internal systems, monitoring and procedures related to risk management. For clarification, the Exchange does not guarantee that these controls will be sufficiently comprehensive to meet all of a PSX Participant’s needs, nor are the controls designed to be the sole means of risk management, and using these controls will not necessarily meet a PSX Participant’s obligations required by Exchange or federal rules (including, without limitation, the Rule 15c3-5 under the Act³ (“Rule 15c3-5”). Use of the Exchange’s Kill Switch or proposed risk setting in Rule 3215 (Exchange Sharing of Risk Settings) Commentary (h) will not automatically constitute compliance with Exchange or federal rules and responsibility for compliance with all Exchange and SEC rules remains with the PSX Participant.⁴

Rule 3316(a) provides the definition of the PHLX Kill Switch, which is an optional tool offered at no charge that enables PSX Participants to establish a pre-determined level of Net Notional Risk Exposure (“NNRE”), to receive notifications as the value of executed orders approaches the NNRE level, and to have order entry ports disabled and open orders administratively cancelled when the value of executed orders exceeds the NNRE level. Most order entry ports are assigned to one MPID. In the event that multiple MPIDs are

assigned to one port, only the affected MPID is disabled from the port. The NNRE, although not explicitly defined,⁵ accounts for the daily dollar amount for buy and sell orders across all symbols, where both buy and sell orders are counted as positive values. For purpose of calculating NNRE, only executed orders are included.

The Exchange is renaming the NNRE by proposing to remove references to “Net Notional Risk Exposure” and to replace them with “Gross Executed Risk Exposure”. This risk level refers to a pre-established maximum daily dollar amount for buy and sell orders across all symbols, where both buy and sell orders are counted as positive values. For purposes of calculating Gross Executed Risk Exposure, only executed orders are included. The Exchange is not changing the NNRE calculation under the proposed amendment. Rather, it will be renamed as the Gross Executed Risk Exposure. This risk setting is identical to Nasdaq Stock Market LLC (“Nasdaq”) Rule 6130(a)(1) and similar to Cboe BZX Exchange, Inc.’s (“BZX”) Interpretations and Policies .03(a)(1) of BZX Rule 11.13.

The Exchange is also proposing to add an additional risk setting titled “Gross Notional Risk Exposure,” which refers to a pre-established maximum daily dollar amount for buy and sell orders across all symbols, where both buy and sell orders are counted as positive values. For purposes of calculating Gross Notional Risk Exposure, unexecuted orders on the Exchange book and executed orders are included. This setting is identical to Nasdaq Rule 6130(a)(2) and similar to Interpretations and Policies .03(a)(2) of BZX Rule 11.13, except BZX excludes unexecuted orders and counts purchases as positive values and sales are counted negative values. Additionally, the Exchange’s rule is similar to New York Stock Exchange LLC (“NYSE”) Rule 7.19(a)(5) and NYSE Arca, Inc. (“Arca”) Rule 7.19-E(a)(5), except NYSE and Arca include orders routed on arrival. While the current functionality would continue to be available, this additional proposed risk setting would allow a PSX Participant to manage its risk more comprehensively, instead of relying solely on the NNRE functionality offered today.

The Exchange also proposes to make a conforming change to Rule 3316(b) by removing “Net Notional Risk Exposure” and replacing it with “Establishing and Adjusting Levels.” The Exchange is also proposing to specify that a PSX

³ 17 CFR 240.15c3-5.

⁴ See Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Risk Management Controls for Brokers or Dealers with Market Access, available at <https://www.sec.gov/divisions/marketreg/faq-15c-5-risk-management-controls-bd.htm>.

⁵ The Exchange is not changing the NNRE functionality under the proposed amendment. Rather, it is being renamed as the Gross Executed Risk Exposure.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Participant's clearing member, as discussed below, may set the risk levels for each MPID individually. This action is identical to Nasdaq Rule 6130(b) and similar to Interpretations and Policies .03(b)(1) of BZX Rule 11.13 and NYSE Rule 7.19(b)(3)(B) and Arca Rule 7.19–E(b)(3)(B), except unlike NYSE and Arca, the Exchange does not allow for setting risk levels at the sub-ID of an MPID. Additionally, the proposal allows for the clearing member, in addition to the PSX Participant, to set and adjust the values before the beginning of a trading day as well as set and adjust them during the trading day. This is identical to Nasdaq Rule 6130(b) and similar to Interpretations and Policies .03(b) of BZX Rule 11.13, NYSE Rule 7.19(b)(3)(A) and Arca Rule 7.19–E(b)(3)(A).

The Exchange is proposing under Rule 3316(c) to allow clearing members, if designated pursuant to Rule 3316(d), to receive notifications when the total value of executed orders, and if applicable, unexecuted orders associated with an MPID exceeds 50, 75, 85, 90, and 95 percent of the applicable risk level values. This rule is identical to Nasdaq Rule 6130(c) and similar to Interpretations and Policies .03(d) of BZX Rule 11.13, NYSE Rule 7.19(b)(4), and Arca Rule 7.19–E(b)(4).

A clearing member guarantees transactions executed on PSX for PSX Participants with whom it has entered into a clearing arrangement, and therefore bears the risk associated with those transactions. Because clearing members bear the risk on behalf of their PSX Participant, the Exchange believes that it is appropriate for the clearing member to have knowledge of what risk settings the PSX Participant may utilize within the Exchange's trading system, as well as the option to set and adjust the risk levels. The proposal will permit clearing members who have a financial interest in the risk settings of PSX Participants with whom the PSX Participants have entered into clearing arrangements to better monitor and manage the potential risks assumed by clearing members, thereby providing clearing members with greater control and flexibility over setting their own risk tolerance and exposure and aiding clearing members in complying with the Act. Therefore, the Exchange proposes to make the proposed optional risk settings in Phlx Rule 3316 available to clearing members, if so authorized by the PSX Participant.

Proposed Rule 3316(d) would allow for a PSX Participant that does not self-clear to allocate responsibility for establishing and adjusting the risk levels to a clearing member that clears

transactions on behalf of the PSX Participant. A PSX Participant may request to sign up for the Kill Switch optional setting by contacting Nasdaq Subscriber Services or by completing a Front End Request form.⁶ In order to allocate responsibility to a clearing member, a PSX Participant must provide the Exchange with authorization, either by providing Nasdaq Subscriber Services with written authorization or by requesting the appropriate user role and permission for the clearing member via the Front End Request form. The PSX Participant may adjust the user role and permissions at any time. If a PSX Participant chooses to designate responsibility to its clearing member, the PSX Participant may view any risk levels established by the clearing member pursuant to proposed Rule 3316(d). Additionally, by allocating responsibility to its clearing member, the PSX Participant consents to the Exchange taking action as provided for in proposed Rule 3316(e). Even if a clearing member is designated, a PSX Participant will continue to be notified by the Exchange of any action taken regarding its trading activity. By allowing PSX Participants to allocate the responsibility for establishing and adjusting such risk settings to its clearing member, the Exchange believes clearing members may reduce potential risks that they assume when clearing for members of the Exchange. A member may revoke responsibility allocated to its clearing member at any time by following the same process described above that is used to grant the clearing member authorization.

Nasdaq, BZX, NYSE and Arca also provide similar designations to its clearing members pursuant to Nasdaq Rule 6130(d), Interpretations and Policies .03(c) of BZX Rule 11.13, NYSE Rule 7.19(b)(2), and Arca Rule 7.19–E(b)(2). However, unlike NYSE and Arca, the Exchange does not allow for multiple risk level values to be in place at one time.

The Exchange also proposes to renumber current Rule 3316(d) as Rule 3316(e) and retitle it to more accurately describe the provision by removing "Operation" and replacing it with "Breach Action and Reinstatement." Additionally, the Exchange is proposing to clarify that when a pre-established risk level is breached and the Kill Switch is triggered, it shall result in the immediate cancellation of all unexecuted orders of any type or duration entered by the PSX Participant

via the affected MPID, and in the immediate prevention of order entry of any type via affected MPID. The PSX Participant or the clearing member, if designated pursuant to paragraph (d), must request reactivation of the MPID before trading will be reauthorized.

Additionally, the Exchange refers to "member" throughout Rule 3316. The term "PSX Participant" more accurately refers to the entity⁷ that would utilize the Kill Switch and therefore, the term "member" was used in error. The Exchange is proposing to make a technical change to correct the reference to "member" by replacing it with "PSX Participant." Therefore, the Exchange will refer to "member" as "PSX Participant" throughout this discussion.

As a reminder, pursuant to current Rule 3215, the Exchange will continue to share any PSX Participant risk settings in the trading system that are specified in the Rule 3215 Commentary and Rule 3316 with the clearing member that clears transactions on behalf of the member even if the clearing member is not designated. Under current Rule 3215 Commentary, the Exchange offers certain risk settings applicable to a PSX Participant on the Exchange. Proposed Rule 3215 Commentary (h) would allow for a PSX Participant to limit the maximum dollar amount that the PSX Participant may associate with an order placed on the Exchange. This risk setting is identical to Nasdaq Rule IM–6200–1(h) and similar to the risk control provided by NYSE pursuant to Rule 7.19(a)(3) and Arca pursuant to Rule 7.19–E(a)(3). When the Maximum Single Order Notional Check is enabled, if a PSX Participant breaches this risk setting, the single order will be rejected by the system. The action taken is identical to Nasdaq Rule IM–6200–1(h) and similar to NYSE Rule 7.19(c)(2) and Arca Rule 7.19–E(c)(2).

The Exchange is also proposing to make the following non-substantive conforming changes:

⁷ Pursuant to PSX Rule 3301(c), a "PSX Participant" is defined as an entity that fulfills the obligations contained in Rule 3211 regarding participation in the System, and shall include: (1) "Equities ECNs," which are member organizations that meet all of the requirements of Rule 3223, and that participate in the System with respect to one or more System Securities; (2) "PSX Market Makers" or "Market Makers", member organizations that are registered as PSX Market Makers for purposes of participation in the System on a fully automated basis with respect to one or more System securities; and (3) "Order Entry Firms," which are member organizations that are registered for the purposes of entering orders in System Securities into the System. This term shall also include any Electronic Communications Network or Alternative Trading System (as such terms are defined in Regulation NMS) that fails to meet all the requirements of Rule 3223.

⁶ The Front End Request form is available at <https://www.nasdaqtrader.com/EASP/TraderEASP.aspx?id=FrontEndForm>.

- Remove the term “open orders” and replace with “unexecuted orders”.
- Remove all references to the acronym “NNRE” throughout the rule in conjunction with the removal of the reference to “Net Notional Risk Exposure.”

- Renumber Rule 3215 Commentary to conform to the addition of proposed Rule 3215 Commentary (h).

The Exchange will announce the implementation date of the proposed rule change in a Trader Alert to be published no later than 60 days following the effective date. The implementation date will be no later than 90 days following the effective date.⁸

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Exchange believes the proposed amendment will remove impediments to and perfect the mechanism of a free and open market and a national market system because it provides functionality for a PSX Participant to manage its risk exposure under Rule 3316 and Rule 3215 Commentary, while also providing a notification system under Rule 3316(c) that would help to ensure the PSX Participant and a PSX Participant’s clearing member are aware of developing issues. In addition, the proposed amendments to Rule 3316 would provide clearing members, who have assumed certain risks of PSX Participants, greater control over risk tolerance and exposure on behalf of their correspondent PSX Participant, while helping to ensure that both PSX Participant and a PSX Participant’s clearing member are aware of developing issues.

A clearing member guarantees transactions executed on PSX for PSX Participants with whom it has entered into a clearing arrangement, and therefore bears the risk associated with those transactions. The Exchange

therefore believes that it is appropriate for the clearing member to have knowledge of what risk settings the PSX Participant may utilize within the Exchange’s trading system, as well as the option to set and adjust the risk levels. The proposal will permit clearing members who have a financial interest in the risk settings of PSX Participants with whom the PSX Participants have entered into clearing arrangements to better monitor and manage the potential risks assumed by clearing members, thereby providing clearing members with greater control and flexibility over setting their own risk tolerance and exposure and aiding clearing members in complying with the Act.

In addition, the Exchange believes that the proposed amendments under Rule 3316 and Rule 3215 Commentary are designed to protect investors and the public interest because the proposed functionalities are a form of risk mitigation that will aid PSX Participants and clearing members in minimizing their financial exposure and reduce the potential for disruptive, market-wide events. The proposed Gross Executed Risk Exposure and Gross Notional Risk Exposure settings are appropriate measures to serve as an additional tool for PSX Participants and clearing members to assist them in identifying risk exposure by identifying when the PSX Participant is reaching its maximum dollar amount for purchases and sales across all symbols. The Exchange also believes the proposed amendments will assist PSX Participants and clearing members in managing their financial exposure which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system. Moreover, a PSX Participant may revoke responsibility allocated to its clearing member at any time.

Further, the Exchange believes that the proposed amendments under Rule 3316 and Rule 3215 Commentary (h) will foster cooperation and coordination with persons facilitating transactions in securities because under Rule 3316(c), the Exchange will provide alerts when a PSX Participant’s trading activity reaches certain thresholds and under Rule 3215 Commentary (h), the Exchange will limit the PSX Participant’s maximum dollar amount placed on an order. As such, the Exchange may help clearing members monitor the risk levels of corresponding PSX Participants.

Additionally, the proposed change to replace the term “member” with PSX Participant in Rule 3316 will provide greater clarity to the public regarding

the Exchange’s optional risk control rules and it is in the public interest for the rules to be accurate as to eliminate potential confusion.

Finally, the Exchange believes that the proposed rule changes do not unfairly discriminate among PSX Participants because use of the risk settings under Rule 3316 and Rule 3215 Commentary (h) are optional and available to all PSX Participants, and not a prerequisite for participation on the Exchange. In addition, because all orders on the Exchange would pass through the risk checks, there would be no difference in the latency experienced by PSX Participants who have opted to use the risk settings versus those who have not opted to use them.¹¹

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the proposal will have a positive effect on competition because, it would allow the Exchange to offer risk management functionality that is comparable to functionality being offered by other national securities exchanges.¹² Moreover, by providing PSX Participants and their clearing members additional means to monitor and control risk, the proposed rule may increase confidence in the proper functioning of the markets and contribute to additional competition among trading venues and broker-dealers. Rather than impede competition, the proposal is designed to facilitate more robust risk management by PSX Participants and clearing members, which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

¹¹ All Exchange orders pass through a basic risk check regardless of whether a PSX Participant opts into a risk setting.

¹² See Securities Exchange Act Release Nos. 89225 (July 6, 2020) 85 FR 41650 (July 10, 2020) (SR-NASDAQ-2020-034); 88904 (May 19, 2020) 85 FR 31560 (May 26, 2020) (SR-NYSEArca-2020-43); 88776 (April 29, 2020) 85 FR 26768 (May 5, 2020) (SR-NYSE-2020-17) (Approval Order); 88599 (April 8, 2020) 85 FR 20793 (April 14, 2020) (SR-CboeBZX-2020-006) (Approval Order).

⁸ The Exchange will implement the Net Notional Risk Exposure and the Gross Notional Risk Exposure risk settings as soon as possible. The Maximum Single Order Notional Check will be implemented within 90 days following the effective date.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁵ normally does not become operative for 30 days from the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁶ 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 Commission notes that the Exchange plans to implement the Gross Executed Risk Exposure and the Gross Notional Risk Exposure risk settings as soon as possible.¹⁷ The Commission believes that waiver of the operative delay would allow the Exchange to provide PSX Participants and their clearing members expeditiously with additional optional settings to manage their risk levels. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹⁸

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may 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-Phlx-2020-37 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-Phlx-2020-37. 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-Phlx-2020-37 and should

be submitted on or before September 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89514; File No. SR-CBOE-2020-055]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 5.24

August 10, 2020.

On June 12, 2020, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rule 5.24 by permitting a virtual trading floor as a business continuity and disaster recovery plan. The proposed rule change was published for comment in the **Federal Register** on June 29, 2020.³ On July 23, 2020, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The Commission has received one comment letter on the proposed rule change.⁵

Section 19(b)(2) of the Act⁶ provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 89131 (June 23, 2020), 85 FR 38951.

⁴ In Amendment No. 1, the Exchange clarified that the temporary all-electronic trading rules set forth in Rule 5.24(e)(1) would not apply to classes engaged in the virtual trading floor. The Exchange also amended the proposal to permit clerks to access the virtual trading floor. When the Exchange filed Amendment No. 1 to CBOE-2020-055, it also submitted the text of the amendment as a comment letter to the filing, which the Commission made publicly available at <https://www.sec.gov/comments/sr-cboe-2020-055/sr-cboe2020055-7470763-221281.pdf>.

⁵ See letter to Secretary, Commission, from Kevin Kennedy, Senior Vice President, Nasdaq, dated July 10, 2020, available at <https://www.sec.gov/comments/sr-cboe-2020-055/sr-cboe2020055-7409704-219196.pdf>.

⁶ 15 U.S.C. 78s(b)(2).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 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.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ According to the Exchange, the Maximum Single Order Notional Check will be implemented within 90 days following the effective date.

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is August 13, 2020.

The Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposal so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁷ designates September 27, 2020, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-CBOE-2020-055), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-17756 Filed 8-13-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89515; File No. SR-OCC-2020-805]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice Concerning Proposed Changes To Enhance OCC's Stock Loan Close-Out Process

August 10, 2020.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 ("Clearing Supervision Act")¹ and Rule 19b-4(n)(1)(i)² under the Securities Exchange Act of 1934 ("Exchange Act"),³ notice is hereby given that on

July 14, 2020, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") an advance notice as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is submitted in connection with proposed changes to OCC Rules 2211 and 2211A, which concern the close-out of a defaulting Hedge Clearing Member's or Market Loan Clearing Member's (each a "defaulting Clearing Member") stock loan positions, respectively, to require Lending Clearing Members or Borrowing Clearing Members (each a "non-defaulting Clearing Member") whom OCC instructs to buy-in or sell-out securities to execute such transactions and provide OCC notice of such action by the settlement time for a Clearing Member's obligations to OCC on the business day after OCC gives the instruction.⁴ In addition, OCC proposes to amend Rules 2211 and 2211A to provide that if a non-defaulting Clearing Member so instructed does not execute the trades and provide notice by that time, OCC will terminate the Stock Loan and effect settlement based upon the Marking Price at the close of business on the day that OCC provided the instruction. OCC submitted the proposed amendments to OCC's Rules in Exhibit 5. Material proposed to be added to OCC's Rules as currently in effect is marked by underlining and material proposed to be deleted is marked with strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the By-Laws and Rules.⁵

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it

received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A and B below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the advance notice and none have been received. OCC will notify the Commission of any written comments received by OCC.

(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act

Description of the Change

This advance notice concerns a change to OCC's operations to amend OCC Rules 2211 and 2211A to ensure that OCC has authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations in the event of a Clearing Member default by more closely aligning the close-out of stock loan positions through buy-in and sell-out transactions with the timing of an auction of a defaulting Clearing Member's other positions and to ensure that the close-out of a defaulting Clearing Member's stock loan positions by buy-in or sell-out transactions occurs within OCC's two-day liquidation assumption. The proposed amendments to the Rules are discussed in more detail below.

Background

OCC operates two programs in which it acts as a central counterparty for stock loan transactions: (1) The Stock Loan/Hedge Program and (2) Market Loan Program (collectively, the "Stock Loan Programs"). Stock Loan/Hedge Program transactions are initiated directly between Clearing Members on a bilateral basis (*i.e.*, "broker-to-broker" model) and Market Loan Program transactions are initiated on either a broker-to-broker basis or anonymously through the matching of bids and offers (*i.e.*, "market" model). Both programs rely on The Depository Trust Company ("DTC") to facilitate the settlement of equity securities and cash collateral between members.

⁷ *Id.*

⁸ 17 CFR 200.30-3(a)(31).

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b-4(n)(1)(i).

³ 15 U.S.C. 78a *et seq.*

⁴ "Buy-in" refers to a non-defaulting lender purchasing replacement stock. "Sell-out" refers to a non-defaulting borrower selling the loaned securities in order to recoup its collateral.

⁵ OCC's By-Laws and Rules can be found on OCC's public website: <http://optionsclearing.com/about/publications/bylaws.jsp>.

Under the Stock Loan Programs, OCC novates the transaction and becomes the lender to the Borrowing Clearing Member and the borrower to the Lending Clearing Member upon receiving reports from DTC showing completed Stock Loans, provided that OCC has not rejected such transactions.⁶ As the principal counterparty to the Borrowing and Lending Clearing Members, OCC guarantees the return of the full value of cash collateral to a Borrowing Clearing Member and guarantees the return of the Loaned Stock (or value of that Loaned Stock) to the Lending Clearing Member.⁷ After novation, as part of the guaranty, OCC makes Mark-to-Market Payments for all cleared Stock Loans on a daily basis to collateralize all loans to the negotiated levels. Settlements generally are combined and netted against other OCC settlement obligations in a Clearing Member's account, including trade premiums and margin deficits. Clearing Member open positions in the Stock Loan Programs are factored into the Clearing Member's overall Margin⁸ and Clearing Fund contribution requirements.⁹

In the event a Clearing Member defaults, OCC closes the defaulting Clearing Member's positions, liquidates collateral, and deposits any proceeds into a Liquidating Settlement Account. The close-out of positions other than stock loan positions would typically be effected by an auction that would occur on the morning prior to market opening on the day after a default occurs.¹⁰ In contrast, OCC's Rules allow OCC to close stock loan positions by instructing the non-defaulting Clearing Members who are parties to the defaulting Clearing Member's loans to sell-out or buy-in securities as applicable.¹¹ A non-

defaulting Clearing Member is required to provide OCC with evidence of the execution price at which each transaction occurred. This execution price is used as the settlement price to facilitate the final mark between the non-defaulting Clearing Member and the Liquidating Settlement Account. Currently, non-defaulting Clearing Members are required to buy-in or sell-out the relevant securities by the close of business on the stock loan business day after OCC's instruction.¹² If a non-defaulting Clearing Member fails to execute such buy-in or sell-out, OCC would terminate the stock loan position and mark the transaction based upon the Marking Price at close of business on the business day after OCC's instruction.¹³

The buy-in/sell-out process for stock loan positions has significant benefits as it distributes the liquidity demands across multiple counterparties, each of whom effectively act as independent liquidating agents. The buy-in/sell-out process also aligns the liquidity demands necessary to facilitate an unwind with the Clearing Member receiving proceeds from the origination of the loan and currently in possession of the collateral. However, the difference in timing between an auction and the buy-in/sell-out process presents credit and liquidity risks for OCC. Specifically, because OCC's portfolio-based margin methodology combines stock loan positions with options, futures, and margin collateral when determining margin requirements, the difference in timing could expose OCC to increased credit and liquidity risk should the price of the stock loan positions move unfavorably between the time of auction and determination of the final settlement price for remaining buy-in/sell-out transactions and should that price differential exceed the amount of margin on deposit for such positions.

Enhancement to Stock Loan Programs Close-Out Rules

In response to these concerns, OCC proposes to amend OCC Rules 2211 and 2211A to require buy-in or sell-out transactions to be complete by the settlement time for a Clearing Member's obligations to OCC, defined in Article I of the By-Laws,¹⁴ on the stock loan

business day after OCC gives non-defaulting Clearing Members the buy-in/sell-out instruction. If a non-defaulting Clearing Member does not execute the trades and provide notice by that time, OCC would terminate the Stock Loan and effect settlement based upon the Marking Price at the close of business the previous business day (*i.e.*, the day that OCC provided the instruction). This Marking Price (*i.e.*, closing price) would be the last settlement price captured in OCC's systems prior to the time by which the non-defaulting Clearing Member was supposed to have taken such actions.

This proposed enhancement is designed to mitigate the risks associated with the difference in timing between close-out of stock loan positions and an auction for the remainder of defaulting Clearing Member's portfolio. In the typical case, an auction to close positions for other products would occur on the morning prior to market opening on the day after a default event occurs. Accelerating the deadline for buy-in or sell-out transactions to that morning—rather than the end of the stock loan business day—would reduce credit and liquidity risks by aligning liquidation timing across products more closely.

The proposed enhancement also is designed to ensure that the close-out process for the Stock Loan Programs would occur in a manner consistent with OCC's two-day liquidation assumption (which is applicable to all products without differentiation). At the earliest, a defaulting Clearing Member would have made its last margin payment at the settlement time on the business day *prior* to default. When that Clearing Member fails to make its margin or mark-to-market payments the next morning, OCC would suspend it and typically would issue the buy-in/sell-out instruction to non-defaulting Clearing Members. The proposed requirement that non-defaulting Clearing Members execute buy-in and sell-out transactions by the settlement time on the business day *after* default ensures that close-out occurs in a manner consistent with the two-day liquidation assumption.

OCC considered requiring non-defaulting Clearing Members to execute buy-in or sell-out transactions by the end of the business day on the same day as OCC's instruction but believes extending the process to the following morning is the better option. In discussion with several Clearing Members, they expressed a preference

⁶ See OCC Rules 2202(b) and 2202A(b). OCC receives DTC confirmation upon settlement of delivery versus payment. See generally DTC Settlement Services Guide, available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Settlement.pdf> (discussing the operation of the "Option Exercise & Assignment Loan Program").

⁷ Under the Market Loan Program, OCC also provides a limited guaranty of dividend and rebate payments.

⁸ See OCC Rules 601 and 2203.

⁹ See OCC Rule 1001.

¹⁰ While this timing describes the typical scenario, the timing of an auction is not set by regulation or OCC's By-Laws or Rules, which allows for an auction on an accelerated timeline, if needed. In addition, OCC's Rules also allow for the close-out of a defaulting Clearing Member's portfolio by open market transactions and hedging transactions to reduce the risks to OCC associated with holding open positions. See OCC Rule 1106.

¹¹ OCC may also effect the close-out of stock loan positions by re-matching Matched-Book Positions, an auction, or in such other manner as OCC determines to be the most orderly manner

practicable under the circumstances. OCC Rules 2210(b) and 2210A(b).

¹² See OCC Rules 2211 (Suspension of Hedge Clearing Members—Buy-In and Sell-Out Procedures) and 2211A (Suspension of Market Loan Clearing Members—Buy-In and Sell-Out Procedures).

¹³ *Id.*

¹⁴ By-Law Article I, Section 1.S.(16) defines "settlement time" with respect of a Clearing

Member's obligations to OCC to mean 9:00 a.m. Central Time.

for setting the deadline at 9:00 a.m. Central Time the following business day because doing so would allow a non-defaulting Clearing Member the opportunity to trade at market opening. OCC believes allowing non-defaulting Clearing Members to trade at market opening the following morning would provide additional time to execute the buy-in and sell-out method in a manner consistent with OCC's two-day liquidation assumption.¹⁵ OCC also presented the proposed change at a meeting of its Financial Risk Advisory Council ("FRAC"), a working group comprised of exchanges, Clearing Members and other market participants.¹⁶ No participant objected to OCC's proposal to accelerate the close-out timing. While questions were raised about the proposal to use the Marking Price at the close of business the day prior in the event a Clearing Member fails to act by the settlement time the next day, OCC believes using the last Marking Price available in its system prior to the time by which a Clearing Member is obligated to take action is superior because OCC's automated systems are designed to determine the Marking Price based on closing securities prices. The manual processes that OCC would need to institute to pull pricing information other than closing prices would make the stock loan close-out process more susceptible to delay and errors.

Implementation Timeframe

OCC expects to implement the proposed changes within thirty (30) days after the date that OCC receives all necessary regulatory approvals for the proposed changes. OCC will announce the implementation date of the proposed change by an Information Memorandum posted to its public website at least one (1) weeks prior to implementation.

Anticipated Effect on and Management of Risk

OCC believes that the proposed changes would reduce the nature and level of risk presented by OCC because they would enhance the overall resilience of OCC's Stock Loan Programs by enhancing the default management processes for the Stock Loan Programs

¹⁵ OCC is considering a proposal to move its settlement time from 9:00 a.m. settlement time earlier in the day, in which case the deadline for a non-defaulting Clearing Member instructed to buy-in or sell-out would change to the new settlement time.

¹⁶ OCC submitted the relevant portions of the presentation provided at the April 16, 2019 FRAC meeting in confidential Exhibit 3.

to mitigate the risks associated with the buy-in/sell-out described above.

OCC proposes to amend OCC Rules 2211 and 2211A to require buy-in or sell-out transactions to be complete by the settlement time for a Clearing Member's obligations to OCC, defined in Article I of the By-Laws,¹⁷ on the stock loan business day after OCC gives non-defaulting Clearing Members the buy-in/sell-out instruction. If a non-defaulting Clearing Member does not execute the trades and provide notice by that time, OCC would terminate the Stock Loan and effect settlement based upon the Marking Price at the close of business the previous business day (*i.e.*, the day that OCC provided the instruction).

OCC believes the proposed changes help to mitigate the risks associated with the difference in timing between close-out of stock loan positions and an auction for the remainder of defaulting Clearing Member's portfolio. In the typical case, an auction to close positions for other products would occur on the morning prior to market opening on the day after a default event occurs. Accelerating the deadline for buy-in or sell-out transactions to that morning—rather than the end of the stock loan business day—would reduce credit and liquidity risks by aligning liquidation timing across products more closely. OCC also believes the proposed changes helps to mitigate credit risks by ensuring that the close-out process for the Stock Loan Programs would occur in a manner consistent with OCC's two-day liquidation assumption (which is applicable to all products without differentiation). In addition, OCC believes using the last Marking Price available in its system prior to the time by which a Clearing Member is obligated to take action helps manage risk in situations where a Clearing Member fails to take action because OCC's automated systems are designed to determine the Marking Price based on closing securities prices. The manual processes that OCC would need to institute to pull pricing information other than closing prices would make the stock loan close-out process more susceptible to delay and errors.

Consistency With the Clearing Supervision Act

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk

¹⁷ By-Law Article I, Section 1.S.(16) defines "settlement time" with respect of a Clearing Member's obligations to OCC to mean 9:00 a.m. Central Time.

management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.¹⁸ Section 805(a)(2) of the Clearing Supervision Act¹⁹ also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like OCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act²⁰ states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and the Exchange Act in furtherance of these objectives and principles.²¹ Rule 17Ad-22 requires registered clearing agencies, like OCC, to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.²² Therefore, the Commission has stated²³ that it believes it is appropriate to review changes proposed in advance notices against Rule 17Ad-22 and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act.²⁴

OCC believes the proposed changes are consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act.²⁵ The proposed changes are generally designed to enhance OCC's overall framework for managing member defaults by mitigating credit and liquidity risks associated with the difference in timing between the close-out of a defaulting Clearing Member's stock loan positions with the auction of the remainder of its positions and

¹⁸ 12 U.S.C. 5461(b).

¹⁹ 12 U.S.C. 5464(a)(2).

²⁰ 12 U.S.C. 5464(b).

²¹ 17 CFR 240.17Ad-22. See Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7-08-11) ("Clearing Agency Standards"); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14) ("Standards for Covered Clearing Agencies").

²² 17 CFR 240.17Ad-22.

²³ See, e.g., Exchange Act Release No. 86182 (June 24, 2019), 84 FR 31128, 31129 (June 28, 2019) (SR-OCC-2019-803).

²⁴ 12 U.S.C. 5464(b).

²⁵ *Id.*

ensuring that the close-out occurs within OCC's two-day liquidation time horizon. These proposed changes would help OCC avoid credit losses or liquidity shortfalls that could disrupt OCC's operations. In this way, OCC believes that the proposed enhancements to its overall framework for managing liquidity risk would improve OCC's resilience as a systemically important market utility by promoting robust risk management; promoting safety and soundness; reducing systemic risks; and supporting the stability of the broader financial system.

OCC also believes that the proposed changes are consistent with the risk management standards adopted by the Commission under Section 805(a)(2) of the Clearing Supervision Act;²⁶ specifically, Rule 17Ad-22(e)(13)²⁷ and Rule 17Ad-22(e)(23).²⁸ Rule 17Ad-22(e)(13) requires covered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to, in part, ensure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations in the event of a Clearing Member default.²⁹ By more closely aligning the close-out of stock loan positions with the close-out of other positions, these proposed changes to OCC's default management processes would help mitigate credit and liquidity risks should the price of the stock loan positions move unfavorably between the time of auction and determination of the final settlement price for remaining buy-in/sell-out transactions and should that price differential exceed the amount of margin on deposit for such positions. In addition, the proposed changes would give OCC the authority and operational capacity to take timely action to contain credit losses by authorizing OCC to cash settle positions by the close of OCC's two-day liquidation time horizon should a non-defaulting Clearing Member fail to report buy-in or sell-out transactions as instructed. For these reasons, OCC believes the proposed changes are reasonably designed to ensure that OCC's default management processes contain losses and liquidity demands and continue to meet settlement demands in the event of a Clearing Member default.

In addition, Rule 17Ad-22(e)(23) requires covered clearing agencies to

maintain written policies and procedures reasonably designed to, among other things, provide for publicly disclosing all relevant rules and material procedures, including key aspects of its default rules and procedures.³⁰ The proposed changes would amend OCC's Rules, which are available on OCC's websites, to provide for the new deadline for non-defaulting Clearing Members to buy-in or sell-out if so instructed by OCC in the event of a Clearing Member default, as well as how OCC would close out a stock loan position if a non-defaulting Clearing Member failed to do so. Therefore, OCC believes the proposed changes would disclose default rules and procedures to the public and to Clearing Members so that they can understand their obligations in the event of a Clearing Member default.

For the foregoing reasons, OCC believes that the proposed changes are consistent with Section 805(b) of the Clearing Supervision Act³¹ and Rules 17Ad-22(e)(13)³² and (e)(23)³³ under the Exchange Act.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its website of proposed changes that are implemented. The proposal shall not

take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-OCC-2020-805 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-OCC-2020-805. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the self-regulatory organization.

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-OCC-2020-805 and should be submitted on or before August 31, 2020.

²⁶ 12 U.S.C. 5464(a)(2).

²⁷ 17 CFR 240.17Ad-22(e)(13).

²⁸ 17 CFR 240.17Ad-22(e)(23).

²⁹ 17 CFR 240.17Ad-22(e)(13).

³⁰ 17 CFR 240.17Ad-22(e)(23).

³¹ 12 U.S.C. 5464(b).

³² 17 CFR 240.17Ad-22(e)(7).

³³ 17 CFR 240.17Ad-22(e)(23).

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-17745 Filed 8-13-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89511; File No. SR-NYSEArca-2020-72]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Certain Changes Regarding the Underlying Benchmark for the ProShares Ultra Bloomberg Crude Oil ETF and ProShares UltraShort Bloomberg Crude Oil ETF

August 10, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 31, 2020, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes certain changes regarding the underlying benchmark for the ProShares Ultra Bloomberg Crude Oil ETF and ProShares UltraShort Bloomberg Crude Oil ETF, which are currently listed and traded on the Exchange under NYSE Arca Rule 8.200-E (Trust Issued Receipts). The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text

of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently lists and trades shares of the ProShares Ultra Bloomberg Crude Oil ETF and ProShares UltraShort Bloomberg Crude Oil ETF (each a “Fund” and, together, the “Funds”) under NYSE Arca Rule 8.200-E (Trust Issued Receipts). The Exchange proposes certain changes regarding the benchmark index underlying the Funds. Shares of the Funds initially were approved for listing on the American Stock Exchange LLC (“Amex”) in 2008,⁴ and were subsequently listed on the Exchange in 2008.⁵

The Funds are series of the ProShares Trust II (“Trust”),⁶ ProShare Capital Management LLC (“Managing Owner” or “Sponsor”) serves as the commodity pool operator for each Fund. The Managing Owner is registered as a commodity pool operator with the Commodity Futures Trading Commission, and with the National Futures Association. The Funds were identified in the Prior Amex Releases as the Ultra DJ-AIG Crude Oil ProShares

and UltraShort DJ-AIG Crude Oil ProShares, respectively.⁷

The Prior Amex Releases stated that the Ultra DJ-AIG Crude Oil ProShares (now known as the ProShares Ultra Bloomberg Crude Oil ETF) seeks daily investment results, before fees and expenses, that correspond to twice (200%) the daily performance of the Fund’s underlying benchmark (described below); and the UltraShort DJ-AIG Crude Oil ProShares (now known as ProShares UltraShort Bloomberg Crude Oil ETF) seeks daily investment results, before fees and expenses, that correspond to twice the inverse (-200%) of the daily performance of the Fund’s underlying benchmark. The Prior Amex Releases stated that the Funds may hold any combination of investments, including cash, securities, options on securities and indices, commodities, futures contracts, options on futures contracts, forward contracts, equity caps, collars, and floors, and swap agreements (collectively, “Financial Instruments”).

The Funds’ Current Benchmark

The Funds’ underlying benchmark (“Current Benchmark”) was identified in the Prior Amex Releases as the Dow Jones-AIG Crude Oil Sub-Index Excess Return. The Dow Jones-AIG Crude Oil Sub-Index Excess Return was renamed the Bloomberg WTI Crude Oil Subindex as of July 1, 2014, after Bloomberg

⁷ The Commission has previously approved listing of Trust Issued Receipts based on oil on the Amex and NYSE Arca. *See, e.g.*, Securities Exchange Act Release Nos. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR-Amex-2005-127) (order approving listing and trading of shares of United States Oil Fund, LP); 57188 (January 23, 2008), 73 FR 5607 (January 30, 2008) (SR-Amex-2007-70) (order approving listing and trading of shares of United States Heating Oil Fund, LP and United States Gasoline Fund, LP); 61881 (April 9, 2010), 75 FR 20028 (April 16, 2010) (SR-NYSEArca-2010-14) (order approving listing and trading of shares of United States Brent Oil Fund, LP); 62527 (July 19, 2010), 75 FR 4360 (July 26, 2010) (order approving listing and trading of shares of United States Commodity Index Fund); 81655 (September 19, 2017), 82 FR 44678 (September 25, 2017) (SR-NYSEArca-2016-177) (Notice of Filing of Amendment No. 4, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4, Relating to the Listing and Trading of Shares of the USCF Canadian Crude Oil Index Fund Under NYSE Arca Rule 8.200-E); 81686 (September 22, 2017), 82 FR 45643 (September 29, 2017) (SR-NYSEArca-2017-05) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3 Thereto, to List and Trade Shares of Direxion Daily Crude Oil Bull 3x Shares and Direxion Daily Crude Oil Bear 3x Shares under NYSE Arca Equities Rule 8.200); 80427 (April 11, 2017), 82 FR 18058 (April 14, 2017) (SR-NYSEArca-2016-173) (Order Approving a Proposed Rule Change, as Modified by Amendments No. 2 and No. 3 Thereto, To List and Trade Shares of the United States 3x Oil Fund and United States 3x Short Oil Fund Under NYSE Arca Equities Rule 8.200, Commentary .02).

⁴ *See* Securities Exchange Act Release Nos. 57932 (June 5, 2008), 73 FR 33467 (June 12, 2008) (SR-Amex-2008-39) (Notice of Filing of Proposed Rule Change and Amendment No. 1 thereto Relating to the Listing and Trading of Trust Issued Receipts that Directly Hold Investments in Certain Financial Instruments and to Permit the Listing and Trading of Shares of Fourteen Funds of the Commodities and Currency Trust) (“Prior Amex Notice”); 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR-Amex-2008-39) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of Trust Issued Receipts that Directly Hold Investments in Certain Financial Instruments and to Permit the Listing and Trading of Shares of Fourteen Funds of the Commodities and Currency Trust) (“Prior Amex Order” and, together with the Prior Amex Notice, the “Prior Amex Releases”).

⁵ *See* Securities Exchange Act Release No. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR-NYSEArca-2008-91) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Regarding the Listing of Fourteen Funds of the Commodities and Currency Trust).

⁶ *See* Securities Exchange Act Release No. 58647 (September 25, 2008), 73 FR 57399 (October 2, 2008) (SR-NYSEArca-2008-99) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the ProShares Trust II) (“Prior NYSE Arca Notice”).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

Finance L.P. replaced Dow Jones as the index administrator. Each Fund changed its name to reflect this change. The Current Benchmark aims to track the price of nearby futures contracts of sweet, light crude oil traded on the New York Mercantile Exchange, Inc. (“NYMEX”). It consists of a single WTI crude oil futures contract selected from the three nearest expiration dates for such contract. The Current Benchmark reflects the cost of rolling the futures contracts included in the Current Benchmark, without regard to income earned on cash positions. The Current Benchmark is a subindex of the Bloomberg Commodity Index and conforms to the representations in the Prior Amex Releases regarding the Dow Jones-AIG Crude Oil Sub-Index Excess Return.

As stated in the Prior Amex Releases, in seeking to achieve each Fund’s investment objective, the Managing Owner determines the type, quantity, and mix of investment positions that it believes in combination should produce daily returns consistent with a Fund’s investment objective. Each Fund invests principally in any one of, or combinations of, Financial Instruments with respect to the underlying benchmark to the extent determined appropriate by the Managing Owner. In addition, each Fund may establish long or short positions in Financial Instruments as the Managing Owner believes will further the investment objective of each Fund.

The Funds’ New Benchmark

The Trust intends to change the underlying benchmark for the Funds from the Current Benchmark to a new benchmark, the Bloomberg Commodity Balanced WTI Crude Oil Index the (“New Benchmark”). Bloomberg Index Services Limited (“Bloomberg”) is the index administrator for the New Benchmark. The Trust intends to amend the current registration statement for the Funds to implement this change.⁸

According to the Registration Statement, the New Benchmark aims to track the performance of three separate contract schedules for West Texas Intermediate (“WTI”) Crude Oil futures traded on NYMEX. The contract schedules are equally-weighted in the New Benchmark (1/3 each) at each semi-

annual reset in March and September. At each semi-annual reset date, one-third of the New Benchmark is designated to follow a monthly roll schedule. Each month this portion of the New Benchmark rolls from the current futures contract (called “Lead” by Bloomberg, and which expires one month out) into the following month’s contract (called “Next” by Bloomberg and which expires two months out).⁹ The second portion of the New Benchmark is always designated to be in a June contract, and follows an annual roll schedule in March of each year in which the June contract expiring in the current year is rolled into the June contract expiring the following year.¹⁰ The remaining portion is always designated to be in a December contract, and follows an annual roll schedule in September of each year in which the December contract expiring in the current year is rolled into the December contract expiring the following year.¹¹ The weighting (*i.e.*, percentage) of each of the three contract schedules included in the New Benchmark fluctuate above or below one-third between the semi-annual reset dates due to changing futures prices and the impact of rolling the futures positions.¹² As a result, the weighting of each contract in the New Benchmark will “drift” away from equal weighting. The New Benchmark reflects the cost of rolling the futures contracts included in the New Benchmark, without regard to income earned on cash positions.

Values for the New Benchmark are determined on each day on which NYMEX is open for trading. The New

⁹ For example, at the beginning of January each year, one third of the New Benchmark will be rolled from the March futures contract (which expires in February) to the April futures contract (which expires in March). As a result of this roll, this portion of the New Benchmark will be exposed to the futures contract that is third closest to expiration (*i.e.*, the April contract—as each of the February, March and April contracts trade at the beginning of January).

¹⁰ For example, at the beginning of March 2021, the second portion of the New Benchmark will be rolled from the June 2021 futures contract to the June 2022 futures contract.

¹¹ For example, at the beginning of September 2020, the third portion of the New Benchmark will be rolled from the December 2020 futures contract to the December 2021 futures contract.

¹² For example, at the close of the first business day of March each year, the target weights for each contract in the New Benchmark will be reset to 33.33%, 33.33% and 33.33%. Each subsequent business day up to the September semi-annual reset date, the contract weights will fluctuate away from 33.33%, 33.33%, 33.33% depending on futures prices and the impact from rolling the futures. At the close of the first business day of September of that same year, the target weights will once again be reset to 33.33%, 33.33%, 33.33% and will fluctuate thereafter until the next semi-annual reset date.

Benchmark’s methodology and values are publicly available on Bloomberg’s website.¹³

Differences Between the Current Benchmark and the New Benchmark

The Funds’ Current Benchmark includes only a single WTI crude oil futures contract selected from the three nearest expiration dates. As noted herein, the New Benchmark is equally weighted (at each semi-annual reset date) across three different WTI futures contract schedules and includes longer-dated contracts than those included in the Current Benchmark.

Other than the change to the Funds’ underlying benchmark, as described above, each of the Funds will continue to comply with all other listing requirements set forth in the Prior Amex Releases, the Prior NYSE Arca Notice and NYSE Arca Rule 8.200–E, as applicable.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹⁴ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Sponsor has represented to the Exchange that it believes that the proposed change to the New Benchmark should benefit Fund investors by diversifying the Funds’ exposure across futures contracts with three different expiration dates, including longer-dated contracts than those included in the Current Benchmark, thereby potentially reducing the volatility of each Fund. The Sponsor has further represented to the Exchange that it believes the potential for lower volatility is especially important to Fund investors in light of global events during the first half of 2020, which could continue for the foreseeable future, including the COVID–19 pandemic, a significant oversupply in the crude oil market, a significant increase in volatility, and contango that resulted in a negative price in the May 2020 WTI crude oil futures contract.

The Funds’ benchmark will continue to be based on pricing of WTI crude oil futures, and the types of Financial Instruments in which the Funds may

¹³ See: <https://data.bloombergfp.com/professional/sites/10/Bloomberg-Commodity-Balanced-WTI-Crude-Oil-Index-Methodology.pdf>

¹⁴ 15 U.S.C. 78f(b)(5).

⁸ See Pre-Effective Amendment No. 2 to the Trust’s registration statement on Form S–3 filed with the Commission on July 15, 2020 (File No. 333–237993) (“Registration Statement”). The representations herein relating to the Funds and the Trust are based, in part, on the Registration Statement. The Trust will not change each Fund’s underlying benchmark until this proposed rule change is effective and operative.

invest are consistent with those described in the Prior Amex Releases. The Exchange notes that the Commission has previously approved listing of Trust Issued Receipts based on oil on the Amex and NYSE Arca.¹⁵

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes that the proposed rule change will facilitate fair and orderly trading of Shares of the Funds utilizing the New Benchmark that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁸ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁹ 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 states that waiver of the 30-day operative delay would permit the Funds to more

quickly change their underlying benchmark. According to the Exchange, other than the change to the Funds' underlying benchmark, as described above, each of the Funds will continue to comply with all other listing requirements set forth in the Prior Amex Releases, the Prior NYSE Arca Notice and NYSE Arca Rule 8.200-E, as applicable. The proposed rule change does not raise any novel regulatory issues, and the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.²⁰

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-NYSEArca-2020-72 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEArca-2020-72. 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

²⁰ 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).

internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2020-72, and should be submitted on or before September 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-17753 Filed 8-13-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89516; File No. SR-C2-2020-009]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 6.61 Concerning Off-Floor Transfers

August 10, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 29, 2020, Cboe C2 Exchange, Inc. (the "Exchange" or "C2") 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

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁵ See note 7, *supra*.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 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.

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ 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 C2 Exchange, Inc. (the “Exchange” or “C2”) proposes to amend Rule 6.61. The text of the proposed rule change is provided below. (additions are *italicized*; deletions are [bracketed])

* * * * *

Rules of Cboe C2 Exchange, Inc.

* * * * *

Rule 6.61. Off-Floor Transfers of Positions

(a)–(c) No change.

(d) Prior Written Notice. A Trading Permit Holder(s) and its Clearing Trading Permit Holder(s) (to the extent that the Trading Permit Holder is not self-clearing) must submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting an off-floor transfer from or to the account(s) of a Trading Permit Holder(s), except that notification is not required for transfers [to correct errors] *effected* pursuant to subparagraph (a)(1) or (a)(2) of this Rule.

* * * * *

(g) Routine, Recurring Transfers. The off-floor transfer procedure set forth in this Rule is intended to facilitate non-routine, non-recurring movements of positions[. The off-floor transfer procedure] *and* is not to be used repeatedly or routinely[in circumvention of the normal auction market process], *except for transfers between accounts of the same person pursuant to subparagraph (a)(2). The off-floor transfer procedure may not be used in circumvention of the normal auction process.*

* * * * *

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/), 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

Rule 6.61 describes exceptions to the prohibition against off-floor transactions set forth in Rule 6.60, subject to certain conditions. The exception in Rule 6.61(a)(2) provides that off-floor transfers of positions are permissible if from one account to another account where no change in ownership is involved (*i.e.*, accounts of the same person),⁵ provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements. These transfers are subject to, among other things, the requirement to submit prior written notice of the transfers to the Exchange pursuant to paragraph (d) and the restriction on effecting these transfers repeatedly or routinely.

The proposed rule change excepts off-floor position transfers effected pursuant to Rule 6.61(a)(2) from the prior written notice requirement in paragraph (d) and from repeated, recurring use restriction in paragraph (g). Off-floor position transfers pursuant to Rule 6.61(a)(2) do not involve a change in ownership. In other words, such transfers may only occur between the same individual or legal entity. These types of transfers are merely transfers of positions from one account to another, both of which accounts are attributable to the same individual or legal entity, and thus the transferred option positions will continue to be attributable to the same person. A market participant effecting an off-floor position transfer pursuant to Rule 6.61(a)(2) is analogous to an individual

⁵ Rule 1.1 defines “person” as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust, or unincorporated organization, or any governmental entity or agency or political subdivision thereof.

transferring funds from a checking account to a savings account, or from an account at one bank to an account at another bank—the money still belongs to the same person, who is just holding it in a different account for personal financial reasons.

Because there is no change in ownership of positions transferred pursuant to Rule 6.61(a)(2), the Exchange believes it is appropriate to permit them to occur as routinely and repeatedly as a market participant would like. These transfers will continue to be subject to the prohibition on netting set forth in Rule 6.61(b), and thus may not result in the closing of any positions. While the off-floor position transfers permitted by Rule 6.61 were intended to accommodate non-routine and non-recurring transfers, the Exchange believes permitting routine, recurring off-floor position transfers that do not result in a change in ownership or reduction in open interest is consistent with the purpose of not being used to circumvent the normal auction purpose. Additionally, given that these transfers may occur on a regular basis in accordance with a market participants’ business needs and procedures, the Exchange believes prior written notice would be onerous and would not serve any purpose given the lack of change in ownership and in open interest. The Exchange believes this will provide market participants with additional flexibility to structure their option position accounts as they believe is appropriate and move their positions between accounts as they deem necessary and appropriate for their business and trading needs, including for risk management purposes.

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.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ 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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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)⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest because it will provide market participants with a more efficient process to transfer open positions between their own accounts in accordance with their own business and trading needs, including to respond to then-current market conditions. Because these transfers would not result in a change in ownership or a reduction in open interest, the Exchange believes the proposed rule change remains consistent with the purpose of Rule 6.61, which was to prohibit use of the off-floor transfer procedure in circumvention of the normal auction process, as the normal auction process involves the opening or closing of positions through a transaction among multiple market participants. Market participants may maintain different accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. Given that these transfers may occur on a regular basis in accordance with a market participants' business needs and procedures, the Exchange believes prior written notice would be onerous and would not serve any purpose given the lack of change in ownership and in open interest. Therefore, the proposed rule change will benefit investors by permitting market participants to manage the open positions in their accounts in a manner consistent with their businesses.

The Exchange recognizes the numerous benefits of executing options transactions on an exchange, including price transparency, potential price improvement, and a clearing guarantee. However, the Exchange believes it is appropriate to permit position transfers among accounts of the same individual or legal entity where there is no impact on open interest to occur off the exchange, as these benefits are inapplicable to those transfers. These transfers have a narrow scope and are intended to permit market participants to achieve their own business needs.

These transfers are not intended to be a competitive trading tool. There is no need for price discovery or improvement, as the transfer merely moves positions to different accounts for the same person and does not open or close any positions. These transfers will result in no change in ownership. The transactions that resulted in the open positions to be transferred pursuant to Rule 6.61(a)(2) were already guaranteed by a clearing member of The Options Clearing Corporation ("OCC"), and the positions may not be closed pursuant to the transfer and will continue to be subject to OCC rules, as they will continue to be held in an account with an OCC clearing member.

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. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change will apply to all market participants in the same manner. All market participants will be able to effect off-floor position transfers pursuant to Rule 6.61(a)(2) on a recurring or routine basis without providing the Exchange with notice of such transfers. The Exchange does not believe 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 it relates solely to the notice required for off-floor transfers that may occur today, and the frequency with which those transfers may occur. These transfers will continue to not result in a change in ownership or netting, and thus will have no impact on outstanding option positions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section

19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ 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 Act¹¹ and Rule 19b-4(f)(6)¹² thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-C2-2020-009 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-C2-2020-009. 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

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

⁸ *Id.*

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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-C2-2020-009 and should be submitted on or before September 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-17757 Filed 8-13-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89519; File No. SR-CboeEDGX-2020-035]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 20.10 Concerning Off-Floor Transfers

August 10, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 29, 2020, Cboe EDGX Exchange, Inc. (the "Exchange" or "'EDGX'") 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 Act³ 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 EDGX Exchange, Inc. (the "Exchange" or "'EDGX'") proposes to amend Rule 20.10. The text of the proposed rule change is provided below. (additions are *italicized*; deletions are [bracketed])

* * * * *

Rules of Cboe EDGX Exchange, Inc.

* * * * *

Rule 20.10. Off-Floor Transfers of Positions

(a)-(c) No change.

(d) Prior Written Notice. A Member(s) and its Clearing Member(s) (to the extent that the Member is not self-clearing) must submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting an off-floor transfer from or to the account(s) of a Member(s), except that notification is not required for transfers [to correct errors] *effected* pursuant to subparagraph (a)(1) *or (a)(2)* of this Rule.

* * * * *

(g) Routine, Recurring Transfers. The off-floor transfer procedure set forth in this Rule is intended to facilitate non-routine, non-recurring movements of positions. The off-floor transfer procedure] *and* is not to be used repeatedly or routinely[in circumvention of the normal auction market process], *except for transfers between accounts of the same person pursuant to subparagraph (a)(2). The off-floor transfer procedure may not be used in circumvention of the normal auction process.*

* * * * *

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), 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

Rule 20.10 describes exceptions to the prohibition against off-floor transactions set forth in Rule 20.9, subject to certain conditions. The exception in Rule 20.10(a)(2) provides that off-floor transfers of positions are permissible if from one account to another account where no change in ownership is involved (*i.e.*, accounts of the same person),⁵ provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements. These transfers are subject to, among other things, the requirement to submit prior written notice of the transfers to the Exchange pursuant to paragraph (d) and the restriction on effecting these transfers repeatedly or routinely.

The proposed rule change excepts off-floor position transfers effected pursuant to Rule 20.10(a)(2) from the prior written notice requirement in paragraph (d) and from repeated, recurring use restriction in paragraph (g). Off-floor position transfers pursuant to Rule 20.10(a)(2) do not involve a change in ownership. In other words, such transfers may only occur between the same individual or legal entity. These types of transfers are merely transfers of positions from one account to another, both of which accounts are attributable to the same individual or legal entity, and thus the transferred option positions will continue to be attributable to the same person. A market participant effecting an off-floor position transfer pursuant to Rule 20.10(a)(2) is analogous to an individual transferring funds from a checking account to a savings account, or from an account at one bank to an account at another bank—the money still belongs to the same person, who is just holding it in a different account for personal financial reasons.

Because there is no change in ownership of positions transferred pursuant to Rule 20.10(a)(2), the Exchange believes it is appropriate to permit them to occur as routinely and repeatedly as a market participant would like. These transfers will

⁵ Rule 1.5(p) defines "person" as a natural person, partnership, corporation, limited liability company, entity, government, or political subdivision, agency or instrumentality of a government.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

continue to be subject to the prohibition on netting set forth in Rule 20.10(b), and thus may not result in the closing of any positions. While the off-floor position transfers permitted by Rule 20.10 were intended to accommodate non-routine and non-recurring transfers, the Exchange believes permitting routine, recurring off-floor position transfers that do not result in a change in ownership or reduction in open interest is consistent with the purpose of not being used to circumvent the normal auction purpose. Additionally, given that these transfers may occur on a regular basis in accordance with a market participants' business needs and procedures, the Exchange believes prior written notice would be onerous and would not serve any purpose given the lack of change in ownership and in open interest. The Exchange believes this will provide market participants with additional flexibility to structure their option position accounts as they believe is appropriate and move their positions between accounts as they deem necessary and appropriate for their business and trading needs, including for risk management purposes.

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.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ 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)⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market

and a national market system, and, in general, to protect investors and the public interest because it will provide market participants with a more efficient process to transfer open positions between their own accounts in accordance with their own business and trading needs, including to respond to then-current market conditions. Because these transfers would not result in a change in ownership or a reduction in open interest, the Exchange believes the proposed rule change remains consistent with the purpose of Rule 20.10, which was to prohibit use of the off-floor transfer procedure in circumvention of the normal auction process, as the normal auction process involves the opening or closing of positions through a transaction among multiple market participants. Market participants may maintain different accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. Given that these transfers may occur on a regular basis in accordance with a market participants' business needs and procedures, the Exchange believes prior written notice would be onerous and would not serve any purpose given the lack of change in ownership and in open interest. Therefore, the proposed rule change will benefit investors by permitting market participants to manage the open positions in their accounts in a manner consistent with their businesses.

The Exchange recognizes the numerous benefits of executing options transactions on an exchange, including price transparency, potential price improvement, and a clearing guarantee. However, the Exchange believes it is appropriate to permit position transfers among accounts of the same individual or legal entity where there is no impact on open interest to occur off the exchange, as these benefits are inapplicable to those transfers. These transfers have a narrow scope and are intended to permit market participants to achieve their own business needs. These transfers are not intended to be a competitive trading tool. There is no need for price discovery or improvement, as the transfer merely moves positions to different accounts for the same person and does not open or close any positions. These transfers will result in no change in ownership. The transactions that resulted in the open positions to be transferred pursuant to Rule 20.10(a)(2) were already guaranteed by a clearing member of The Options Clearing Corporation ("OCC"), and the positions

may not be closed pursuant to the transfer and will continue to be subject to OCC rules, as they will continue to be held in an account with an OCC clearing member.

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. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change will apply to all market participants in the same manner. All market participants will be able to effect off-floor position transfers pursuant to Rule 20.10(a)(2) on a recurring or routine basis without providing the Exchange with notice of such transfers. The Exchange does not believe 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 it relates solely to the notice required for off-floor transfers that may occur today, and the frequency with which those transfers may occur. These transfers will continue to not result in a change in ownership or netting, and thus will have no impact on outstanding option positions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ 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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ *Id.*

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)¹² thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2020-035 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-CboeEDGX-2020-035. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2020-035 and should be submitted on or before September 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-17759 Filed 8-13-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89513; File No. SR-BX-2020-015]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4764 and Rule 4765

August 10, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 29, 2020, Nasdaq BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4764 (BX Kill Switch) and Rule 4765 (Exchange Sharing of Participant Risk Settings) Commentary to provide Participants with additional optional settings.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 purpose of the proposed rule changes under BX Rule 4764 (BX Kill Switch) and Rule 4765 (Exchange Sharing of Participant Risk Settings) Commentary is to provide Participants with additional optional settings in order to assist them in their efforts to manage their risk levels. Once the optional risk controls are set, the Exchange is authorized to take automated action if a designated risk level for a Participant is exceeded. Such risk settings would provide Participants with enhanced abilities to manage their risk with respect to orders on the Exchange.

The proposed pre-trade risk controls described below are meant to supplement, and not replace, the Participant's own internal systems, monitoring and procedures related to risk management. For clarification, the Exchange does not guarantee that these controls will be sufficiently comprehensive to meet all of a Participant's needs, nor are the controls designed to be the sole means of risk management, and using these controls will not necessarily meet a Participant's obligations required by Exchange or federal rules (including, without limitation, the Rule 15c3-5 under the Act³ ("Rule 15c3-5")). Use of the Exchange's Kill Switch or proposed risk setting in Rule 4765 (Exchange Sharing of Participant Risk Settings) Commentary (h) will not automatically constitute compliance with Exchange or federal rules and responsibility for compliance with all Exchange and SEC rules remains with the Participant.⁴

³ 17 CFR 240.15c3-5.

⁴ See Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Risk Management Controls for Brokers or Dealers with

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

Rule 4764(a) provides the definition of the BX Kill Switch, which is an optional tool offered at no charge that enables participants to establish a pre-determined level of Net Notional Risk Exposure (“NNRE”), to receive notifications as the value of executed orders approaches the NNRE level, and to have order entry ports disabled and open orders administratively cancelled when the value of executed orders exceeds the NNRE level. Most order entry ports are assigned to one MPID. In the event that multiple MPIDs are assigned to one port, only the affected MPID is disabled from the port. The NNRE, although not explicitly defined,⁵ accounts for the daily dollar amount for buy and sell orders across all symbols, where both buy and sell orders are counted as positive values. For purpose of calculating NNRE, only executed orders are included.

The Exchange is renaming the NNRE by proposing to remove references to “Net Notional Risk Exposure” and to replace them with “Gross Executed Risk Exposure”. This risk level refers to a pre-established maximum daily dollar amount for buy and sell orders across all symbols, where both buy and sell orders are counted as positive values. For purposes of calculating Gross Executed Risk Exposure, only executed orders are included. The Exchange is not changing the NNRE calculation under the proposed amendment. Rather, it will be renamed as the Gross Executed Risk Exposure. This risk setting is identical to Nasdaq Stock Market LLC (“Nasdaq”) Rule 6130(a)(1) and similar to Cboe BZX Exchange, Inc.’s (“BZX”) Interpretations and Policies .03(a)(1) of BZX Rule 11.13.

The Exchange is also proposing to add an additional risk setting titled “Gross Notional Risk Exposure,” which refers to a pre-established maximum daily dollar amount for buy and sell orders across all symbols, where both buy and sell orders are counted as positive values. For purposes of calculating Gross Notional Risk Exposure, unexecuted orders on the Exchange book and executed orders are included. This setting is identical to Nasdaq Rule 6130(a)(2) and similar to Interpretations and Policies .03(a)(2) of BZX Rule 11.13, except BZX excludes unexecuted orders and counts purchases as positive values and sales are counted negative values. Additionally, the Exchange’s rule is similar to New York Stock Exchange

LLC (“NYSE”) Rule 7.19(a)(5) and NYSE Arca, Inc. (“Arca”) Rule 7.19–E(a)(5), except NYSE and Arca include orders routed on arrival. While the current functionality would continue to be available, this additional proposed risk setting would allow a Participant to manage its risk more comprehensively, instead of relying solely on the NNRE functionality offered today. For purposes of Rule 4764, the Exchange proposes to use the term “Participant” as defined in Rule 4701(c).⁶

The Exchange also proposes to make a conforming change to Rule 4764(b) by removing “Net Notional Risk Exposure” and replacing it with “Establishing and Adjusting Levels.” The Exchange is also proposing to specify that a Participant’s clearing member, as discussed below, may set the risk levels for each MPID individually. This action is identical to Nasdaq Rule 6130(b) and similar to Interpretations and Policies .03(b)(1) of BZX Rule 11.13 and NYSE Rule 7.19(b)(3)(B) and Arca Rule 7.19–E(b)(3)(B), except unlike NYSE and Arca, the Exchange does not allow for setting risk levels at the sub-ID of an MPID. Additionally, the proposal allows for the clearing member, in addition to the Participant, to set and adjust the values before the beginning of a trading day as well as set and adjust them during the trading day. This is identical to Nasdaq Rule 6130(b) and similar to Interpretations and Policies .03(b) of BZX Rule 11.13, NYSE Rule 7.19(b)(3)(A) and Arca Rule 7.19–E(b)(3)(A).

The Exchange is proposing under Rule 4764(c) to allow clearing members, if designated pursuant to Rule 4764(d), to receive notifications when the total value of executed orders, and if applicable, unexecuted orders associated with an MPID exceeds 50, 75, 85, 90, and 95 percent of the applicable risk level values. This rule is identical to Nasdaq Rule 6130(c) and similar to Interpretations and Policies .03(d) of

⁶ Pursuant to BX Rule 4701(c), a “Participant” is defined as an entity that fulfills the obligations contained in Rule 4611 regarding participation in the System, and shall include: (1) “Equities ECNs,” members that meet all of the requirements of Rule 4623, and that participates in the System with respect to one or more System Securities; (2) “Equities Market Makers” or “Market Makers”, members that are registered as Equities Market Makers for purposes of participation in the System on a fully automated basis with respect to one or more System Securities; (3) “Order Entry Firms,” members that are registered as Order Entry Firms for purposes of entering orders in System Securities into the System. This term shall also include any Electronic Communications Network or Alternative Trading System (as such terms are defined in Regulation NMS) that fails to meet all the requirements of Rule 4623.

BZX Rule 11.13, NYSE Rule 7.19(b)(4), and Arca Rule 7.19–E(b)(4).

A clearing member guarantees transactions executed on BX for members with whom it has entered into a clearing arrangement, and therefore bears the risk associated with those transactions. Because clearing members bear the risk on behalf of their Participant, the Exchange believes that it is appropriate for the clearing member to have knowledge of what risk settings the Participant may utilize within the Exchange’s trading system, as well as the option to set and adjust the risk levels. The proposal will permit clearing members who have a financial interest in the risk settings of Participants with whom the Participants have entered into clearing arrangements to better monitor and manage the potential risks assumed by clearing members, thereby providing clearing members with greater control and flexibility over setting their own risk tolerance and exposure and aiding clearing members in complying with the Act. Therefore, the Exchange proposes to make the proposed optional risk settings in Rule 4764 available to clearing members, if so authorized by the Participant.

Proposed Rule 4764(d) would allow for a Participant that does not self-clear to allocate responsibility for establishing and adjusting the risk levels to a clearing member that clears transactions on behalf of the Participant. A Participant may request to sign up for the Kill Switch optional setting by contacting Nasdaq Subscriber Services or by completing a Front End Request form.⁷ In order to allocate responsibility to a clearing member, a Participant must provide the Exchange with authorization, either by providing Nasdaq Subscriber Services with written authorization or by requesting the appropriate user role and permission for the clearing member via the Front End Request form. The Participant may adjust the user role and permissions at any time. If a Participant chooses to designate responsibility to its clearing member, the Participant may view any risk levels established by the clearing member pursuant to proposed Rule 4764(d). Additionally, by allocating responsibility to its clearing member, the Participant consents to the Exchange taking action as provided for in proposed Rule 4764(e). Even if a clearing member is designated, a Participant will continue to be notified by the Exchange of any action taken regarding its trading activity. By

⁷ The Front End Request form is available at <https://www.nasdaqtrader.com/EASP/TraderEASP.aspx?id=FrontEndForm>.

Market Access, available at <https://www.sec.gov/divisions/marketreg/faq-15c-5-risk-management-controls-bd.htm>.

⁵ The Exchange is not changing the NNRE functionality under the proposed amendment. Rather, it is being renamed as the Gross Executed Risk Exposure.

allowing Participants to allocate the responsibility for establishing and adjusting such risk settings to its clearing member, the Exchange believes clearing members may reduce potential risks that they assume when clearing for Participants of the Exchange. A Participant may revoke responsibility allocated to its clearing member at any time by following the same process described above that is used to grant the clearing member authorization.

Nasdaq, BZX, NYSE and Arca also provide similar designations to its clearing members pursuant to Nasdaq Rule 6130(d), Interpretations and Policies .03(c) of BZX Rule 11.13, NYSE Rule 7.19(b)(2), and Arca Rule 7.19–E(b)(2). However, unlike NYSE and Arca, the Exchange does not allow for multiple risk level values to be in place at one time.

The Exchange also proposes to renumber current Rule 4764(d) as Rule 4764(e) and retitle it to more accurately describe the provision by removing “Operation” and replacing it with “Breach Action and Reinstatement.” Additionally, the Exchange is proposing to clarify that when a pre-established risk level is breached and the Kill Switch is triggered, it shall result in the immediate cancellation of all unexecuted orders of any type or duration entered by the Participant via the affected MPID, and in the immediate prevention of order entry of any type via affected MPID. The Participant or the clearing member, if designated pursuant to paragraph (d), must request reactivation of the MPID before trading will be reauthorized.

As a reminder, pursuant to current Rule 4765, the Exchange will continue to share any Participant risk settings in the trading system that are specified in Rule 4764 and the Rule 4765 Commentary with the clearing member that clears transactions on behalf of the Participant even if the clearing member is not designated. Under current Rule 4765 Commentary, the Exchange offers certain risk settings applicable to a Participant on the Exchange. Proposed Rule 4765 Commentary (h) would allow for a Participant to limit the maximum dollar amount that the Participant may associate with an order placed on the Exchange. This risk setting is identical to Nasdaq Rule IM–6200–1(h) and similar to the risk control provided by NYSE pursuant to Rule 7.19(a)(3) and Arca pursuant to Rule 7.19–E(a)(3). When the Maximum Single Order Notional Check is enabled, if a Participant breaches this risk setting, the single order will be rejected by the system. The action taken is identical to Nasdaq Rule IM–6200–1(h) and similar

to NYSE Rule 7.19(c)(2) and Arca Rule 7.19–E(c)(2).

The Exchange is also proposing to make the following non-substantive conforming changes:

- Capitalize the term “Participant” when referenced throughout the rule.
- Remove the term “open orders” and replace with “unexecuted orders”.
- Remove all references to the acronym “NNRE” throughout the rule in conjunction with the removal of the reference to “Net Notional Risk Exposure.”
- Renumber Rule 4765 Commentary to conform to the addition of proposed Rule 4765 Commentary (h).

The Exchange will announce the implementation date of the proposed rule change in a Trader Alert to be published no later than 60 days following the effective date. The implementation date will be no later than 90 days following the effective date.⁸

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Specifically, the Exchange believes the proposed amendment will remove impediments to and perfect the mechanism of a free and open market and a national market system because it provides functionality for a Participant to manage its risk exposure under Rule 4764 and Rule 4765 Commentary, while also providing a notification system under Rule 4764(c) that would help to ensure the Participant and its clearing member are aware of developing issues. In addition, the proposed amendments to Rule 4764 would provide clearing members, who have assumed certain risks of Participants, greater control over risk tolerance and exposure on behalf of their correspondent Participant, while helping to ensure that both Participant and its clearing member are aware of developing issues.

A clearing member guarantees transactions executed on BX for

⁸ The Exchange will implement the Net Notional Risk Exposure and the Gross Notional Risk Exposure risk settings as soon as possible. The Maximum Single Order Notional Check will be implemented within 90 days following the effective date.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

members with whom it has entered into a clearing arrangement, and therefore bears the risk associated with those transactions. The Exchange therefore believes that it is appropriate for the clearing member to have knowledge of what risk settings the Participant may utilize within the Exchange’s trading system, as well as the option to set and adjust the risk levels. The proposal will permit clearing members who have a financial interest in the risk settings of Participants with whom the Participants have entered into clearing arrangements to better monitor and manage the potential risks assumed by clearing members, thereby providing clearing members with greater control and flexibility over setting their own risk tolerance and exposure and aiding clearing members in complying with the Act.

In addition, the Exchange believes that the proposed amendments under Rule 4764 and Rule 4765 Commentary are designed to protect investors and the public interest because the proposed functionalities are a form of risk mitigation that will aid Participants and clearing members in minimizing their financial exposure and reduce the potential for disruptive, market-wide events. The proposed Gross Executed Risk Exposure and Gross Notional Risk Exposure settings are appropriate measures to serve as an additional tool for Participants and clearing members to assist them in identifying risk exposure by identifying when the Participant is reaching its maximum dollar amount for purchases and sales across all symbols. The Exchange also believes the proposed amendments will assist Participants and clearing members in managing their financial exposure which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system. Moreover, a Participant may revoke responsibility allocated to its clearing member at any time.

Further, the Exchange believes that the proposed amendments under Rule 4764 and Rule 4765 Commentary (h) will foster cooperation and coordination with persons facilitating transactions in securities because under Rule 4764(c), the Exchange will provide alerts when a Participant’s trading activity reaches certain thresholds and under Rule 4765 Commentary (h), the Exchange will limit the Participant’s maximum dollar amount placed on an order. As such, the Exchange may help clearing members monitor the risk levels of corresponding Participants.

Finally, the Exchange believes that the proposed rule changes do not

unfairly discriminate among Participants because use of the risk settings under Rule 4764 and Rule 4765 Commentary (h) are optional and available to all Participants, and not a prerequisite for participation on the Exchange. In addition, because all orders on the Exchange would pass through the risk checks, there would be no difference in the latency experienced by Participants who have opted to use the risk settings versus those who have not opted to use them.¹¹

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the proposal will have a positive effect on competition because, it would allow the Exchange to offer risk management functionality that is comparable to functionality being offered by other national securities exchanges.¹² Moreover, by providing Participants and their clearing members additional means to monitor and control risk, the proposed rule may increase confidence in the proper functioning of the markets and contribute to additional competition among trading venues and broker-dealers. Rather than impede competition, the proposal is designed to facilitate more robust risk management by Participants and clearing members, which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on

which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁵ normally does not become operative for 30 days from the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁶ 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 Commission notes that the Exchange plans to implement the Gross Executed Risk Exposure and the Gross Notional Risk Exposure risk settings as soon as possible.¹⁷ The Commission believes that waiver of the operative delay would allow the Exchange to provide Participants and their clearing members expeditiously with additional optional settings to manage their risk levels. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹⁸

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may 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.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 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.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ According to the Exchange, the Maximum Single Order Notional Check will be implemented within 90 days following the effective date.

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-BX-2020-015 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-BX-2020-015. 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-BX-2020-015 and should be submitted on or before September 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-17755 Filed 8-13-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Wednesday, August 19, 2020.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topic:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION:

For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Dated: August 12, 2020.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2020-17927 Filed 8-12-20; 4:15 pm]

BILLING CODE 8011-01-P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2020-0034]

Public Availability of Social Security Administration Fiscal Year (FY) 2018 Service Contract Inventory

AGENCY: Social Security Administration.

ACTION: Notice of Public Availability of FY 2018 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010, we are publishing this notice to advise the public of the availability of the FY 2018 Service Contract inventory. This inventory provides information on FY 2018 service contract actions over \$25,000. We organized the information by function to show how we distribute contracted resources throughout the agency. We developed the inventory in accordance with guidance issued on December 19, 2011 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at <https://obamawhitehouse.archives.gov/sites/default/files/omb/procurement/memo/service-contract-inventory-guidance.pdf>. You can access the inventory and summary of the inventory on our homepage at the following link: <http://www.socialsecurity.gov/sci>.

FOR FURTHER INFORMATION CONTACT:

Ronnetta Mason, Office of Budget, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401. Phone (410) 597-1955, email Ronnetta.Mason@ssa.gov.

Michelle King,

Deputy Commissioner for Budget, Finance, and Management.

[FR Doc. 2020-17816 Filed 8-13-20; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF STATE

[Public Notice 11173]

60-Day Notice of Proposed Information Collection: Department of State TechWomen Evaluation Survey

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and

Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *October 13, 2020*.

ADDRESSES: You may submit comments by the following method:

- *Web:* Persons with access to the internet may comment on this notice by going to www.Regulations.gov. You can search for the document by entering "Docket Number: DOS-2020-0033" in the Search field. Then click the "Comment Now" button and complete the comment form.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Natalie Donahue, Chief of Evaluation, Bureau of Educational and Cultural Affairs, ecaevaluation@state.gov who may be reached at (202) 632-6193 or ecaevaluation@state.gov.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* TechWomen Evaluation Survey.
- *OMB Control Number:* None.
- *Type of Request:* New collection.
- *Originating Office:* Educational and Cultural Affairs (ECA).
- *Form Number:* No form.
- *Respondents:* TechWomen program mentors, program staff from ECA and the implementing partner (IP), and small sample of additional stakeholders.
- *Estimated Number of Mentor Survey Respondents:* 946.
- *Estimated Number of Mentor Survey Responses:* 709.
- *Average Time per Mentor Survey:* 30 minutes.
- *Total Estimated Mentor Survey Burden Time:* 21,270 minutes.
- *Estimated Number of Mentor Key Informant Interview (KII) Participants:* 40.
- *Average Time per Mentor KIIs:* 60 minutes.
- *Total Estimated Mentor KIIs Burden Time:* 2,400 minutes.
- *Total Estimated Burden Time:* 23,670 minutes.
- *Frequency:* Once.

¹⁹ 17 CFR 200.30-3(a)(12).

• *Obligation to Respond*: Voluntary. We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The TechWomen program seeks to “empower, connect, and support the next generation of women leaders in STEM” by providing opportunities for them to reach their full potential and become role models for women and girls in their communities. Through mentorship and exchange, the TechWomen program is designed to strengthen participants’ professional capacity, increase mutual understanding between key networks of professionals, and expand women and girls’ interest in STEM careers by exposing them to female role models. During the five-week program, foreign participants engage with female leaders in project-based mentorships at leading companies in the Silicon Valley and Bay Area, participate in professional development workshops and networking events, and travel to Washington, DC for targeted meetings and special events to conclude the program. After their completion of the program, emerging leaders and mentors have the opportunity to reconnect during delegation trips to program countries in Africa, South and Central Asia, and the Middle East, which focus on expanding networks of women in STEM fields, creating and strengthening partnerships, encouraging girls to pursue STEM careers and ensuring the sustainability of mentor-fellow relationships. This program is funded pursuant to the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2451 *et seq.*).

To evaluate the impacts of the program, the U.S. Department of State’s Bureau of Educational and Cultural

Affairs (ECA) intends to conduct an evaluation of the program covering the period of 2011 through 2019. The evaluation will determine the strength and sustainability of professional networks created by the program and the extent to which these networks have been leveraged for collaborations between Alumnae to enact change. In order to do so, ECA contracted Social Impact (SI) in early 2020 to conduct an evaluation of the TechWomen program.

Methodology

The evaluation will use a mixed-methods design including a quantitative survey and key informant interviews (KIIs). Data from these methods will be used to assess the strength of mentor-alumnae networks as a result of the TechWomen project. The evaluation’s approach prioritizes ECA utilization of recommendations to maximize the reach and impact of the TechWomen program. The evaluation will include 40 Key Informant Interviews in the Silicon Valley/Bay Area. The sampling will include Professional Mentors, Cultural Mentors, and Impact Coaches. The Evaluation Team (ET) will gather survey data using the network survey platform ONASurveys.com and will use data from the online survey to provide visual representations and analytic data of the TechWomen network structure.

Aleisha Woodward,

*Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs
Department of State.*

[FR Doc. 2020–17830 Filed 8–13–20; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 11177]

60-Day Notice of Proposed Information Collection: Certificate of Eligibility for Exchange Visitor Status (J-Nonimmigrant)

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to October 13, 2020.

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

• *Web*: Persons with access to the internet may comment on this notice by going to www.Regulations.gov. You can search for the document by entering “Docket Number: DOS–2020–0034” in the Search field. Then click the “Comment Now” button and complete the comment form.

• *Email*: JExchanges@State.gov.

• *Regular Mail*: Send written comments to: U.S. Department of State, ECA/EC, SA–4E, Washington, DC 20522–0505, ATTN: **Federal Register Notice Response**.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to G. Kevin Saba, Director, Office of Policy and Program Support, Office of Private Sector Exchange, SA–4E, Washington, DC 20522–0505; the office may be reached by email at JExchanges@state.gov and by telephone at (202) 634–4710.

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection*: Certificate of Eligibility for Exchange Visitor Status (J-Nonimmigrant).

• *OMB Control Number*: 1405–0119.

• *Type of Request*: Revision of a Currently Approved Collection.

• *Originating Office*: Bureau of Educational and Cultural Affairs, Office of Policy and Program Support (ECA/EC).

• *Form Number*: DS–2019.

• *Respondents*: U.S. Department of State designated sponsors.

• *Estimated Number of Respondents*: 1,500.

• *Estimated Number of Responses*: 325,000.

• *Average Time Per Response*: 45 minutes.

• *Total Estimated Burden Time*: 243,750 hours.

• *Frequency*: On occasion.

• *Obligation to Respond*: Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for

this proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The collection is the continuation of information collected and needed by the Bureau of Educational and Cultural Affairs in administering the Exchange Visitor Program (J-Nonimmigrant) under the provisions of the Mutual Educational and Cultural Exchange Act, as amended (22 U.S.C. 2451, *et seq.*). The Form DS-2019 is the document that provides the information needed to identify an individual (and spouse and dependents, where applicable) seeking to enter the United States as an Exchange Visitor in J-Nonimmigrant status. Minor changes have been made to the wording in the 212(e) section entitled Signature of Responsible Officer or Alternate Responsible Officer. This change does not increase cost or burden.

Methodology

Access to Form DS-2019 is made available to Department designated sponsors electronically via the Student and Exchange Visitor Information System (SEVIS).

Zachery Parker,

Director.

[FR Doc. 2020-17813 Filed 8-13-20; 8:45 am]

BILLING CODE 4710-05-P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from the U.S. Wheat Associates (WB20-40—8/7/20) for permission to use select data from the Board's 1984-2019 Unmasked Carload Waybill Samples. Also, their request asks for permission to access the masking factors. A copy of this request may be obtained from the Board's website under docket No. WB20-40.

The waybill sample contains confidential railroad and shipper data;

therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245-0319.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2020-17849 Filed 8-13-20; 8:45 am]

BILLING CODE 4915-01-P

TRADE AND DEVELOPMENT AGENCY

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: U.S. Trade and Development Agency.

ACTION: Request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the U.S. Trade and Development Agency's (USTDA) intention to request an extension for a currently approved information collection for Evaluation of USTDA Performance. USTDA invites general public and other Federal agencies to take this opportunity to comment on the following proposed information collection. Comments may be sent to Lisa Jayne Lawn, Administrative Officer. All comments received will be available for public inspection during regular business hours at the same address.

DATES: Send comments on or before October 13, 2020 to be assured of consideration.

ADDRESSES: To access and review all of the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the agency name. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> or via postal mail, commercial delivery, or hand delivery. All submissions received must include the agency name. *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 Administrative Officer, U.S. Trade and Development Agency, 1101 Wilson

Bldv., Suite 1100, Arlington, VA 22209-3901.

FOR FURTHER INFORMATION CONTACT:

Contact Lisa Jayne Lawn, Administrative Officer, Attn: PRA, U.S. Trade and Development Agency, 1101 Wilson Blvd., Suite 1100, Arlington, VA 22209-3901; Tel.: (703) 875-4357, Fax: (703) 875-4009; Email: llawn@ustda.gov.

SUPPLEMENTARY INFORMATION: Comments are invited on: (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) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Summary Collection Under Review

Type of Request: Extension of a currently approved information collection.

Expiration Date of Previous Approval: 12/31/2020.

Title: Evaluation of USTDA Performance.

Form Number: USTDA 1000E-2014a.

Frequency of Use: Annually for duration of project.

Type of Respondents: Business or other for profit; Not-for-profit institutions; Farms; Federal Government.

Estimated Number of Responses: 1,440 to 1,800 per year.

Estimated Total Annual Burden on Respondents: 480 to 600 hours per year.

Federal Cost: \$335,709.

Authority for Information Collection: Government Performance and Results Act of 1993 103 Public Law 62; 107 Stat. 285.

Abstract: USTDA and contractors will collect information from various stakeholders on USTDA-funded activities regarding development impact and/or commercial objectives as well as evaluate success regarding GPRA objectives.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will become a matter of public record.

Dated: August 10, 2020.

Lisa Jayne Lawn,

Administrative Officer.

[FR Doc. 2020-17799 Filed 8-13-20; 8:45 am]

BILLING CODE 8040-01-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2019-0002]

Notice of Issuance of Final Circular: Guidance on Joint Development

AGENCY: Federal Transit Administration (FTA), Transportation (DOT).

ACTION: Notice of availability of final circular.

SUMMARY: The Federal Transit Administration (FTA) has placed in the docket and on its website guidance in the form of FTA Circular 7050.1B, *FTA Guidance on Joint Development*. The purpose of the final Circular is to increase flexibility for project sponsors to pursue joint development projects, reduce FTA oversight of joint development agreements negotiated between project sponsors and their partners, streamline FTA's project eligibility review process, and clarify prior guidance in FTA Circular 7050.1A.

DATES: The effective date of the Circular is August 14, 2020.

FOR FURTHER INFORMATION CONTACT: For policy guidance questions, Margaretta Veltri, Office of Budget and Policy, Federal Transit Administration, 1200 New Jersey Ave. SE, Room E52-315, Washington, DC 20590, phone: (202) 366-5094, or email, margaretta.veltri@dot.gov. For legal questions, Heather Ueyama, Office of Chief Counsel, 1200 New Jersey Ave. SE, Room E54-417, Washington, DC 20590, phone: (202) 366-7374, or email, heather.ueyama@dot.gov.

SUPPLEMENTARY INFORMATION:

Availability of Final Circular

This notice provides a summary of the final changes to the *FTA Guidance on Joint Development* Circular and responds to comments received on the proposed Circular. The final Circular itself is not included in this notice; instead, an electronic version may be found on FTA's website, at www.transit.dot.gov, and in the docket, at www.regulations.gov. Paper copies of the final Circular may be obtained by contacting FTA's Administrative Services Help Desk, at (202) 366-4865.

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II. Changes to Circular 7050.1A

- A. Fair Share of Revenue
 - B. Submission and Review Process
 - C. Technical and Conforming Changes
- ### III. Response to Comments Received

I. Overview

FTA is finalizing its update to its Joint Development Circular to increase flexibility for project sponsors to pursue joint development projects, reduce FTA oversight of joint development agreements negotiated between project sponsors and their partners, streamline FTA's project eligibility review process, and clarify prior guidance in FTA Circular 7050.1A. The final changes to the Circular affect: (1) The minimum threshold for the statutory "fair share of revenue" requirement; and (2) the submission and review process for FTA-assisted joint development projects. The final Circular also incorporates technical and conforming changes that increase clarity, conformity with existing law, and internal consistency.

This notice provides a summary of changes to Circular 7050.1A, and addresses comments received in response to the April 18, 2019 **Federal Register** notice of proposed updated circular and request for comments (84 FR 16339). The final Circular 7050.1B, *FTA Guidance on Joint Development*, is effective immediately and supersedes Circular 7050.1A. The final Circular applies to all new projects and those pending FTA approval at the time of the Circular's publication.

II. Changes to Circular 7050.1A

A. Fair Share of Revenue

Section 5302(3)(G)(iii) of title 49, United States Code, requires FTA-assisted joint development projects to provide a "fair share of revenue that will be used for public transportation." Prior to the October 1, 2014 effective date of Circular 7050.1A, FTA generally deferred to a project sponsor's assessment of a "fair share of revenue," and did not require any specific amount of revenue for transit from a joint development project. FTA defined "fair share of revenue" in Circular 7050.1A to incorporate a minimum revenue threshold that a joint development project must produce for transit purposes that at least equals the federal government's initial investment in the joint development project. (79 FR 50,728; 50,731-32).

Over time, FTA has found that defining a fair share of revenue minimum threshold unnecessarily limits the pool of potential projects by reducing flexibility for project sponsors and their partners to determine what amounts to a fair share of revenue.

Accordingly, the proposed Circular eliminated the fair share of revenue minimum threshold and monetary requirement. FTA received several comments supporting this proposal. In response, the final Circular adopts this change.

FTA allows the amount and form of revenue received by the project sponsor to be negotiated between joint development parties. Consistent with the proposed Circular and Circular 7050.1A, the project sponsor must continue to report to FTA the amount and source of the revenue it will receive, and the revenue must be used for transit purposes. FTA advises in the final Circular that the project sponsor should determine how to document its reasonable determination that the terms and conditions of the joint development improvement (including the share of revenue for public transportation which shall be provided thereunder) are reasonable and fair to the recipient. For example, a project sponsor's Board of Directors (or similar governing body) could, following a reasonable investigation, document the fair share of revenue determination in a Board resolution or other Board materials. This change provides discretion to the project sponsor, while also ensuring compliance with the fair share of revenue requirement in lieu of the certificate of compliance and baseline market analysis that FTA no longer requires, as discussed in Section (B) below.

Further, in response to a comment, and to provide additional flexibility to the project sponsor, FTA will no longer reserve the right to decline joint development project funding or approval if the project does not generate revenue for the project sponsor.

B. Submission and Review Process

Circular 7050.1A prescribed a process by which project proposals are submitted to FTA for review. It required a formal project proposal to include: (1) A completed project request form that contains pertinent information about the joint development project, including how the eligibility criteria are to be satisfied; (2) all proposed agreements between the project sponsor and project partners; (3) an executed certificate of compliance; and (4) two forms identifying other required and supplemental documentation, including a baseline market analysis to demonstrate a good faith effort to provide a fair share of revenue to the project sponsor.

FTA will update the project request form to reflect the changes regarding the "fair share of revenue" requirement

described in Section (A) above. The revised project request form will be published on FTA's website at www.transit.dot.gov/jointdevelopment.

FTA has determined that the elimination of the fair share of revenue minimum threshold makes the submission of a baseline market analysis and certificate of compliance unnecessary. Accordingly, the proposed Circular no longer required project sponsors to submit either document. In response to several comments expressing support for this proposal, the final Circular finalizes these changes. This will streamline the review of FTA-assisted joint development projects by reducing the amount of paperwork that project sponsors must prepare and FTA must review. In response to another comment, FTA encourages, but does not require, project sponsors to conduct baseline market analyses to better understand current market conditions and evaluate the viability of joint development projects.

C. Technical and Conforming Changes

The final Circular incorporates several minor edits for clarity and ease of reading. One commenter noted that certain defined terms were not included in the text of the document. FTA has reviewed all defined terms to ensure all are used in the final Circular. For example, FTA has removed "original federal investment" and "affordable housing" from the list of definitions in Chapter I. These definitions are unnecessary because all joint development projects now are subject to the same statutory fair share of revenue requirements.

Supporting access to affordable housing is a long-standing goal of FTA's joint development program. In Circular 7050.1A, only certain community service projects, publicly operated projects, and affordable housing projects were exempt from the fair share of revenue minimum threshold requirement. In this final Circular, however, FTA no longer defines a minimum fair share of revenue threshold for any type of joint development project. Two commenters indicated that this change will increase flexibility for project sponsors to pursue a greater range of affordable housing projects.

The final Circular also no longer includes a definition of "incidental use" in Section IV.3.e, as the term is already defined in Chapter I. To the extent practicable, FTA has removed redundant references to FTA Circulars and replaced them with direct references to the underlying statutes and

regulations on which the text of the Circular is based.

The distinction between joint development and public-private partnerships, as defined, was edited in Section II.1.c of the Circular for clarity and to conform with the definition of public-private partnership in 49 CFR 650.5.

FTA also updated the Environmental Requirements in Section V.3 of the Circular for clarity and accuracy, and added a reference to the underlying statute for NEPA re-evaluations (23 CFR 771.129). The Civil Rights sections (Sections V.5.b and V.6) were updated for clarity and accuracy as well, and to accurately reflect the nondiscrimination prohibitions listed in 49 U.S.C. 53329(b).

The final Circular incorporates technical corrections for conformity with existing law. For example, 49 U.S.C. 5302(3)(G)(i) requires that FTA-assisted joint development projects either enhance economic development or incorporate private investment. In Section III.3.a.2 of the proposed Circular, FTA reserved the right to decline joint development project funding or approval if the level of private investment was not meaningful to promote an economic benefit. FTA has determined that this language conflates the statutory text, and clarifies that per § 5302(3)(G)(i), FTA requires a showing of either enhancing economic development or incorporating private investment—not both. Accordingly, FTA will no longer reserve the right to decline project funding or approval if the level of private investment is not meaningful to promote an economic benefit. Further, FTA clarified the use of the terms "program income" and "period of performance" when describing proceeds generated from joint development projects. "Program income" is defined as gross income "generated by a supported activity or earned as a result of the Federal award during the period of performance." (2 CFR 200.80). "Period of performance" is defined as the duration of time designated within the initial grant. (2 CFR 200.77). FTA has determined that the term "program income" does not accurately describe proceeds derived from FTA-assisted joint development projects, as such projects often continue beyond the time designated within an initial grant. For clarity and accuracy, FTA has therefore revised the term "program income" to "revenue" in several places throughout the Circular.

FTA has also updated the final Circular to ensure internal consistency. Although FTA declines to provide a minimum threshold for both the

statutory "fair share of revenue" and "fair share of costs" requirements, the Circular provided an inconsistent level of discretion to the project sponsor for each requirement. As discussed in Section (A) above, with respect to "fair share of revenue," the final Circular eliminates FTA's reservation of the right to decline joint development project funding or approval if the project does not generate revenue. For consistency, FTA has eliminated a similar restriction with respect to the "fair share of costs" requirement—FTA will no longer reserve the right to decline joint development project funding or approval if a rental payment, or other means, is less than the actual cost to the project sponsor to operate and maintain the space in its facility. FTA made this change because this language unnecessarily inhibits a project sponsor's flexibility when making a "fair share of costs" determination and is inconsistent with the level of discretion that FTA provides with respect to the "fair share of revenue" requirement.

FTA has also determined that the Circular provided inconsistent guidance on how a project sponsor should document compliance with certain statutory requirements. In response to comments regarding the "fair share of revenue" determination, the final Circular incorporates a recommendation that the project sponsor should determine how to document its reasonable determination that the terms and conditions of the joint development improvement (including the share of revenue for public transportation that shall be provided thereunder) are reasonable and fair to the recipient. For consistency, the final Circular incorporates similar recommendations with respect to the § 5302(3)(G)(i) "private investment" and § 5302(3)(G)(iv) "fair share of costs" determinations. Regarding "private investment," the final Circular advises that a project sponsor should determine how to document its reasonable determination that the level of private investment is reasonable. Regarding "fair share of costs," the final Circular advises that a project sponsor should determine how to document its reasonable determination that a rental payment, or other means, is reasonable and fair to the recipient. These changes ensure a consistent level of flexibility and discretion to the project sponsor when documenting its compliance with each of these statutory requirements.

III. Response to Comments Received

Twelve parties submitted sixty-one comments in response to FTA's April

18, 2019 notice of Proposed Changes to the Joint Development Circular. As outlined in Section II, comments addressed: (A) Fair Share of Revenue, (B) Submission and Review Process, and (C) Technical and Conforming Changes, including general comments on the circular outside the scope of the proposed updates.

A. Fair Share of Revenue

In the Notice of Proposed Update to the Joint Development Circular, FTA invited comments on the proposal to no longer define a minimum revenue threshold. Section 5302(3)(G)(iii) of title 49, United States Code, requires FTA-assisted joint development projects to provide a “fair share of revenue that will be used for public transportation.” Removing the minimum revenue threshold for the fair share of revenue requirement increases flexibility by allowing project sponsors to determine what constitutes a fair share of revenue in joint development projects. FTA will still require the project sponsor to report the expected amount of revenue it will receive, and its funding sources.

FTA received fifteen comments on the fair share of revenue requirement, most of which supported no longer defining a fair share of revenue minimum threshold. One commenter suggested FTA clarify that the removal of a minimum threshold should not be interpreted as a fair market value requirement by default. One comment sought specific clarification of the documentation that would be required to demonstrate a fair share of revenue meeting FTA’s expectations.

Two commenters asked when to report on the expected revenue for a project, specifically: (1) Whether the amount of revenue should be reported as part of the joint development application or later in the joint development process, and (2) if a determination of revenue is required in the joint development submission, whether this still functionally creates a minimum threshold. Another commenter sought clarification on how the proposed changes would affect joint development projects that advance community service or publicly operated projects, or affordable housing.

One commenter suggested FTA not retain the right to decline funding if a project does not generate revenue. Another commenter suggested FTA require the project sponsor’s General Manager or Chief Executive Officer to certify that the terms and conditions of the joint development project are commercially reasonable and fair to the project sponsor.

FTA Response

No longer defining a fair share of revenue minimum threshold is not new for FTA’s joint development process. In 2007, FTA’s guidance on joint development deferred to project sponsors and parties involved to determine what constitutes a fair share of revenue (72 FR 5788). The final updated Circular will no longer impose a fair share minimum threshold and defers to the project sponsors and parties involved to determine a fair share of revenue. In response to comments received, FTA has removed the provision reserving FTA’s right to decline funding for joint development projects that do not generate revenue. FTA has declined to add clarification that the elimination of a minimum threshold should not be interpreted as a fair market value requirement by default, as this would be inconsistent with FTA’s policy to not define “fair share of revenue.” In response to comments on reporting requirements for expected revenue, FTA will continue to require the project sponsor to report the fair share of revenue and the sources of funding in the joint development application submitted to FTA. In response to comments regarding the documentation of a fair share of revenue determination, FTA has added a recommendation that the project sponsor should determine how to document its reasonable determination that the terms and conditions of the joint development improvement (including the share of revenue for public transportation that shall be provided thereunder) are reasonable and fair to the recipient. FTA has adopted similar recommendations with respect to the statutory “private investment” and “fair share of costs” requirements.

Since FTA will no longer define a fair share of revenue threshold, the proposed changes will now require all joint development projects to follow the same requirements regarding the fair share of revenue—including community service projects, publicly operated projects, and affordable housing.

In response to the suggestion that FTA require the project sponsor’s General Manager or Chief Executive Officer (CEO) to certify that the terms and conditions of the joint development project are commercially reasonable and fair to the project sponsor, FTA has removed this requirement. It will be at the discretion of the project sponsor and parties involved if they want the General Manager or CEO to certify the joint development project.

B. Submission and Review Process

FTA received seven comments on the proposed changes to the submission and review process. Most comments expressed support for the changes. Under the proposed changes, FTA will no longer require project sponsors to submit a baseline market analysis or certificate of compliance. One commenter noted that a baseline market study may continue to be useful in providing an expected amount for the fair share of revenue; another commenter suggested updating the Certificate of Compliance requirement rather than eliminating it.

FTA Response

FTA agrees that a baseline market study may continue to be useful in providing an expected amount for the fair share of revenue. While a baseline market analysis is no longer required for submission, project sponsors are still encouraged to conduct baseline market analyses to better understand current market conditions and evaluate the viability of joint development projects.

Eliminating the Certificate of Compliance requirement will streamline the review of FTA-assisted joint development projects by reducing the amount of paperwork that project sponsors must prepare and FTA must review. However, when requesting a formal FTA review of the proposed project, a project sponsor will still submit a completed Joint Development Project Request form and a proposed Joint Development Agreement, along with any supplemental documentation. FTA approval of a proposed joint development project will be contingent upon the project sponsor satisfying the eligibility criteria set forth in 49 U.S.C. 5302(3)(G) and complying with the Uniform Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act), and the Uniform Administrative Requirements at 2 CFR parts 200 and 1201.

Project sponsors are also encouraged to submit joint development project proposals for preliminary FTA review, prior to determining the terms and conditions to be agreed upon by all parties in the joint development project.

C. Notice of Update to Joint Development Circular Generally

FTA received thirty-nine general comments, covering a wide range of topics, including: Real property, the period of performance as it pertains to program income, and FTA policy. Several commenters requested clarification on the requirements and terminology in the Circular. Comments

overall were receptive to the proposed changes.

Nine comments—including eight from transit agencies—were written in direct support of the proposed changes to the Circular. Sixteen comments addressed concerns or asked questions about real property; specifically regarding disposition, incidental use, and federal requirements on FTA-funded real property. Three comments sought clarification of the term “period of performance” under which FTA requirements attach. Eleven comments offered suggestions for clarifying language in the Circular generally. One of these comments suggested that in Section III.3.a of the Circular, FTA should consolidate the “enhances economic development” and “incorporates private investment” sub-elements into one element.

FTA Response

FTA has included insights from several comments, and answered many of the questions received, in the final updates to the Circular. However, several comments addressed subjects outside the scope of the proposed changes. These comments were reviewed and will be useful in the development of FTA programs and guidance in the future.

Regarding real property, any joint development project that includes FTA funding or FTA-assisted property is an FTA-assisted joint development project and must comply with the requirements and procedures set forth in Circular 7050.1B. FTA-assisted property includes land previously acquired with FTA funds.

While joint development can be considered a form of transit-oriented development, it is usually much smaller in scope and always uses FTA-assisted project property or a direct investment of FTA grant funds. FTA assistance may not be used in the *construction* of transit-oriented development that is not eligible FTA-assisted joint development. However, FTA assistance may be used to *plan* transit-oriented development that is not eligible FTA-assisted joint development, in conjunction with transit projects.

Under the definition of program income, “period of performance” refers to the duration of time designated within the initial grant. In response to a comment requesting clarification regarding FTA’s use of the terms “program income” and “period of performance” when describing proceeds generated from joint development projects, FTA has revised “program income” to “revenue” in several places throughout the Circular. Suggestions to

apply separate federal requirements to joint development projects using real property are outside the scope of this update. Terminology in this Circular has been updated only as it relates to substantive changes in policy related to the “fair share of revenue” requirement and the submission and review process for FTA-assisted joint development projects, as well as the technical and conforming changes discussed in Section (II.C) above.

FTA disagrees that the “enhances economic development” and “incorporates private investment” sub-elements should be consolidated in Section III.3.a of the Circular. Consolidating these two items would conflate the text of 49 U.S.C. 5302(3)(G)(i), which requires either economic enhancement or private investment—not both.

K. Jane Williams,

Deputy Administrator.

[FR Doc. 2020-17777 Filed 8-13-20; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2020-0007]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, Transportation (DOT).

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collection and their expected burdens.

DATES: Comments must be submitted on or before 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.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of

the Department’s estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Management Planning Division, 1200 New Jersey Avenue, SE, Mail Stop TAD-10, Washington, DC 20590 (202) 366-0354 or tia.swain@dot.gov.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On October 18, 2019, FTA published a 60-day notice (84 FR 56012) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected

burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: Pre-Award, Post-Delivery Audit Requirements Under Buy America.

OMB Control Number: 2132-0544.

Type of Request: Renewal of a previously approved information collection.

Abstract: Federal Transit Laws, 49 U.S.C. 5323(j) and (m), require that recipients of Federal Transit Administration (FTA) funding comply with certain requirements, including Buy America, certify compliance of these requirements at the pre-award and post-delivery stages of the procurement process when using FTA funds and maintain on file certifications.

Bidders or offerors must submit certificates to assure compliance with Buy America, the purchaser's contract specifications (for rolling stock only), and Federal motor vehicle safety requirements (for rolling stock only). The information collected on the certification forms is necessary for FTA recipients to meet the requirements of 49 U.S.C. Section 5323(j) and (m). In addition, FTA recipients are required to certify, as part of their annual Certifications and Assurances, that they will comply with pre-award and post-delivery audit requirements for rolling stock under 49 CFR part 661.

Respondents: FTA recipients, including State and local government, and businesses or other for-profit organizations.

Estimated Annual Burden on Respondents: (1) Approximately 2.16 hours for each of the estimated 700 procurements by FTA recipients and businesses or other for-profit organizations to certify compliance (or 1,512 hours), (2) approximately .16 hours for each of the estimated 700 procurements for recordkeeping by FTA recipients (or 112 hours), and (3) 1.66 hours for each of the estimated 700 procurements for review by FTA recipients (or 1,162 hours)

Estimated Total Annual Burden: 2,786 hours.

Frequency: Annual.

Nadine Pembleton,

Director Office of Management Planning.
[FR Doc. 2020-17778 Filed 8-13-20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2020-0008]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collection and their expected burdens.

DATES: Comments must be submitted on or before 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.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Management Planning Division, 1200 New Jersey Avenue SE, Mail Stop TAD-10, Washington, DC 20590 (202) 366-0354 or tia.swain@dot.gov.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before

OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On October 18, 2019, FTA published a 60-day notice (84 FR 56012) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: Title VI as it Applies to FTA Grant Programs.

OMB Control Number: 2132-0540.

Type of Request: Renewal of a previously approved information collection.

Abstract: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) states:

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

To achieve this purpose, each Federal department and agency which provides financial assistance for any program or activity is authorized and directed by the Department of Justice (DOJ) to effectuate provisions of Title VI for each program or activity by issuing generally applicable regulations or requirements. The Department of Transportation (DOT) has issued its regulations implementing this DOJ mandate.

In this regard, the responsibility of the FTA is to ensure that Federally-supported transit services and benefits are distributed by applicants, recipients, and subrecipients of FTA assistance in a manner consistent with Title VI. The employment practices of a grant applicant, recipient, or sub-recipient are also covered under Title VI if the primary purpose of the FTA-supported program is to provide employment or if those employment practices would result in discrimination against beneficiaries of FTA-assisted services and benefits.

FTA policies and requirements are designed to clarify and strengthen Title VI (service equity) procedures for FTA grant recipients by requiring submission of written plans and approval of such plans by the agency. All project sponsors receiving financial assistance pursuant to an FTA-funded project shall not discriminate in the provision of services because of race, color, or national origin. Experience has demonstrated that a program requirement at the application stage is necessary to assure that benefits and services are equitably distributed by grant recipients. The requirements prescribed by the Office of Civil Rights are designed to accomplish this objective and diminish possible vestiges of discrimination among FTA grant recipients. FTA's assessment of the requirements indicated that the formulation and implementation of the Title VI Program should occur with a decrease in costs to such applicants and recipients.

Respondents: Transit agencies, States, and Metropolitan Planning Organizations.

Estimated Annual Burden on Respondents: 284 (45 hours for each of the 100 more specific Title VI Program submissions; 1 hour for each of the 183 general Title VI Program submissions).

Estimated Total Annual Burden: 4,684 hours.

Frequency: Annual.

Nadine Pembleton,

Director Office of Management Planning.
[FR Doc. 2020-17776 Filed 8-13-20; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0823]

Agency Information Collection Activity: Expanded Access to Non-VA Care Through the MISSION Act: Veterans Community Care Program

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 13, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Brian McCarthy, Office of Regulatory and Administrative Affairs (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to Brian.McCarthy4@va.gov. Please refer to "OMB Control No. 2900-0823" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy at (202) 615-9241.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104-13; 44 U.S.C. 3501-3521.

Title: Expanded Access to Non-VA Care through the MISSION Act: Veterans Community Care Program, VA Forms 10-10143, 10-10143a, 10-10143b, 10-10143c, 10-10143e, 10-10143f and 10-10143g.

OMB Control Number: 2900-0823.
Type of Review: Revision and extension of a currently approved collection.

Abstract: Section 101 of the VA Maintaining Internal Systems and Strengthening Integrated Outside Networks (MISSION) Act of 2018 requires VA to implement the Veterans Community Care Program to furnish care in the community to covered Veterans through eligible entities and providers, under circumstances as further prescribed in the MISSION Act. VA currently collects information that will be required to implement the Veterans Community Care Program (VCCP) under the Veterans Choice Program, through an OMB approved collection 2900-0823.

OMB Collection 2900-0823 now includes VA Form 10-10143, Election to Receive Authorized Non-VA Care and Selection of Provider for the Veterans Community Care Program; VA Form 10-10143a, Veterans Community Care Health Insurance Certification; VA Form 10-10143b, Submission of Medical Record Information under the Veterans Community Care Program; VA Form 10-10143c, Submission of Information on Credentials and Licenses by Eligible Entities and Providers; and VA Form 10-10143e, Secondary Authorization Request for VA Community Care. In addition, two new forms that received emergency PRA clearances from OMB in 2020 are included in 2900-0823: VA Form 10-10143f, Community Care Document Cover Sheet; and VA Form 10-10143g, Non-VA Hospital Emergency Notification.

VA seeks to update OMB collection 2900-0823 to implement the Veterans Community Care Program by updating the title of VA forms and any associated statutory citations to be consistent with the new program and the MISSION Act, by adding a new cover sheet to use when submitting documentation from providers of non-VA emergent care, by adding a new 72-hour notification form to be used when a Veteran receives emergent care from a non-VA provider, and by updating burden hours to account for estimated increased use of

community care under the new program.

This collection of information is required to properly adjudicate and implement the requirements of the MISSION Act.

a. VA Form 10–10143 will collect Veteran information on whether covered Veterans would elect to receive authorized care under the Veterans Community Care Program (VCCP) if certain conditions are met, as required by 38 U.S.C. 1703(d)(3). This form also will allow a covered Veteran to specify a particular non-VA entity or provider.

b. VA Form 10–10143a will collect other health insurance information from covered Veterans who elect to participate in the VCCP, as required by 38 U.S.C. 1705A. This information also is required by 38 U.S.C. 1703(j), which requires VA to recover or collect reasonable charges for community care that is furnished from a health care plan contract described in 38 U.S.C. 1729.

c. VA Form 10–10143b will collect health records of covered Veterans from non-VA health care entities and providers for care authorized under the VCCP, as required by 38 U.S.C. 1703(a)(2)(A), which requires VA to establish a mechanism to receive medical records from non-VA providers. A copy of all medical and dental records (including but not limited to images, test results, and notes or other records of what care was provided and why) related to a Veteran's care provided under the VCCP must be submitted to VA, including any claims for payment for the furnishing of such care.

d. VA Form 10–10143c will collect information from non-VA entities and providers concerning relevant credentials and licenses as required for such entities or providers to furnish care and services generally. This information is authorized by section 133 of the MISSION Act, which requires VA to establish competency standards for non-VA providers, as well as 38 U.S.C. 1703C(a)(1), which requires VA to establish certain standards of quality for furnishing care and services (including through non-VA providers).

e. VA Form 10–10143e will collect secondary authorization requests from

non-VA entities and providers to furnish care and services in addition to or supporting the original authorization for care. This information is required by 38 U.S.C. 1703(a)(3), which establishes that a covered Veteran may only receive care or services under the VCCP upon VA's authorization of such care or services.

f. VA Form 10–10143f will allow for the submission of paper documents in support of a non-VA provider claim for emergency care rendered in the community when not accompanied by a paper Health Care Claim form. This Community Care Document Cover Sheet will be used exclusively for the submission of medical documentation for unauthorized emergent services for patients otherwise covered by VA.

g. VA Form 10–10143g will be used to provide 72-hour notification to VA when a Veteran receives emergent care from a non-VA provider. This form should be completed by the non-VA provider within 72 hours of the beginning of treatment.

VA Form 10–10143

Affected Public: Individuals or households.

Estimated Annual Burden: 610,833 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 3,665,000.

VA Form 10–10143a

Affected Public: Individuals or households.

Estimated Annual Burden: 610,833 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 3,665,000.

VA Form 10–10143b

Affected Public: Private Sector.

Estimated Annual Burden: 1,039,332 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Average of 34 times annually.

Estimated Number of Respondents: 366,823.

VA Form 10–10143c

Affected Public: Private Sector.

Estimated Annual Burden: 10,190 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 122,274.

VA Form 10–10143e

Affected Public: Private Sector.

Estimated Annual Burden: 611,372 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: Average of 5 times annually.

Estimated Number of Respondents: 366,823.

VA Form 10–10143f

Affected Public: Private Sector.

Estimated Annual Burden: 41,667 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 500,000.

VA Form 10–10143g

Affected Public: Private Sector.

Estimated Annual Burden: 83,333 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 500,000.

By direction of the Secretary.

Danny S. Green,

VA Clearance Officer, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2020–17764 Filed 8–13–20; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing Residual Risk and Technology Review; Final Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[EPA-HQ-OAR-2018-0747; FRL-10010-12-OAR]

RIN 2060-AU16

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing Residual Risk and Technology Review**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is taking final action on the residual risk and technology review (RTR) conducted for the Miscellaneous Coating Manufacturing (MCM) source category regulated under national emission standards for hazardous air pollutants (NESHAP). These final amendments also address emissions during periods of startup, shutdown, and malfunction (SSM), including clarifying regulatory provisions for certain vent control bypasses, provisions for electronic reporting of performance test results, performance evaluation reports, compliance reports, and Notification of Compliance Status (NOCS) reports; and provisions to conduct periodic performance testing of oxidizers used to reduce emissions of organic hazardous air pollutants (HAP).

DATES: This final rule is effective on August 14, 2020. The incorporation by reference (IBR) of certain publications listed in the rule is approved by the Director of the Federal Register as of August 14, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2018-0747. 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 will be accepted. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Ms. Angela Carey, Sector Policies and Programs Division (E143-01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-2187; fax number: (919) 541-0516; and email address: carey.angela@epa.gov. For specific information regarding the risk modeling methodology, contact Ms. Darcie Smith, 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) 541-2076; fax number: (919) 541-0840; and email address: smith.darcie@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 (Mail Code 2227A), 1200 Pennsylvania Avenue NW, Washington DC 20460; telephone number: (202) 564-1395; and email address: cox.john@epa.gov.

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

ANSI American National Standards Institute
 CAA Clean Air Act
 CDX Central Data Exchange
 CEDRI Compliance and Emissions Data Reporting Interface
 CFR Code of Federal Regulations
 EPA Environmental Protection Agency
 HAP hazardous air pollutants(s)
 HI hazard index
 HQ hazard quotient
 ICR Information Collection Request
 IFR internal floating roof
 km kilometer
 LDAR leak detection and repair
 MACT maximum achievable control technology
 MCM miscellaneous coating manufacturing
 MIR maximum individual risk
 NAAQS National Ambient Air Quality Standards
 NESHAP national emission standards for hazardous air pollutants

NTTAA National Technology Transfer and Advancement Act
 OAQPS Office of Air Quality Planning and Standards
 OMB Office of Management and Budget
 OSHA Occupational Safety and Health Administration
 PB-HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
 PM particulate matter
 POM polycyclic organic matter
 ppmv parts per million by volume
 ppmw parts per million by weight
 PRD pressure relief device
 REL reference exposure limit
 RFA Regulatory Flexibility Act
 RIN Regulatory Information Number
 RTR residual risk and technology review
 SSM startup, shutdown, and malfunction
 the Court the 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
 VCS voluntary consensus standards
 VOC volatile organic compounds

Background information. On September 4, 2019 (84 FR 46610), the EPA proposed revisions to the National Emission Standards for Hazardous Air Pollutants for Miscellaneous Coating Manufacturing (MCM NESHAP) facilities NESHAP in conjunction with our RTR. In this action, we are finalizing decisions and revisions for the rule. We summarize some of the more significant comments we timely received regarding the proposed rule and provide our responses in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in the *Summary of Public Comments and Responses for Risk and Technology Review for Miscellaneous Coating Manufacturing*, in the MCM Docket (Docket ID No. EPA-HQ-OAR-2018-0747). A "track changes" version of the regulatory language that incorporates the changes in this action is available in the docket.

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

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- 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 codes
Miscellaneous Coating Manufacturing Industry.	3255, 3259

¹North 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/miscellaneous-coating-manufacturing-national-emission-standards>. 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, 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, we must also consider control options that are more stringent than the floor under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them “as necessary (taking into account developments in practices, processes, and control technologies),” no less frequently than every 8 years, pursuant to CAA section 112(d)(6).¹ 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).² For more information on the statutory authority for this rule, see the proposal preamble (84 FR 46610, September 4, 2019) and the memorandum, *CAA Section 112 Risk and Technology Reviews: Statutory Authority and Methodology*, December 14, 2017, available in the docket for this rulemaking.

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

The EPA promulgated the MCM NESHAP on December 11, 2003 (68 FR 69185). The standards are codified at 40 CFR part 63, subpart HHHHH. The MCM industry consists of facilities that are engaged in their manufacture without regard to the particular end uses or consumers of such products. The manufacturing of these products may occur in any combination at any facility. The source category covered by this MACT standard currently includes 43 facilities.

The MCM source category includes the collection of equipment (*i.e.*, process vessels; storage tanks; components such as pumps, valves, and connections; wastewater tanks; heat exchangers; and transfer racks) that is used to manufacture coatings at a facility. MCM operations may also include certain cleaning operations. Coatings manufactured at MCM facilities are materials such as paints, inks, or adhesives that are intended to be applied to a substrate to form a protective, decorative, or functional layer (*e.g.*, an adhesive) and consist of a mixture of resins, pigments, solvents, and/or other additives. Coatings are produced by a manufacturing operation in which materials are blended, mixed, diluted, or otherwise formulated. Coatings do not include materials made in processes where a formulation component is synthesized by a chemical reaction or separation activity and then transferred to another vessel where it is formulated to produce a material used as a coating, where the synthesized or separated component is not stored prior to formulation.

The equipment controlled by the MCM NESHAP includes process vessels, storage tanks for feedstocks and products, equipment leak components (pumps, compressors, agitators, pressure relief devices (PRDs), sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems), wastewater tanks, heat exchangers, and transfer racks.

The current NESHAP regulates process vessels and storage tanks based on the volume of the process vessel or storage tank and the maximum true vapor pressure of the organic HAP processed or stored. Control requirements range from the use of tightly fitted lids on process vessels to also capturing and reducing organic HAP emissions through the use of add-on controls (*i.e.*, a flare, oxidizer, or condenser). For halogenated vent streams from process vessels and storage tanks, the use of a flare is prohibited, and a halogen reduction device (*i.e.*, an acid gas scrubber) is required after a combustion control device. For storage tanks, facilities may comply with the provisions in 40 CFR part 63, subpart HHHHH, by complying with the provisions in 40 CFR part 63, subpart WW.

The NESHAP regulates emissions from equipment leaks at existing sources by requiring compliance with leak inspection and repair provisions using sight, sound, and smell in 40 CFR part 63, subpart R, or alternatively, the leak detection and repair (LDAR) provisions in 40 CFR part 63, subpart TT or UU. New sources are required to comply with the LDAR provisions in 40 CFR part 63, subpart TT or UU.

The NESHAP regulates wastewater streams by requiring the use of fixed roofs on wastewater tanks, treating the wastewater (either on-site or off-site) as a hazardous waste under 40 CFR part 264, 265, or 266, or using enhanced biological treatment if the wastewater contains less than 50 parts per million by weight (ppmw) of partially soluble HAP. If the wastewater is treated as a hazardous waste under 40 CFR part 264, 265, or 266, it may be treated by steam stripping or incineration. These standards apply only to wastewater streams that contain total partially soluble and soluble HAP at an annual average concentration greater than or equal to 4,000 ppmw and loads greater than or equal to 750 pounds per year (lb/yr) at an existing source. For new sources, these standards apply only to wastewater streams that contain total partially soluble and soluble HAP at an annual average concentration greater

¹ 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.

² 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.”).

than or equal to 1,600 ppmw and any partially soluble and soluble HAP load.

The NESHAP regulates transfer operations if the operation involves the bulk loading of coating products that contain 3.0 million gallons per year or more of HAP with a weighted average HAP partial pressure greater than or equal to 1.5 pounds per square inch, absolute. Regulated transfer operations are required to reduce emissions by using a closed vent system and a control device (other than a flare) to reduce emissions by at least 75 percent; using a closed vent system and a flare for a non-halogenated vent stream; or using a vapor balancing system. When a non-flare combustion device is used to control a halogenated vent stream, then a halogen reduction device must be used either before or after the combustion device. If used after the combustion device, the halogen reduction device must meet either a minimum 95-percent reduction or a maximum 0.45 kilograms per hour (kg/hr) emission rate of hydrogen halide or halogen. If used before the combustion device, the halogen reduction device must meet a maximum 0.45 kg/hr emission rate of hydrogen halide or halogen.

The NESHAP requires heat exchangers to meet the provisions of 40 CFR part 63, subpart F, 40 CFR 63.104. Section 63.104 requires the implementation of a LDAR or monitoring program for heat exchange systems, unless the system meets certain design and operation provisions, or it is a once-through system that meets certain National Pollution Discharge Elimination System (NPDES) permit provisions.

C. What changes did we propose for the MCM source category in our September 4, 2019, proposal?

On September 4, 2019, the EPA published a proposed rule in the **Federal Register** for the MCM NESHAP, 40 CFR part 63, subpart HHHHH, that took into consideration the RTR analyses. We proposed to find that after compliance with the current NESHAP (*i.e.*, MACT standards) the risks to public health from the source category are acceptable, and that additional emission controls are not necessary to provide an ample margin of safety. Based on our technology review, we did not identify any cost-effective developments in practices, processes, or control technologies for the source category. Accordingly, we proposed no changes to the existing emission control requirements in 40 CFR part 63, subpart HHHHH, based on the risk assessment or the technology review.

We proposed the following amendments to improve rule effectiveness, provide regulatory flexibility, and comply with a legal ruling:

- A new requirement for electronic submittal of notifications, semi-annual reports, and compliance reports (which include performance test reports);
- revisions to the SSM provisions of the NESHAP to ensure that they are consistent with the Court decision in *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008), which vacated two provisions that exempted source owners or operators from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM;
 - revisions to account for instances where 40 CFR part 63, subpart HHHHH, cross-references other subparts that contain SSM provisions;
 - language to add 40 CFR 63.8005(h) to clarify that any periods during which a control device for a process vessel is bypassed must be included in demonstrating compliance with the emission reduction provisions for process vessels in Table 1 to 40 CFR part 63, subpart HHHHH;
 - revisions to 40 CFR 63.8000(b)(2), which allows the opening of a safety device at any time conditions require it to avoid unsafe conditions, to clarify that such an opening to avoid unsafe conditions is considered a deviation, unless it is a bypass of a control for a process vessel and accounted for as specified in 40 CFR 63.8005(h);
 - removal of references to paragraph (d)(4) of the Occupational Safety and Health Administration (OSHA) Hazard Communication standard (29 CFR 1910.1200), which dealt with OSHA-defined carcinogens, and replacing that reference with a list of HAP that must be regarded as potentially carcinogenic based on EPA guidelines;
 - a new requirement to fulfill performance testing and reestablish operating limits no less frequently than every 5 years for sources that are using add-on controls to demonstrate compliance, unless they are already required to perform periodic testing as a condition of renewing their title V operating permit; and
 - to IBR alternative test methods and references to updated alternative test methods.

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 MCM source category. This action also finalizes the changes to the NESHAP

described in section II.C of this preamble, as proposed.

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

This section describes the final decisions for the MCM NESHAP (40 CFR part 63, subpart HHHHH) being promulgated pursuant to CAA section 112(f). The EPA proposed no changes to this subpart based on the risk review conducted pursuant to CAA section 112(f). In this action, we are finalizing our proposed determination that risks from this source category are acceptable, and that the NESHAP at 40 CFR part 63, subpart HHHHH, provides an ample margin of safety to protect public health, and that more stringent standards are not necessary to prevent an adverse environmental effect. The EPA received no new data or other information during the public comment period that causes us to change that proposed determination. Therefore, we are not requiring additional emission controls under CAA section 112(f)(2) for this subpart in this action.

B. What are the final rule amendments based on the technology review for the MCM 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. The EPA received no new data or other information during the public comment period that causes us to change that proposed determination. Therefore, we are not finalizing revisions to the MACT standards under CAA section 112(d)(6).

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

We are finalizing the proposed amendments to the MCM NESHAP to remove and revise provisions related to 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. Previously, the 2003 MCM NESHAP included exemptions for standards during SSM. As detailed in section IV.D

of the proposal preamble (84 FR 46610, September 4, 2019), the final rule removes the SSM exemptions (see 40 CFR 63.8000(a)), consistent with the Court decision in *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008).

Table 10 to subpart HHHHH of 40 CFR part 63 (General Provisions applicability table) is being revised to change the specification of the requirements that apply during periods of SSM. We eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemptions. The EPA also made other harmonizing changes to remove or modify inappropriate, unnecessary, or redundant language in the absence of the SSM exemptions. We proposed to find that facilities in this source category can meet the applicable emission standards in the MCM NESHAP at all times, including periods of startup and shutdown, without additional standards or work practices. The EPA considered the requirements for control device bypasses and for safety devices that we are finalizing in this rule when proposing to find that the standards can be met at all times after the SSM provisions are revised. We received no information to cause us to change our conclusion; therefore, the EPA is finalizing the proposed determination that no additional standards are needed to address emissions during startup and shutdown periods. The legal rationale and detailed changes for startup and shutdown periods that we are finalizing here are set forth in the September 4, 2019, preamble to the proposed rule. See 84 FR 46629 through 46630.

Further, as proposed, the EPA is not including standards for malfunctions, except as related to the proposed revisions related to control device bypasses and for safety devices. As discussed in section IV.D of the September 4, 2019, proposal preamble, 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, although the EPA has the discretion to set standards for malfunctions where feasible. See 84 FR 46629 through 46630. For this source category, we proposed at 40 CFR 63.8005(h) to provide a method to account for control device bypass periods (including malfunction periods) when evaluating compliance with the overall control efficiency requirements for process vessels in Table 1 to 40 CFR part 63 subpart HHHHH, and we solicited commenters to provide additional information.

We are revising the General Provisions table to 40 CFR part 63, subpart HHHHH, to eliminate requirements that include rule language providing an exemption for periods of SSM. Finally, we are revising as proposed the Deviation Notification Report and related records as they relate to malfunctions, as further described below. As discussed in detail in the proposal preamble, these revisions are consistent with the requirement in 40 CFR 63.8000(a) that the standards apply at all times. Refer to section IV.D.1 of the proposal preamble for a detailed discussion of these amendments (84 FR 46629, September 4, 2019).

We are finalizing amendments to account for instances where 40 CFR part 63, subpart HHHHH, cross-references other subparts that contain SSM provisions. Listed in 40 CFR 63.8000(f) are the referenced provisions in subparts SS, TT, and UU of 40 CFR part 63 that contain references to SSM periods that will no longer apply after the compliance date for these amendments. Listed in 40 CFR 63.8000(f)(10) through (22) are the paragraphs or phrases within the paragraphs that will not apply after the applicable compliance date for the amendments as a result of the final SSM revisions.

Because we are finalizing the revisions to remove the SSM provisions and require compliance at all times, we are also finalizing the amendment to add 40 CFR 63.8005(h) to account for bypass periods in determining compliance with the emission percent reduction provisions in Table 1 to 40 CFR part 63, subpart HHHHH, for process vessels. These amendments will apply to process vessels with closed vent systems and add-on controls that contain bypass lines that could divert a vent stream to the atmosphere. We are finalizing the revisions that owners or operators must measure and record during each semiannual compliance period the hours that the control device was bypassed and the source's total operating hours. They must use the overall control efficiency required in Table 1, the total operating hours, and the control efficiency of the control device to determine the allowable bypass hours during the semiannual compliance period using Equation 1 in 40 CFR 63.8005(h). These changes are required because SSM periods that may involve bypassing of the control device cannot be excluded and must now be included in determining compliance.

Because we are finalizing the revisions to remove the SSM provisions and require compliance at all times, we are also finalizing the revisions to 40

CFR 63.8000(b)(2) so that opening of a safety device to avoid unsafe conditions is considered a deviation, unless it is a bypass of a control for a process vessel and accounted for as specified in 40 CFR 63.8005(h). We are also finalizing the proposed revisions to revise 40 CFR 63.8080(c), which is the provision requiring a record of each time a safety device is opened, to add additional recordkeeping provisions consistent with those for other deviations. In the event a safety device is opened, the owners or operators will be required to comply with the general duty provision in 40 CFR 63.8000(a) to minimize emissions at all times, and to report and record information related to deviations as specified in 40 CFR 63.8075 and 63.8080, respectively, unless it is a bypass of a control for a process vessel and accounted for as specified in 40 CFR 63.8005(h).

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

The EPA is amending 40 CFR 63.8055(b)(4), as proposed, to remove a reference to paragraph (d)(4) of the OSHA's Hazard Communication standard addressing OSHA-defined carcinogens. We are replacing the reference to carcinogens in 29 CFR 1910.1200(d)(4) with a new table, Table 11 to 40 CFR part 63, subpart HHHHH, that lists those organic HAP that must be included in calculating total organic HAP content of a coating material if they are present at 0.1 percent or greater by mass. We are including organic HAP in Table 11 to 40 CFR part 63, subpart HHHHH, if they were categorized in the *EPA's Prioritized Chronic Dose-Response Values for Screening Risk Assessments* (dated May 9, 2014) as a "human carcinogen," "probable human carcinogen," or "possible human carcinogen" according to *The Risk Assessment Guidelines of 1986* (EPA/600/8-87/045, August 1987), or as "carcinogenic to humans," "likely to be carcinogenic to humans," or with "suggestive evidence of carcinogenic potential" according to the *Guidelines for Carcinogen Risk Assessment* (EPA/630/P-03/001F, March 2005).

The EPA is making several additional revisions to 40 CFR part 63, subpart HHHHH, to clarify text or correct typographical errors, grammatical errors, and cross-reference errors. These editorial corrections and clarifications are summarized in Table 2 of this preamble.

TABLE 2—SUMMARY OF EDITORIAL AND MINOR CORRECTIONS TO 40 CFR PART 63, SUBPART HHHHH

Provision	Revision
40 CFR 63.7985(d)(2)	Remove the word “future.”.
40 CFR 63.7990(a)	Revise 40 CFR 63.7990(a) to refer to the affected source definition that is in 40 CFR 63.7990(b), and not in 40 CFR 63.7985(a).
40 CFR 63.8000(a)(1)	Revise the reference to “§§ 63.8005 through 63.8025” to “§§ 63.8005 through 63.8030.”.
40 CFR 63.8050(c)(3)	Correcting a printing error related to a May 13, 2005, amendment (70 FR 25676) to paragraph (c)(3) that resulted in deleting paragraphs (c)(3)(i) through (iii).
40 CFR 63.8075(c)(1)	Clarify the paragraph to say §§ 63.8005 through 63.8030 include heat exchangers.
40 CFR 63.8075(d)	Change the first reference to paragraph (d)(2) to instead refer to paragraph (d)(1).
40 CFR 63.8075(d)(2)(ii)	Remove the word “initial.”.
40 CFR 63.8090(b)	Clarify the sentence to provide that you are in compliance with the subpart if you have a storage tank with a fixed roof, closed-vent system, and control device in compliance with 40 CFR part 60, subpart Kb, and you are in compliance with the monitoring, recordkeeping, and reporting requirements in the subpart.
40 CFR 63.8105, definition of “Process vessel vent”	The EPA is not finalizing the proposed change to the last sentence of the definition, which would have replaced the words “process vessel vent” with “§ 63.8075 vent.”.
Table 7 to 40 CFR part 63, subpart HHHHH	Remove 2-Butanone (MEK) for Partially Soluble Hazardous Air Pollutants.
Table 8 to 40 CFR part 63, subpart HHHHH	Correct “FFFF” to “HHHHH.”.
Table 10 to 40 CFR part 63, subpart HHHHH	Change proposed column 3 entry for the row corresponding to § 63.6(f)(1) from “Yes, before the compliance date specified in § 63.7995(e). No, on and after the compliance date specified in § 63.7995(e).” to “No. See § 63.8000(a).”.
Table 10 to 40 CFR part 63, subpart HHHHH	Change proposed column 3 entry for the row corresponding to § 63.6(h)(1) from “Yes, before the compliance date specified in § 63.7995(e). No, on and after the compliance date specified in § 63.7995(e).” to “No. See § 63.8000(a).”.

We are including in the final rule a requirement for facilities to conduct control device performance testing no less frequently than once every 5 years when using emission capture systems and add-on controls to demonstrate compliance. For facilities with title V permits that require comparable periodic testing prior to permit renewal, no additional testing is required, and we included provisions in the rule to allow facilities to harmonize the NESHAP testing schedule with a facility’s current title V testing schedule.

E. What are the requirements for electronic submission of notifications, reports, and performance test data to the EPA?

The EPA is requiring owners or operators of MCM facilities to submit electronic copies of certain required notifications, semiannual reports, performance test reports, and performance evaluation reports, through the EPA’s Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). The final rule requires that certain performance test results be submitted using the Electronic Reporting Tool. For the semiannual compliance reports, the final rule requires that owners or operators use the appropriate spreadsheet template to submit information to CEDRI. The final version of the template for this report is located on the CEDRI website.

The electronic submittal of the reports addressed in this rulemaking will increase the usefulness of the data

contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public. For a more thorough discussion of electronic reporting, see the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules*, available in Docket ID No. EPA–HQ–OAR–2018–0747.

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

The revisions to the MACT standards being promulgated in this action are effective on August 14, 2020.

For all of the provisions we are finalizing under CAA sections 112(d)(2) and (3), all affected source owners or operators must comply with all of the amendments no later than 3 years after

the effective date of the final rule, or upon startup, whichever is later. As provided in CAA section 112(i), all new affected sources would comply with these provisions by the effective date of the final amendments to the MCM NESHAP, or upon startup, whichever is later.

All affected facilities would have to continue to meet the current provisions of 40 CFR part 63, subpart HHHHH, up to and no later than the applicable compliance date of the amended rule.

We are finalizing the amendments to the provisions for SSM by removing the exemptions from the emission limitations (*i.e.*, emission limits, operating limits, and work practice standards) during SSM periods and by removing the provision to develop and implement an SSM plan. We are also requiring that owners or operators take into account control device bypass periods, even if during SSM periods, when demonstrating compliance with the percent emission reduction provisions for process vessels in Table 1 to 40 CFR part 63, subpart HHHHH.

For all affected sources that commence construction or reconstruction on or before September 4, 2019, we are providing 3 years after the effective date of the final rule (or upon startup, whichever is later) for owners or operators to comply with the provisions that have been amended to remove the exemption from the emission limitations during SSM periods, with the exception of the vacated SSM exemptions contained in 40 CFR 63.6(f)(1) and (h)(1). We are

revising Table 10 to clarify that for all affected sources, these exemptions do not apply following the Court vacatur in *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008). For all affected sources that commenced construction or reconstruction after September 4, 2019, we are requiring that owners or operators comply with the amended provisions by the effective date of the final rule (or upon startup, whichever is later).

We are also adding a provision that notifications, performance test results, and semiannual compliance reports be submitted electronically, and that the semiannual compliance report be submitted electronically using a new template. We are requiring that all sources begin complying with the new electronic reporting provisions beginning no later than 3 years after the regulation’s effective date.

The EPA selected these compliance dates based on experience with similar industries and the EPA’s detailed justification for the selected compliance

dates is included in the preamble to the proposed rule (84 FR 46634, September 4, 2019).

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

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

A. Residual Risk Review for the MCM Source Category

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

Pursuant to CAA section 112(f), the EPA conducted a residual risk review

and presented the results of this review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in the September 4, 2019, proposed rule for 40 CFR part 63, subpart HHHHH (84 FR 46610). The results of the risk assessment for the proposal are presented briefly below in Table 3 of this preamble. More detail is in the residual risk technical support document, *Residual Risk Assessment for the Miscellaneous Coating Manufacturing Source Category in Support of the 2019 Risk and Technology Review Proposed Rule*, available in the docket for this rulemaking.

Table 3 of this preamble provides a summary of the results of the inhalation risk assessment for the source category.

TABLE 3—MCM INHALATION RISK ASSESSMENT RESULTS⁵

Risk assessment	Number of facilities ¹	Maximum individual cancer risk (in 1 million) ²	Population at increased risk of cancer ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI ³	Maximum screening acute noncancer HQ ⁴
Source Category	43	6	3,700	0.002	0.4	2
Whole Facility .....	.....	20	50,100	0.006	2	.....

¹ Number of facilities evaluated in the risk analysis.

² Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.

³ Maximum target organ-specific hazard index (TOSHI). The target organ system with the highest TOSHI for the source category is respiratory.

⁴ The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of hazard quotient (HQ) values. HQ values shown use the lowest available acute threshold value, which in most cases is the reference exposure limit (REL). When an HQ exceeds 1, we also show the HQ using the next lowest available acute dose-response value. The HQ shown here is for glycol ethers, for which there are no other available acute dose-response values.

⁵ For this source category, it was determined that baseline allowable emissions are equal to baseline actual emissions and, therefore, the risk summaries are the same.

The results of the inhalation risk modeling using the source category emissions for both actual and allowable emissions, as shown in Table 3 of this preamble, indicate the estimated cancer maximum individual risk (MIR) is 6-in-1 million, with chromium (VI) compounds from process vents as the major contributor to the risk. The total estimated cancer incidence from this source category is 0.002 excess cancer cases per year, or one excess case in every 500 years. Approximately 3,700 people are estimated to have cancer risks greater than or equal to 1-in-1 million from HAP emitted from the affected sources in this source category. The estimated maximum chronic noncancer TOSHI for the source category is 0.4 (respiratory), driven by emissions of acrylic acid from process vents. No one is exposed to TOSHI

levels greater than 1 due to emissions from this source category.

The results of the inhalation risk modeling using whole facility emissions data, as shown in Table 3 of this preamble, indicate that the estimated MIR is 20-in-1 million with emissions of hydrazine from sources subject to other standards driving the risk. These include 40 CFR part 63 subparts FFFF (Miscellaneous Organic Chemicals Manufacturing NESHAP), H (Hazardous Organic NESHAP), and EEEE (Organic Liquids Distribution), which are not part of this source category. The total estimated whole facility cancer incidence is 0.006 excess cancer cases per year. Approximately 50,100 people are estimated to have cancer risks greater than or equal to 1-in-1 million. The estimated maximum chronic noncancer TOSHI is 2 (for the

neurological target organ), driven by emissions of hydrogen cyanide from non-MCM source category emissions from carbon fiber production. Approximately 80 people are estimated to be exposed to noncancer hazard index (HI) levels greater than 1.

As shown in Table 3 of this preamble, for source category emissions, the highest acute HQ based on the reasonable worst-case scenario is 2, based on the REL for glycol ethers. This is the highest HQ that is outside facility boundaries. One facility is estimated to have an HQ greater than 1 based on the REL, which is the only available benchmark for glycol ethers.

Potential multipathway health risks under a fisher and farmer/gardener scenario were identified using a three-tier screening assessment of the HAP known to be persistent and bio-

accumulative in the environment (PB-HAP) emitted by facilities in this source category. For carcinogenic PB-HAP, one facility emits arsenic compounds, while two facilities emit polycyclic organic matter (POM). None of these emissions exceed a Tier 1 cancer screening value for arsenic or POM. For noncarcinogenic PB-HAP, one facility emits cadmium compounds and one facility emits mercury compounds. None of these emissions exceed a Tier 1 noncancer screening value for cadmium or mercury. Further analyses (*i.e.*, Tier 2 or 3 screens) were not performed. For lead compounds, we did not estimate any exceedances of the lead National Ambient Air Quality Standards (NAAQS).

A screening-level evaluation of the potential adverse environmental risk associated with emissions of the PB-HAP listed above, plus acid gases (hydrogen chloride is the only reported acid gas), indicated that no ecological benchmarks were exceeded. For lead compounds, we did not estimate any exceedances of the secondary lead NAAQS.

We weighed all health risk factors, including those shown in Table 2 of this preamble, in our risk acceptability determination and proposed that the residual risks from the MCM source category are acceptable (section IV.B.1 of the proposal preamble, 84 FR 46625, September 4, 2019).

We then considered whether 40 CFR part 63, subpart HHHHH, provides an ample margin of safety to protect public health and prevents, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. In considering whether the standards should be tightened to provide an ample margin of safety to protect public health, we considered the same risk factors that we considered for our acceptability determination and also considered the costs, technological feasibility, and other relevant factors related to emissions control options that might reduce risk associated with emissions from the source category. Related to risk, the baseline risks were low, and regardless of the availability of further control options, little risk reduction could be realized. As discussed further in section IV.B of this preamble, the only developments identified in the technology review were control options for inorganic HAP and organic HAP from process vessels. Because the baseline risks are being driven by inorganic HAP from process vessels, we evaluated a control option for inorganic HAP emissions from process vessels located at MCM facilities that would be

similar to those included in 40 CFR part 63, subpart CCCCCC, the NESHAP for Area Sources for Paints and Allied Products Manufacturing. Additionally, we evaluated increasing the control efficiency requirements for organic HAP emissions from process vessels. The process vessel options did not result in a decrease to the MIR or to the maximum chronic noncancer TOSHI because the MIR facility already had controls in place. However, there was a reduction seen in the population exposed to a cancer risk of 1-in-1 million from 3,700 to 1,900 due to emissions reductions at other facilities. But, as described in section IV.C of the proposal preamble (84 FR 46626, September 4, 2019), we determined that these options were not cost effective. Therefore, given the low baseline risks and lack of options for further risk reductions, we proposed that additional emission controls for this source category are not necessary to provide an ample margin of safety (see section IV.B.2 of the proposal preamble, 84 FR 46626, September 4, 2019).

2. How did the risk review change for the MCM Source Category?

We have not changed any aspect of the risk assessment for the MCM source category as a result of public comments received on the September 4, 2019, proposal.

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

We received comments in support of and against the proposed residual risk review and our determination is that no revisions were warranted under CAA section 112(f)(2) for the source category. Generally, the comments that were not supportive of the determination from the risk reviews suggested changes to the underlying risk assessment methodology. For example, one commenter stated that the EPA should lower the acceptability benchmark so that risks below 100-in-1 million are unacceptable, include emissions outside of the source category assessed, and assume that pollutants with noncancer health risks have no safe level of exposure. After review of all the comments received, we determined that no changes are needed to the risk assessment. The comments and our specific responses can be found in the document, *Summary of Public Comments and Responses for Risk and Technology Review for Miscellaneous Coating Manufacturing*, available in the docket for this rulemaking.

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 the maximum individual risk (MIR) of approximately 1-in-10 thousand” (see 54 FR 38045, September 14, 1989). We weigh all health risk factors in our risk acceptability determination, including the cancer MIR, cancer incidence, the maximum cancer TOSHI, the maximum acute noncancer HQ, the extent of noncancer risks, the distribution of cancer and noncancer risks in the exposed population, and the risk estimation uncertainties.

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 rule, we determined that the risks from the MCM 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, we are not revising this subpart to require additional controls pursuant to CAA section 112(f)(2) based on the residual risk review, and we are readopting the existing standards under CAA section 112(f)(2).

B. Technology Review for the MCM Source Category

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

Sources of HAP emissions regulated by the MCM NESHAP are process vessels, storage tanks, transfer racks, equipment leaks, wastewater streams, and heat exchange systems. MCM processes occur as batch operations, which involve intermittent or discontinuous feed of raw materials into equipment, and generally involve emptying of the equipment after the operation ceases and prior to beginning a new operation.

For process vessels, we evaluated two options that could be potentially considered technology developments under CAA section 112(d)(6). In the first option, we considered increasing the control efficiency requirement for process vessels at existing sources to

match the control requirement for new sources, which would increase the control efficiency for organic HAP with a vapor pressure equal to or greater than 0.6 kilopascals from 75 percent to 95 percent. We consider this option to be a new development because several facilities have controlled all process vessels with thermal oxidizers to comply with the NESHAP.

We estimated the costs of installing a thermal oxidizer on the six plants in the MCM source category that currently do not have a thermal oxidizer installed on process vessels. The costs were estimated using the *EPA Air Pollution Control Cost Manual* cost spreadsheet for thermal oxidizers³ and the process vent flow rate from the National Emissions Inventory (NEI) or the facility operating permit. The estimated cost effectiveness for these facilities ranged from \$20,000 per ton HAP removed to \$150,000 per ton HAP removed.

The second option for process vessels that we considered was to require controls to limit particulate matter (PM) HAP emissions when dry materials (*e.g.*, pigments) containing inorganic HAP are added to the process vessel. We considered provisions that would be similar to those included in 40 CFR part 63, subpart CCCCCC, the NESHAP for Area Sources for Paints and Allied Products Manufacturing. This option would reflect the fact that several facilities subject to 40 CFR part 63, subpart HHHHH, have process vessels controlled with fabric filters when dry materials are being added.

We estimated costs for both a fabric filter baghouse and a cartridge filter type of particulate control with a flow rate of 1,000 cubic feet per minute, plus 150 feet of flexible duct to capture the fugitive PM when dry matter is being added to the mixing vessel. The estimated cost effectiveness for this option ranged from \$310,000 to \$2,100,000 per ton of particulate HAP reduced. We also evaluated whether pigments could be added in a wetted or paste form, but not all pigments are available or can be used in wetted or paste form.

The EPA did not find the control technology development options considered for process vessels in this technology review to be cost effective or, in some cases, technologically feasible. Consequently, the EPA proposed that it is not necessary to amend the standards for process vessels under the technology review.

The MCM NESHAP requires existing sources to comply with the equipment leaks provisions in 40 CFR part 63, subpart R, NESHAP for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations); subpart TT, NESHAP for Equipment Leaks, Control Level 1; or subpart UU, NESHAP for Equipment Leaks, Control Level 2. New sources must comply with the provisions of subpart UU or TT. Based on developments in other similar source categories, we identified as a technology alternative to the current standard a more stringent provision for existing sources that would eliminate sensory monitoring and require instrument monitoring with lower leak definitions than specified in 40 CFR part 63, subpart TT. For this alternative, we estimated the incremental emission reductions and cost effectiveness of employing instrument monitoring (EPA Method 21) with an equipment leak defined as instrument readings of 500 parts per million by volume (ppmv) for valves, 2,000 ppmv for pumps, and 500 ppmv for connectors. We estimated the costs of requiring instrument monitoring with more stringent leak definitions for four model plants with 25, 50, 100, or 200 process vessels. The estimated cost effectiveness for these model plants ranged from \$107,000 per ton HAP removed to \$22,000 per ton HAP removed for the smallest to largest model plant, and these values are higher than organic HAP cost-effectiveness values that we historically have considered reasonable. The EPA did not find the leak detection instrument monitoring option that was evaluated to be cost effective. Consequently, the EPA proposed that it was not necessary to amend the standards for equipment leaks under the technology review.

The MCM NESHAP regulates wastewater streams that contain total partially soluble and soluble HAP at an annual average concentration greater than or equal to 4,000 ppmw and load greater than or equal to 750 lb/yr at existing sources, or that contain greater than or equal to 1,600 ppmw and any partially soluble and soluble HAP load at new sources. Wastewater tanks used to store regulated wastewater streams must have a fixed roof, which may have openings necessary for proper venting of the tank, such as a pressure/vacuum vent or j-pipe vent. Regulated wastewater streams must be conveyed using hard piping and treated as a hazardous waste in accordance with 40 CFR part 264, 265, or 266 either on-site or off-site. Alternatively, if the wastewater contains less than 50 ppmw

of partially soluble HAP, it may be treated in an enhanced biological treatment system that is located either on-site or off-site.

Because our technology review identified no developments in practices, processes, or controls for reducing wastewater emissions at MCM facilities, we evaluated developments in other industries with wastewater streams that contain organic HAP. We reviewed three options that were considered in other industry technology reviews for their applicability to the MCM wastewater streams. These options were:

(1) Requiring wastewater drain and tank controls at facilities.

(2) Requiring specific performance parameters (minimum fraction biodegraded, f_{bi0}) for an enhanced biological unit beyond those required in the Benzene NESHAP.

(3) Requiring wastewater streams with a volatile organic compound (VOC) content of 750 ppmw or higher to be treated by steam stripping prior to any other treatment process for facilities with high organic loading rates (*i.e.*, facilities with total annualized benzene quantity of 10 megagrams per year or more).

The EPA did not find any of the three wastewater stream control options evaluated to be cost effective. Consequently, the EPA proposed that it was not necessary to amend the standards for wastewater streams under the technology review.

The EPA did not identify in our technology review any developments in practices, processes, and control technologies for storage tanks, transfer operations (*i.e.*, bulk loading) of coating products, or heat exchange systems that were not already considered in the development of the original MACT.

Further explanation of the assumptions and methodologies for all options evaluated are provided in the memorandum, *Clean Air Act Section 112(d)(6) Technology Review for the Miscellaneous Coating Manufacturing Source Category*, available in the docket to this action.

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

We are making no changes to the conclusions of the technology review and are finalizing the results of the technology review for the MCM source category as proposed.

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

Comment: Some of the commenters supported the EPA's proposed

³ <https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution>.

determination that no changes to the MCM NESHAP were needed based on the technology review.

However, one commenter argued that the standard should be strengthened to reduce HAP emissions. The commenter argued that the EPA should establish a standard of zero allowed leaks to prohibit all uncontrolled releases, or to establish more stringent standards based on the latest advancements in LDAR. The commenter also argued that the EPA should establish more stringent standards for HAP metals based on the use of fabric filters when dry materials are added to process vessels, as in the Paints and Allied Products Manufacturing rule for area sources. Finally, the commenter argued that the EPA should establish standards for storage vessels based on internal floating roofs (IFR) or the use of closed vent systems and recovery or destruction devices. The commenter argued that CAA section 112(d)(6) does not allow the EPA to use cost as a factor in deciding whether more stringent standards should be adopted.

Response: In this technology review, we specifically looked for developments in practices, processes, and controls, including improvements in previously considered control technologies, and concluded there were no cost-effective developments applicable to this source category. The comment suggesting additional or more stringent controls be imposed has not provided data to support a revision to the proposed technology review; for this reason, we are adopting no changes to the NESHAP under the technology review.

With respect to the role of cost in our decisions under the technology review, we note that courts have not required the EPA to demonstrate that a technology is “cost-prohibitive” in order not to require adopting a new technology under CAA section 112(d)(6); a simple finding that a control is not cost effective is enough. See *Association of Battery Recyclers, et al. v. EPA*, et al., 716 F.3d 667, 673–74 (D.C. Cir. 2015) (approving the EPA’s consideration of cost as a factor in its 42 U.S.C. 7412(d)(6) decision-making and the EPA’s reliance on cost effectiveness as a factor in its standard-setting).

The option to require controls to limit PM HAP emissions from process vessels in which dry materials containing inorganic HAP are added to the process vessel was considered during the proposal for this rule. As stated in the MCM technology review memorandum, *Clean Air Act Section 112(d)(6) Technology Review for Process Vessels, Storage Tanks, Equipment Leaks, Wastewater Streams, Transfer*

Operations, and Heat Exchange Systems Located in the Miscellaneous Coating Manufacturing Source Category (Docket Item No. EPA–HQ–OAR–2018–0747–0033), we reviewed the permits for the 12 facilities subject to 40 CFR part 63, subpart HHHHH, for which the 2014 NEI included emissions of particulate HAP and found that the permits for all but one of the facilities confirmed that some type of particulate control was already fitted on the process vessels. These controls included baghouse fabric filters, cartridge filters, and wet scrubbers, and we proposed that it was not cost effective to require any additional PM controls.

Also, as described in the MCM technology review memorandum, we evaluated installing an IFR, external floating roof, closed vent system to an emission control device, vapor balancing, and considered maximum total vapor pressure thresholds; however, we did not identify any control technology development options for storage tanks to be cost effective.

Finally, in the MCM technology review memorandum, we concluded that more stringent leak definitions for pumps, valves, and connectors using EPA Method 21 equipment leak monitoring were not cost effective for this source category.

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

For the reasons explained in the preamble to the proposed rule (84 FR 46626, September 4, 2019) and in the comment responses above in section IV.B.3 of this preamble, and the response to comment document, we are making no changes and are finalizing the results of the technology review as proposed.

C. SSM Provisions

1. What did we propose?

In the September 4, 2019, action, we proposed amendments to the MCM NESHAP to remove and revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times. More information concerning the elimination of SSM provisions is in the preamble to the proposed rule (84 FR 46629, September 4, 2019).

We proposed amendments to account for instances where 40 CFR part 63, subpart HHHHH, cross-references other subparts that contain SSM provisions. We proposed 40 CFR 63.8000(f) that lists the referenced paragraphs, including individual paragraphs or phrases, in subparts SS, TT, and UU of 40 CFR part 63 that contain references

to SSM periods that will no longer apply after the compliance date for the final amendments as a result of the final SSM revisions.

Because we proposed to remove the SSM provisions and require compliance at all times, we proposed to amend 40 CFR 63.8000(c) to account for bypass periods in determining compliance with the emission percent reduction provisions in Table 1 to 40 CFR part 63, subpart HHHHH, for process vessels. These amendments apply to process vessels with closed vent systems and add-on controls that contain bypass lines that could divert a vent stream to the atmosphere. We proposed that owners or operators must measure and record during each semiannual compliance period the hours that the control device was bypassed and the source’s total operating hours. They must then use the overall control efficiency required in Table 1, the total operating hours, and the control efficiency of the control device to determine the allowable bypass hours during the semiannual compliance period using proposed Equation 1 in 40 CFR 63.8005(h). These changes are required because SSM periods that may involve bypassing of the control device cannot be excluded and must now be included in determining compliance.

Because we proposed to remove the SSM provisions and require compliance at all times, we proposed to revise 40 CFR 63.8000(b)(2) so that opening of a safety device to avoid unsafe conditions is considered a deviation, unless it is a bypass of a control for a process vessel and accounted for as specified in 40 CFR 63.8005(h). We also proposed to revise 40 CFR 63.8080(c), which is the provision to keep a record of each time a safety device is opened, to add additional recordkeeping provisions consistent with those for other deviations. As a result of these proposed changes, the opening of a safety device would be considered a deviation from the emission limits for sources using closed vent systems and add-on control devices to comply with the emission limitations in 40 CFR part 63, subpart HHHHH, unless it is a bypass of a control for a process vessel and accounted for as specified in 40 CFR 63.8005(h). In the event a safety device is opened, the owners or operators would be required to comply with the general duty provision in 40 CFR 63.8000(a) to minimize emissions at all times and to report and record information related to deviations as specified in 40 CFR 63.8075 and 63.8080, respectively, unless it is a bypass of a control for a process vessel

and accounted for as specified in 40 CFR 63.8005(h).

2. What changed since proposal?

We are finalizing the SSM provisions as proposed with no changes (84 FR 46629, September 4, 2019).

We are also revising the bypass provisions to allow the use of bypass valve or damper position indicators to determine the time and duration of possible bypasses as an alternative to the proposed requirement to use a flow indicator. In the final rule, we are providing the following options to comply with the bypass monitoring requirements: (1) Use a flow indicator that provides a continuous reading of flow and no flow, (2) use valve position indicator or bypass damper indicator that provides a continuous reading of damper position, or (3) secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. For flow indicators, facilities will have to perform a flow meter verification check annually. The annual verification check must be performed for at least two points, one at the instrument's zero and the other at the instrument's span. For valve position indicators, facilities must ensure that any bypass line valve or damper is in the closed position through continuous monitoring of valve position when the control device is in operation. The monitoring system must be inspected semiannually to verify that the monitor will accurately indicate valve position. For car-seal or lock-and-key type configurations, facilities must ensure that any seal or closure mechanism is maintained in the non-diverting position and the vent stream is not diverted through a bypass line. The visual inspections on the seal or closure mechanism must be completed at least once every month.

We are finalizing the provisions related to safety device openings in 40 CFR 63.8000(b)(2) and 63.8080(c) as proposed with no changes (84 FR 46632, September 4, 2019).

We have corrected an error in the proposed amendatory language at 40 CFR 63.7995(e) (84 FR 46640). In the proposal, we indicated that sources that began construction or reconstruction on or before the publication of the final rule in the **Federal Register** are given 3 years to comply with the provisions listed in 40 CFR 63.7995(e)(1) through (5). That was incorrect and the text should have indicated that those that began construction or reconstruction on or before the proposal publication date of September 4, 2019, have 3 years to comply with the provisions listed in 40 CFR 63.7995(e)(1) to (5).

3. What key comments did we receive and what are our responses?

Comment: One commenter requested specific SSM provisions for PRDs, flares, and maintenance venting. The commenter requested that the opening of a safety device be allowed if it is a PRD meeting the requirements in 40 CFR part 63, subpart TT (40 CFR 63.1010 or 63.1011) or UU (40 CFR 63.1029 or 63.1030), and suggested certain work practices are followed that were specified by the commenter. The commenter also requested that certain types of safety devices and PRDs be exempt from the requirements for safety devices.

The commenter requested that the definition of "process vessel vent" be revised to exclude "maintenance vents after the equipment has been washed or purged in accordance with site maintenance practices to minimize, to the extent possible, emissions of HAP." The commenter also suggested as a second option, if the EPA decides to regulate HAP emissions from maintenance activities associated with process vessel vents, that the EPA should add work practice standards in place of emission limitations, consistent with the language in the Petroleum Refinery MACT, 40 CFR 63.643(c), and the proposed changes to the Ethylene Production MACT, 40 CFR 63.1103(e)(5).

The commenter requested that, consistent with the Column 3 note on 40 CFR 63.6(h)(2) through (9) in Table 10 to 40 CFR part 63, subpart HHHHH, the EPA should clarify the "Yes" language on 40 CFR 63.6(h)(1) by adding the italicized language as follows: "Yes, before the compliance date specified in § 63.7995(e), specifically for flares subject to Method 22 observations that are required as part of a compliance assessment. No, on or after the compliance date specified in § 63.7995(e)."

Response: We are making none of the suggested changes because they are not necessary. There is a low likelihood of PRDs or flares being used in this source category because operations are conducted at ambient conditions (*i.e.*, process overpressures are less likely because operations are conducted at lower temperature and pressures) and facilities typically comply with the standards using thermal oxidizers or condensers. Additionally, the bypass provisions apply to all SSM events, including events associated with maintenance venting, and no examples were provided to the EPA to support adding provisions for maintenance venting in the MCM source category.

4. What is the rationale for our final approach for the SSM provisions?

We evaluated all comments on the EPA's proposed amendments to the SSM provisions. For the reasons explained in the proposed rule, we determined that these amendments to the SSM provisions for the MCM NESHAP remove and revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times. More information concerning the amendments we are finalizing for SSM provisions is in the preamble to the proposed rule (84 FR 46629, September 4, 2019). Therefore, we are finalizing our approach for the SSM provisions as proposed.

D. Electronic Reporting Provisions

1. What did we propose?

In the September 4, 2019, document, we proposed to require owners or operators of MCM sources to submit electronic copies of notifications, reports, and performance tests through the EPA's CDX, using the CEDRI. These include the initial notifications required in 40 CFR 63.9(b) and 63.8070(b), the NOCS required in 40 CFR 63.9(h) and 63.8075(d), the performance test report required in 40 CFR 63.8075(f), the performance evaluation report required in 40 CFR 63.8075(g), and the semiannual reports required in 40 CFR 63.8075(b) and (c). A description of the electronic submission process is provided in the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules*, August 8, 2018, available in the docket for this rulemaking. The proposed rule requirements would replace the current rule requirements to submit the notifications and reports to the Administrator at the appropriate address listed in 40 CFR 63.13. The proposed rule requirement would not affect submittals required by state air agencies. The proposed compliance schedule language in 40 CFR 63.8075(h) for submission of initial compliance reports, NOCS reports, and compliance reports would have provided 3 years after the final rule is published to begin electronic reporting.

2. What changed since proposal?

We are finalizing the electronic reporting provisions as proposed with no changes (84 FR 46632, September 4, 2019).

We are revising the proposed electronic reporting template to incorporate changes identified in the

public comments and described completely in the *Summary of Public Comments and Responses for Risk and Technology Review for Miscellaneous Coating Manufacturing*, available in the docket for this rulemaking.

3. What key comments did we receive and what are our responses?

Comment: The EPA received comments that identified several corrections and additions to the draft CEDRI template and described them in detail in their comment letter. These changes to the draft CEDRI template are described completely in the *Summary of Public Comments and Responses for Risk and Technology Review for Miscellaneous Coating Manufacturing*, available in the docket for this rulemaking.

Response: The EPA has evaluated these comments and has made the appropriate corrections to the CEDRI template as described in *Summary of Public Comments and Responses for Risk and Technology Review for Miscellaneous Coating Manufacturing*, available in the docket for this rulemaking.

4. What is the rationale for our final approach for the electronic reporting provisions?

For the reasons explained in the preamble to the proposed rules (84 FR 46632, September 4, 2019), and in the comment responses above in section IV.D.3 of this preamble, and in the response to comment document, we are finalizing the electronic reporting provisions for the MCM NESHAP, as proposed. We are revising the CEDRI reporting template as appropriate to incorporate the corrections and additions identified in the public comments.

E. Other Technical Amendments

1. What did we propose?

The EPA proposed to amend 40 CFR 63.8055(b)(4) to remove reference to paragraph (d)(4) of the OSHA's Hazard Communication standard, which dealt with OSHA-defined carcinogens. We proposed to replace these references to carcinogens in 29 CFR 1910.1200(d)(4) with a list (in proposed new Table 11 to 40 CFR part 63, subpart HHHHH) of those organic HAP that must be included in calculating total organic HAP content of a coating material if they are present at 0.1 percent or greater by mass. We also proposed additional technical and editorial corrections that were listed in Table 4 of the proposal preamble.

2. What changed since proposal?

We are finalizing the technical amendments as proposed with no changes (84 FR 46633, September 4, 2019).

3. What key comments did we receive and what are our responses?

We received comments supporting the addition of Table 11 to 40 CFR part 63, subpart HHHHH. We also received comments indicating several additional technical and editorial corrections that are detailed in the *Summary of Public Comments and Responses for Risk and Technology Review for Miscellaneous Coating Manufacturing*, available in the docket for this rulemaking.

4. What is the rationale for our final approach for the other technical amendments?

For the reasons explained in the preamble to the proposed rules (84 FR 46633, September 4, 2019), in the comment responses above in section IV.E.3 of this preamble, and in the response to comment document, we are finalizing the other technical amendments for the MCM NESHAP, as proposed. The proposed technical amendments, to include the new Table 11, are being finalized in this action. The editorial corrections proposed in Table 4 of the proposal preamble are being finalized, with edits based on responses from commenters. These edits are shown in Table 2 of this preamble.

F. Ongoing Emissions Compliance Demonstrations

1. What did we propose?

We proposed to require owners or operators of facilities complying with the standards using a closed vent system and add-on controls to control emissions to perform periodic testing to confirm the performance of the add-on control device. We proposed to require owners or operators that are not already on a 5-year testing schedule to conduct the first of the periodic performance tests within 3 years of the effective date of the revised standards. Afterward, the owners or operators would conduct periodic testing before they renew their operating permits, but no longer than 5 years following the previous performance test. Additionally, owners or operators of facilities that have already tested as a condition of their permit within the last 2 years before the effective date would be permitted to maintain their current 5-year schedule and not be required to move up the date of the next test to the 3-year date specified above.

2. What changed since proposal?

We are finalizing the periodic performance testing and ongoing compliance demonstration provisions as proposed with no changes (84 FR 46634, September 4, 2019).

3. What key comments did we receive and what are our responses?

Comment: The EPA received comments that performance testing should not be required except when the facility has a change in operations, or where the change is not considered to be within the previously established worst-case conditions as specified in 40 CFR 63.8005(d)(1)(iv). The EPA also received comments that periodic performance testing should only be required for thermal oxidizers and should not be required for carbon adsorbers or for condensers, and that the EPA should not eliminate design evaluations of small control devices. See 40 CFR 63.8000(d)(2). The commenters argued that testing small control devices is often impractical (for example, once-through carbon adsorption) and needless where the performance (such as for condensers) can be predicted with a high degree of certainty.

Response: We disagree that performance tests should only be required when the facility has a change in operations. As explained in the preamble to the proposed rule, periodic performance tests help identify potential degradation of the add-on control device over time and ensure the control device remains effective, reducing the potential for acute emissions episodes or noncompliance. Also as explained in the preamble to the proposed rule, many facilities using add-on controls to demonstrate compliance with the NESHAP are currently required to conduct performance tests every 5 years as a condition for renewing their title V operating permit. The requirement to conduct testing every 5 years also eliminates uncertainty of determining whether a change in facility operations should trigger a new performance test. Further, removing the design evaluation for small control devices will not affect facilities using condensers because they may still comply by meeting the condenser outlet temperature requirements specified in Table 1 to 40 CFR part 63, subpart HHHHH. We do not expect many facilities to be controlling with carbon adsorbers, and, therefore, we are not exempting carbon adsorbers from these requirements.

The comments and responses on the proposed performance testing requirements are detailed in the

Summary of Public Comments and Responses for Risk and Technology Review for Miscellaneous Coating Manufacturing, available in the docket for this rulemaking.

4. What is the rationale for our final approach for the ongoing compliance demonstrations?

For the reasons explained in the preamble to the proposed rules (84 FR 46634, September 4, 2019) and in the comment responses above in section IV.F.3 of this preamble and the response to comment document, we are finalizing the periodic testing provisions for the MCM NESHAP, as proposed.

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

A. What are the affected sources?

Currently, 43 major sources subject to the MCM NESHAP are operating in the United States. The affected source under the NESHAP is the facility-wide collection of equipment used to manufacture coatings and includes all process vessels; storage tanks for feedstocks and products; components such as pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems; wastewater tanks; transfer racks; and cleaning operations. A coating is defined as material such as paint, ink, or adhesive that is intended to be applied to a substrate and consists of a mixture of resins, pigments, solvents, and/or other additives, where the material is produced by a manufacturing operation where materials are blended, mixed, diluted, or otherwise formulated.

B. What are the air quality impacts?

At the current level of control, estimated emissions of volatile organic HAP from the MCM source category are approximately 405 tpy.

The final amendments require that all 43 major sources in the MCM source category comply with the relevant emission standards at all times, including periods of SSM. We were unable to quantify the emissions that occur during periods of SSM or the specific emissions reductions that will occur as a result of this action. However, eliminating the SSM exemption has the potential to reduce emissions by requiring facilities to meet the applicable standard during SSM periods.

Indirect or secondary air emissions impacts are impacts that will result from the increased electricity usage

associated with the operation of control devices (e.g., increased secondary emissions of criteria pollutants from power plants). Energy impacts consist of the electricity and steam needed to operate control devices and other equipment. The amendments will have no effect on the energy needs of the affected facilities and will, therefore, have no indirect or secondary air emissions impacts.

C. What are the cost impacts?

We estimate that to comply with the final amendments, each facility in the MCM source category will experience increased reporting and recordkeeping costs. The recordkeeping and reporting costs are presented in section VI.C of this preamble. The costs include time to read and understand the rule amendments. Costs associated with elimination of the SSM exemptions were estimated as part of the reporting and recordkeeping costs and include time for re-evaluating previously developed SSM record systems. Costs associated with the provision to electronically submit notifications and semi-annual compliance reports using CEDRI were estimated as part of the reporting and recordkeeping costs and include time for becoming familiar with CEDRI and the reporting template for semi-annual compliance reports.

We are also finalizing a provision for performance testing no less frequently than every 5 years for sources in the MCM source category using add-on controls to demonstrate compliance. We estimate that 12 of the facilities subject to the MCM NESHAP and using add-on control devices will incur costs to conduct control device performance testing because they are not required by their permits to conduct testing every 5 years. This total does not include facilities in the MCM source category that have add-on controls and are currently required to perform periodic performance testing as a condition of their state operating permit. The cost for a facility to conduct a destruction or removal efficiency performance test using EPA Method 25 or 25A is estimated to be about \$19,000. The total cost for all 12 facilities to test their add-on control devices in a single year, plus one facility completing a retest to account for 5 percent of control devices failing to pass the first test, will be \$247,000. The total annualized testing cost, including retests, is approximately \$57,000 per year at an interest rate of 5.25 percent and an additional \$6,000 in reporting costs per facility in the year in which the test occurs for the MCM source category. For further information on the potential costs, see the cost tables

in the memoranda, *Estimated Costs/Impacts 40 CFR part 63 Subpart HHHHHH Monitoring Review Revisions*, May 2019, and the *Economic Impact and Small Business Screening Assessments for Proposed Amendments to National Emission Standards for the Hazardous Air Pollutants for Miscellaneous Coating Manufacturing Facilities (Subpart HHHHHH)*, in the MCM Docket.

D. What are the economic impacts?

The economic impact analysis is designed to inform decision-makers about the potential economic consequences of a regulatory action. For the final rule, the EPA estimated the cost of becoming familiar with the rule and re-evaluating previously developed SSM record systems and performing periodic emissions testing at certain facilities with add-on controls that are not already required to perform testing. To assess the maximum potential impact, the largest cost expected to be experienced in any 1 year is compared to the total sales for the ultimate owner of the affected facilities to estimate the total burden for each facility.

For the final revisions to the MCM NESHAP, the 2019 equivalent annualized value (in 2018\$) of the costs over the period 2020–2026 is \$66,000, assuming a 3-percent discount rate and \$73,000 assuming a 7-percent discount rate. The 43 affected facilities are owned by 27 different parent companies, and the total costs associated with the final amendments range from 0.000005 to 0.025 percent of annual sales revenue per ultimate owner. These costs are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

The EPA also prepared a small business screening assessment to determine whether any of the identified affected entities are small entities, as defined by the U.S. Small Business Administration. Two of the facilities potentially affected by the final revisions to the MCM NESHAP are small entities. However, the costs associated with the final amendments for these two affected small entities range from 0.002 to 0.025 percent of annual sales revenues per ultimate owner. Therefore, there are no significant economic impacts on a substantial number of small entities from these final amendments.

More information and details of this analysis are provided in the technical document titled *Economic Impact and Small Business Screening Assessments for Proposed Amendments to the National Emission Standards for*

Hazardous Air Pollutants for Miscellaneous Coating Manufacturing (Subpart HHHHH), available in the MCM Docket.

E. What are the benefits?

As stated above in section V.B of this preamble, we were unable to quantify the specific emissions reductions associated with eliminating the SSM exemption.

Because these final amendments are not considered economically significant, as defined by Executive Order 12866, we did not monetize the benefits of reducing these emissions. This does not mean that there are no benefits associated with the potential reduction in volatile organic HAP from this rule.

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,

during the proposal, we performed a demographic analysis, which is an assessment of risk 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 risk from the MCM source category across different demographic groups within the populations living near facilities.

The results of the demographic analysis are summarized in Table 4 of this preamble. These results, for various demographic groups, are based on the estimated risk from actual emissions levels for the population living within 50 km of the facilities. These results have not changed since the proposal.

TABLE 4—MCM DEMOGRAPHIC RISK ANALYSIS RESULTS

	Nationwide	Population with cancer risk at or above 1-in-1 million due to MCM	Population with chronic HI above 1 due to MCM
Total Population	371,746,049	3,665	0
White and Minority by Percent			
White	62	64	0
Minority	38	36	0
Minority by Percent			
African American	12	32	0
Native American	0.8	0.05	0
Hispanic or Latino (includes White and nonwhite)	18	2	0
Other and Multiracial	7	2	0
Income by Percent			
Below Poverty Level	14	29	0
Above Poverty Level	86	71	0
Education by Percent			
Over 25 and without High School Diploma	14	19	0
Over 25 and with a High School Diploma	86	81	0
Linguistically Isolated by Percent			
Linguistically Isolated	6	1	0

The results of the MCM source category demographic analysis indicate that emissions from the source category expose approximately 3,700 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 each demographic group (except for African American, Below Poverty Level, Hispanic or Latino, and Above Poverty Level) are similar to (within 5 percent of) their respective nationwide

percentages. The African American and Below Poverty Level demographic groups are greater than their respective nationwide percentages, while the Hispanic or Latino (includes White and nonwhite) and Above Poverty Level are lower than their respective nationwide percentages.

The methodology and the results of the demographic analysis are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations*

Living Near Miscellaneous Coating Manufacturing Facilities, available in the docket for this rulemaking.

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

The EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are summarized in section IV.A of this preamble and are further documented in

the *Residual Risk Assessment for the Miscellaneous Coating Manufacturing Source Category in Support of the 2019 Risk and Technology Review Proposed Rule*, available in the docket for this rulemaking.

VI. Statutory and Executive Order Reviews

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

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

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

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

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

C. Paperwork Reduction Act (PRA)

The information collection activities in this final rule will be submitted for approval to OMB under the PRA. The information collection request (ICR) document that the EPA prepared has been assigned EPA ICR number 2115.07. You can find a copy of the ICR in the MCM Docket (Docket ID No. EPA-HQ-OAR-2018-0747), and it is briefly summarized here.

The EPA is finalizing revisions to the SSM provisions of the rule, requiring periodic testing of control devices, and requiring the use of electronic data reporting for future performance test data submittals, notifications, and reports. This information is being collected to assure compliance with 40 CFR part 63, subpart HHHHH.

Respondents/affected entities: Facilities manufacturing surface coatings.

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

Estimated number of respondents: In the 3 years after the amendments are final, approximately 43 respondents per year will be subject to the NESHAP and no additional respondents are expected to become subject to the NESHAP during that period.

Frequency of response: The total number of responses in year 1 is 175, in year 2 is 46, and in year 3 is 85.

Total estimated burden: The average annual burden of the final amendments

to the 43 MCM facilities over the 3 years is estimated to be 565 hours (per year). The average annual burden of the Agency over the 3 years after the amendments are final is estimated to be 116 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The average annual cost of the final rule amendments to the MCM facilities is \$65,000 in labor costs in the first 3 years after the amendments are final. The average annual capital and operation and maintenance costs are \$82,000. The total average annual Agency cost of the proposed amendments over the first 3 years after the amendments are final is estimated to be \$5,500.

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. The Agency has determined that two of the facilities potentially affected by the final revisions to the MCM NESHAP are small entities and may experience an impact of 0.002 to 0.025 percent of annual sales revenues per ultimate owner. Details of this analysis are presented in section V.D of this preamble and additional detail is provided in the economic impact memoranda associated with this action. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. 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. No tribal facilities are known to be engaged in any of the industries that will be affected by this action (MCM). 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 contained in sections III.A, III.C, and IV.A of this preamble and are further documented in the *Miscellaneous Coating Manufacturing Risk Assessment Report*, in the MCM Docket.

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. Therefore, the EPA conducted searches for the MCM NESHAP through the Enhanced National Standards Systems Network Database managed by the American National Standards Institute (ANSI). We also contacted voluntary consensus standards (VCS) organizations and accessed and searched their databases. We conducted searches for EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 18, 21, 22, 24, 25, 25A, 25D, 26, 26A, and 29 of 40 CFR part 60, appendix A; 301, 305, 311, 316, and 320 of 40 CFR part 63, appendix A; 624, 625, 1624, 1625, 1666, and 1671 of 40 CFR part 136, appendix A; and 8260, 8260B (SW-846), 8270, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW-846 third edition. During the EPA's

VCS search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's reference method, the EPA ordered a copy of the standard and reviewed it as a potential equivalent method. We reviewed all potential standards to determine the practicality of the VCS for this rule. This review requires significant method validation data that meet the requirements of EPA Method 301 for accepting alternative methods or scientific, engineering, and policy equivalence to procedures in the EPA reference methods. The EPA may reconsider determinations of impracticality when additional information is available for particular VCS.

No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 21, 22, 25D, 305, 316, 625, 1624, 1625, 1666, 1671, 8260, 8260B (SW-846), and 8270. The following VCS were identified as acceptable alternatives to the EPA test methods for the purpose of this rule.

The EPA is including in the final rule the VCS ANSI/ASME PTC 19-10-1981 Part 10 (2010), "Flue and Exhaust Gas Analyses," as an acceptable alternative to EPA Method 3B for the manual procedures only and not the instrumental procedures. This method is used to quantify the oxygen and carbon dioxide concentration in exhaust from stationary combustion sources, and is available at the American National Standards Institute, 1899 L Street NW, 11th Floor, Washington, DC 20036 and the American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016-5990. See <https://www.ansi.org> and <https://www.asme.org>.

Additionally, the EPA is including in the final rule the VCS ASTM D6420-18, "Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry," as an acceptable alternative to EPA Method 18 with the following caveats. This ASTM procedure employs a direct interface gas chromatograph/mass spectrometer (GCMS) to identify and quantify the 36 volatile organic compounds (or sub-set of these compounds) listed in the method, and has been approved by the EPA as an alternative to EPA Method 18 only when the target compounds are all known and the target compounds are all listed in ASTM D6420 as measurable. ASTM D6420-18 should not be used for methane and ethane because the atomic mass is less than 35; and ASTM D6420

should never be specified as a total VOC method.

The EPA is including in the final rule the VCS ASTM D2369-10(2015) el, "Test Method for Volatile Content of Coatings;" ASTM D2697-03 (2014), "Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings;" and ASTM D3960-98, "Standard Practice for Determining VOC Content of Paints and Related Coatings," as acceptable alternatives to EPA Method 24 for determining the weight-percent HAP content of coatings, by determining the volatile matter or VOC content of coatings and use that value as a substitute for the mass fraction of HAP, for demonstrating compliance with the weight-percent HAP limit alternative in 40 CFR 63.8055. ASTM D2369-10(2015) el is used for calculating the weight percent volatile organic content in coatings and the weight percent solids content. ASTM D2697-03 (2014) measures the volume of dry coating solids in a given volume of liquid coating. ASTM D3960-98 is used for determining the VOC content of paints and related coatings and for calculating the VOC content expressed as the mass of VOC: (1) Per unit volume of coating less water and exempt volatile compounds, and (2) per unit volume of coating solids and (3) per unit mass of coating solids.

In addition, the EPA is including in the final rule-the VCS ASTM D6348-12e1, "Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy," as an acceptable alternative to EPA Method 320 of appendix A to 40 CFR part 63 with caveats requiring inclusion of selected annexes to the standard as mandatory. ASTM D6348-12e1 identifies and measures the concentration of organic compounds in an exhaust stream. The test plan preparation and implementation in the Annexes to ASTM D6348-12e1, Sections A1 through A8 are mandatory; and in ASTM D6348-12e1, Annex A5 (Analyte Spiking Technique), the percent (%) R must be determined for each target analyte (Equation A5.5). In order for the test data to be acceptable for a compound, %R must be $70\% \geq R \leq 130\%$. If the %R value does not meet this criterion for a target compound, the test data is not acceptable for that compound and the test must be repeated for that analyte (*i.e.*, the sampling and/or analytical procedure should be adjusted before a retest). The %R value for each compound must be reported in the test report, and all field measurements must be corrected with

the calculated %R value for that compound by using the following equation:

$$\text{Reported Results} = (\text{Measured Concentration in the Stack} \times 100) / \% R.$$

The five ASTM methods (ASTM D2369-10(2015) el, ASTM D2697-03, ASTM D3960-98, ASTM D6348-12e1, and ASTM D6420-18) are available at ASTM International, 1850 M Street NW, Suite 1030, Washington, DC 20036. See <https://www.astm.org/>.

The EPA is including in the final rule the VCS CARB Method 310, "Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds (ROC) in Aerosol Coating Products," as an acceptable alternative to EPA Method 311 for determining the weight-percent HAP content of coatings, by determining the mass fraction of volatile matter and use that value as a substitute for the mass fraction of HAP, for demonstrating compliance with the weight-percent HAP limit alternative in 40 CFR 63.8055. This method is used to determine the weight percent of VOC in consumer products and ROC in aerosol coating products and is available from the California Air Resources Board (CARB), 1001 I Street, Sacramento, CA 95814. See <https://ww2.arb.ca.gov/>.

Additional information for the VCS search and determinations can be found in the memorandum, *Voluntary Consensus Standard Results for National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing*, which is available in the docket for this rulemaking.

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) because it does not significantly affect the level of protection provided to human health or the environment. The documentation for this decision is contained in section V.F of this preamble and the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Miscellaneous Coating Manufacturing Facilities*, available in the docket for this rulemaking.

L. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 63

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

Andrew Wheeler, Administrator.

For the reasons stated in the preamble, the EPA amends 40 CFR part 63 as follows:

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

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

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

Subpart A—General Provisions

- 2. Section 63.14 is amended by:
■ a. Revising paragraphs (e)(1) and (h)(26), (30), (50), (86), and (94);
■ b. Redesignating paragraphs (k)(1) through (5) as paragraphs (k)(2) through (6); and
■ c. Adding new paragraph (k)(1).

The revisions and addition read as follows:

§ 63.14 Incorporations by reference.

(e) * * *
(1) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], issued August 31, 1981, IBR approved for §§ 63.309(k), 63.457(k), 63.772(e) and (h), 63.865(b), 63.997(e), 63.1282(d) and (g), and 63.1625(b), table 5 to subpart EEEE, §§ 63.3166(a), 63.3360(e), 63.3545(a), 63.3555(a), 63.4166(a), 63.4362(a), 63.4766(a), 63.4965(a), and 63.5160(d), table 4 to subpart UUUU, table 3 to subpart YYYY, §§ 63.7822(b), 63.7824(e), 63.7825(b), 63.8000(d), 63.9307(c), 63.9323(a), 63.9621(b) and (c), 63.11148(e), 63.11155(e), 63.11162(f), 63.11163(g), 63.11410(j), 63.11551(a), 63.11646(a), and 63.11945, and table 4 to subpart AAAAA, table 5 to subpart DDDDD, table 4 to subpart JJJJJ, table 4 to subpart KKKKK, tables 4 and 5 of subpart UUUUU, table 1 to subpart ZZZZZ, and table 4 to subpart JJJJJ.

* * * * *

(h) * * *
(26) ASTM D2369–10 (Reapproved 2015)e1, Standard Test Method for Volatile Content of Coatings, approved June 1, 2015, IBR approved for §§ 63.3151(a), 63.3360(c), 63.3961(j), 63.4141(a) and (b), 63.4161(h), 63.4321(e), 63.4341(e), 63.4351(d), 63.4541(a), and 63.4561(j), appendix A to subpart PPPP, and §§ 63.4741(a), 63.4941(a) and (b), 63.4961(j), and 63.8055(b).

(30) ASTM D2697–03 (Reapproved 2014), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, approved July 1, 2014, IBR approved for §§ 63.3161(f), 63.3360(c), 63.3941(b), 63.4141(b), 63.4741(a) and (b), 63.4941(b), and 63.8055(b).

(50) ASTM D3960–98, Standard Practice for Determining Volatile Organic Compound (VOC) Content of Paints and Related Coatings, approved November 10, 1998, IBR approved for §§ 63.3360(c) and 63.8055(b).

(86) ASTM D6348–12e1, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, Approved February 1, 2012, IBR approved for §§ 63.997(e), 63.1571(a), and 63.2354(b), table 5 to subpart EEEE, table 4 to subpart UUUU, and §§ 63.7142(a) and (b) and 63.8000(d).

(94) ASTM D6420–18, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, approved November 1, 2018, IBR approved for §§ 63.987(b), 63.997(e), and 63.2354(b), table 5 to subpart EEEE, and §§ 63.2450(j) and 63.8000(d).

(k) * * *

(1) Method 310, "Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds (ROC) in Aerosol Coating Products," amended May 25, 2018, IBR approved for § 63.8055(b).

* * * * *

Subpart HHHHH—National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

■ 3. Section 63.7985 is amended by revising paragraphs (a)(1) through (3), (b) introductory text, (b)(1) through (3), and (d)(1) through (4) to read as follows:

§ 63.7985 Am I subject to the requirements in this subpart?

(a) * * *
(1) Are located at or are part of a major source of hazardous air pollutants (HAP) emissions, as defined in section 112(a) of the Clean Air Act (CAA);

(2) Manufacture coatings as defined in § 63.8105;

(3) Process, use, or produce HAP; and

(b) Miscellaneous coating manufacturing operations include the facility-wide collection of equipment described in paragraphs (b)(1) through (4) of this section that is used to manufacture coatings as defined in § 63.8105. Miscellaneous coating manufacturing operations also include cleaning operations.

- (1) Process vessels;
(2) Storage tanks for feedstocks and products;

(3) Components such as pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems; and

(d) * * *

(1) Research and development facilities, as defined in section 112(c)(7) of the CAA;

(2) The affiliated operations located at an affected source under subparts GG (National Emission Standards for Aerospace Manufacturing and Rework Facilities), KK (National Emission Standards for the Printing and Publishing Industry), JJJJ (NESHAP: Paper and Other Web Coating), MMMM (National Emission Standards for Miscellaneous Metal Parts and Products Surface Coating Operations) and SSSS (NESHAP: Surface Coating of Metal Coil) of this part. Affiliated operations include, but are not limited to, mixing or dissolving of coating ingredients; coating mixing for viscosity adjustment, color tint or additive blending, or pH adjustment; cleaning of coating lines and coating line parts; handling and storage of coatings and solvent; and conveyance and treatment of wastewater;

(3) Ancillary equipment such as boilers and incinerators (only those not used to comply with the emission limits in Tables 1 through 5 to this subpart), chillers and refrigeration systems, and other equipment that is not directly involved in the manufacturing of a coating (i.e., it operates as a closed system, and materials are not combined with materials used to manufacture the coating);

(4) Quality assurance/quality control laboratories; or

* * * * *

■ 4. Section 63.7990 is amended by revising paragraph (a) to read as follows:

§ 63.7990 What parts of my plant does this subpart cover?

(a) This subpart applies to each miscellaneous coating manufacturing affected source as defined in paragraph (b) of this section.

* * * * *

■ 5. Section 63.7995 is amended by revising paragraphs (a) introductory text and (b) and adding paragraph (e) to read as follows:

§ 63.7995 When do I have to comply with this subpart?

* * * * *

(a) Except as specified in paragraph (e) of this section, if you have a new affected source, you must comply with this subpart according to the requirements in paragraphs (a)(1) and (2) of this section.

* * * * *

(b) Except as specified in paragraph (e) of this section, if you have an existing affected source on December 11, 2003, then you must comply with the requirements for existing sources in this subpart no later than December 11, 2006.

* * * * *

(e) All affected sources that commenced construction or reconstruction on or after September 4, 2019, must be in compliance with the requirements listed in paragraphs (e)(1) through (5) of this section upon initial startup or no later than August 14, 2020, whichever is later. All affected sources that commenced construction or reconstruction before September 4, 2019, must be in compliance with the requirements listed in paragraphs (e)(1) through (5) of this section no later than August 14, 2023.

(1) The general requirements specified in §§ 63.8000(a)(2), (b)(2), (d)(8), and (f) and 63.8005(d)(5) and (h).

(2) The reporting requirements specified in § 63.8075(e)(5), (e)(6)(ii)(B) and (D), and (e)(6)(iii)(C) and (E).

(3) The recordkeeping requirements specified in § 63.8080(c), (e), (f), (h), and (i).

(4) The definitions specified in § 63.8105.

(5) The general provisions as specified in Table 10 to this subpart.

■ 6. Section 63.8000 is amended by:

■ a. Revising paragraphs (a), (b)(2), (c)(3), (d)(1) introductory text, and (d)(1)(i) and (iii);

■ b. Adding paragraph (d)(1)(vi);

■ c. Removing and reserving paragraph (d)(2);

■ d. Revising paragraphs (d)(3), (d)(4)(i)(A), (d)(4)(ii)(C), and (d)(4)(iv); and

■ e. Adding paragraphs (d)(8), (e), and (f).

The revisions and additions read as follows:

§ 63.8000 What are my general requirements for complying with this subpart?

(a) *Applicability.* You must comply with paragraphs (a)(1) and (2) of this section.

(1) Except as specified in paragraph (a)(2) of this section, you must be in compliance with the emission limits and work practice standards in Tables 1 through 5 to this subpart at all times, except during periods of startup, shutdown, and malfunction. You must meet the requirements specified in paragraphs (b) and (c) of this section. You must meet the requirements specified in §§ 63.8005 through 63.8030 (or the alternative means of compliance in § 63.8050), except as specified in paragraph (d) of this section. You must meet the notification, reporting, and recordkeeping requirements specified in §§ 63.8070, 63.8075, and 63.8080.

(2) Beginning on the compliance dates specified in § 63.7995(e), paragraph (a)(1) of this section no longer applies. Instead, beginning no later than the compliance dates specified in § 63.7995(e), you must be in compliance with the emission limits and work practice standards in Tables 1 through 5 to this subpart at all times. You must meet the requirements specified in paragraphs (b) and (c) of this section. You must meet the requirements specified in §§ 63.8005 through 63.8030 (or the alternative means of compliance in § 63.8050), except as specified in paragraph (d) of this section. You must meet the notification, reporting, and recordkeeping requirements specified in §§ 63.8070, 63.8075, and 63.8080.

(b) * * *

(2) You must comply with paragraphs (b)(2)(i) and (ii) of this section.

(i) Except as specified in paragraph (b)(2)(ii) of this section, opening of a safety device, as defined in § 63.8105, is allowed at any time conditions require it to avoid unsafe conditions.

(ii) Beginning on the compliance dates specified in § 63.7995(e), paragraph (b)(2)(i) of this section no longer applies. Instead, opening of a safety device, as defined in § 63.8105, is considered a deviation, as defined in § 63.8105, unless it is a bypass of a control for a process vessel and

accounted for as specified in § 63.8005(h).

(c) * * *

(3) If you use a halogen reduction device to reduce hydrogen halide and halogen HAP emissions that are generated by combusting halogenated vent streams, you must meet the requirements of § 63.994, except as specified in paragraph (f) of this section, and the requirements referenced therein. If you use a halogen reduction device before a combustion device, you must determine the halogen atom emission rate prior to the combustion device according to the procedures in § 63.115(d)(2)(v).

(d) * * *

(1) *Requirements for performance tests.* The requirements specified in paragraphs (d)(1)(i) through (vi) of this section apply instead of or in addition to the requirements for performance testing of control devices as specified in subpart SS of this part.

(i) Conduct gas molecular weight analysis using Method 3, 3A, or 3B in appendix A to 40 CFR part 60. As an alternative to EPA Method 3B for the manual procedures only and not the instrumental procedures, you may use ANSI/ASME PTC 19–10–1981 Part 10 (incorporated by reference, *see* § 63.14) as an acceptable alternative.

* * * * *

(iii) As an alternative to using Method 18, Method 25/25A, or Method 26/26A of 40 CFR part 60, appendix A, to comply with any of the emission limits specified in Tables 1 through 6 to this subpart you may use the alternatives specified in paragraph (d)(1)(iii)(A) or (B) of this section.

(A) As an alternative to using Method 18, Method 25/25A, or Method 26/26A of 40 CFR part 60, appendix A, you may use Method 320 of appendix A to this part. When using Method 320, you must follow the analyte spiking procedures of section 13 of Method 320, unless you demonstrate that the complete spiking procedure has been conducted at a similar source. As an alternative to Method 320 of appendix A to this part, you may use ASTM Method D6348–12e1 (incorporated by reference, *see* § 63.14), with the caveats that the test plan preparation and implementation in the Annexes to ASTM Method D6348–12e1, Sections A1 through A8 are mandatory; and in ASTM Method D6348–12e1 Annex A5 (Analyte Spiking Technique), the percent (%) R must be determined for each target analyte (Equation A5.5). In order for the test data to be acceptable for a compound, %R must be 70% ≥ R ≤ 130%. If the %R value does not meet this criterion for a

target compound, the test data is not acceptable for that compound and the test must be repeated for that analyte (i.e., the sampling and/or analytical procedure should be adjusted before a retest). The %R value for each compound must be reported in the test report, and all field measurements must be corrected with the calculated %R value for that compound by using the following equation:

Reported Results = (Measured Concentration in the Stack x 100) / % R.

(B) As an alternative to using EPA Method 18, you may also use ASTM D6420-18 (incorporated by reference, see § 63.14), but only when the target compounds are all known and the target compounds are all listed in ASTM D6420-18 as measurable; ASTM D6420-18 should not be used for methane and ethane; and ASTM D6420-18 may not be used as a total VOC method.

(vi) You must conduct periodic performance tests and establish the operating limits required by §§ 63.8005(e), 63.8010(b)(1), and 63.8050(d)(3) within 5 years following the previous performance test. You must conduct the initial or first periodic performance test before August 14, 2023, unless you are already required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 71, and have conducted a performance test on or after August 15, 2022. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test.

(2) [Reserved]
(3) Periodic verification. For a control device with total inlet HAP emissions less than 1 ton per year (tpy), you must establish at least one operating limit for a parameter that you will measure and record at least once per averaging period (i.e., daily or block) to verify that the control device is operating properly. You may elect to measure the same parameter that is required for control devices that control inlet HAP emissions equal to or greater than 1 tpy. If the parameter will not be measured continuously, you must request approval of your proposed procedure in the precompliance report. You must identify the operating limit or range and the measurement frequency, and you must provide rationale to support how these measurements demonstrate the control device is operating properly.

(4) * * *

(i) * * *

(A) If you wish to use a CEMS other than a Fourier Transform Infrared Spectroscopy (FTIR) meeting the requirements of Performance Specification 15 in appendix B to 40 CFR part 60 or a hydrogen chloride (HCl) CEMS meeting the requirements of Performance Specification 18 in appendix B to 40 CFR part 60 and Quality Assurance Procedure 6 in appendix F to 40 CFR part 60 to measure hydrogen halide and halogen HAP before we promulgate a Performance Specification for such CEMS, you must prepare a monitoring plan and submit it for approval in accordance with the procedures specified in § 63.8.

* * * * *

(ii) * * *

(C) For CEMS meeting Performance Specification 8 used to monitor performance of a noncombustion device, determine the predominant organic HAP using either process knowledge or the screening procedures of Method 18 in appendix A-6 to 40 CFR part 60 on the control device inlet stream, calibrate the monitor on the predominant organic HAP, and report the results as C1. Use Method 18, ASTM D6420-18 (incorporated by reference, see § 63.14), or any approved alternative as the reference method for the relative accuracy tests, and report the results as C1.

* * * * *

(iv) The CEMS data must be reduced to operating day or operating block averages computed using valid data, except monitoring data also are sufficient to constitute a valid hour of data if measured values are available for at least two of the 15-minute periods during an hour when calibration, quality assurance, or maintenance activities are being performed. An operating block is a period of time from the beginning to end of batch operations in the manufacturing of a coating. Operating block averages may be used only for process vessel data.

* * * * *

(8) Quality control program.

Beginning no later than the compliance dates specified in § 63.7995(e), in lieu of the requirements specified in § 63.8(d)(3), you must keep the written quality control program 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 part, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, you shall keep previous (i.e., superseded) versions

of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. The program of corrective action should be included in the plan required under § 63.8(d)(2).

(e) General duty. Beginning no later than August 14, 2023, at all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(f) Removal of startup, shutdown, and malfunction requirements. Beginning on the compliance dates specified in § 63.7995(e), the referenced provisions specified in paragraphs (f)(1) through (22) of this section do not apply when demonstrating compliance with this subpart through referenced provisions of subparts SS, UU, and TT of this part.

- (1) Section 63.983(a)(5).
(2) The phrase "except during periods of start-up, shutdown and malfunction as specified in the referencing subpart" in § 63.984(a).
(3) The phrase "except during periods of start-up, shutdown and malfunction as specified in the referencing subpart" in § 63.985(a).
(4) The phrase "other than start-ups, shutdowns, or malfunctions" in § 63.994(c)(1)(ii)(D).
(5) Section 63.996(c)(2)(ii).
(6) Section 63.997(e)(1)(i).
(7) The term "breakdowns" from § 63.998(b)(2)(i).
(8) Section 63.998(b)(2)(iii).
(9) The phrase "other than periods of startups, shutdowns, and malfunctions" from § 63.998(b)(5)(i)(A).
(10) The phrase "other than periods of startups, shutdowns, and malfunctions" from § 63.998(b)(5)(i)(C).
(11) The phrase " , except as provided in paragraphs (b)(6)(i)(A) and (B) of this section" from § 63.998(b)(6)(i).
(12) The second sentence of § 63.998(b)(6)(ii).

(13) Section 63.998(c)(1)(ii)(D), (E), (F), and (G).

(14) Section 63.998(d)(1)(ii).

(15) Section 63.998(d)(3)(i) and (ii).

(16) The phrase “may be included as part of the startup, shutdown, and malfunction plan, as required by the referencing subpart for the source, or” from § 63.1005(e)(4)(i).

(17) The phrase “(except periods of startup, shutdown, or malfunction)” from § 63.1007(e)(1)(ii)(A).

(18) The phrase “(except during periods of startup, shutdown, or malfunction)” from § 63.1009(e)(1)(i)(A).

(19) The phrase “(except during periods of startup, shutdown, or malfunction)” from § 63.1012(b)(1).

(20) The phrase “(except periods of startup, shutdown, or malfunction)” from § 63.1026(e)(1)(ii)(A).

(21) The phrase “(except periods of startup, shutdown, or malfunction)” from § 63.1028(e)(1)(i)(A).

(22) The phrase “(except periods of startup, shutdown, or malfunction)” from § 63.1031(b)(1).

■ 7. Section 63.8005 is amended by:

■ a. Revising paragraphs (a)(2) and (d)(1);

■ b. Adding paragraph (d)(5);

■ c. Revising paragraphs (e) introductory text, (e)(2), and (g); and

■ d. Adding paragraph (h).

The revisions and additions read as follows:

§ 63.8005 What requirements apply to my process vessels?

(a) * * *

(2) For each control device used to comply with Table 1 to this subpart, you must comply with subpart SS of this part as specified in § 63.8000(c), except as specified in § 63.8000(d) and (f) and paragraphs (b) through (g) of this section.

* * * * *

(d) * * *

(1) To demonstrate initial compliance with a percent reduction emission limit in Table 1 to this subpart, you must conduct the performance test or design evaluation under conditions as specified in § 63.7(e)(1), except as specified in paragraph (d)(5) of this section, and except that the performance test or

design evaluation must be conducted under worst-case conditions. Also, the performance test for a control device used to control emissions from process vessels must be conducted according to § 63.1257(b)(8), including the submittal of a site-specific test plan for approval prior to testing. The requirements in § 63.997(e)(1)(i) and (iii) also do not apply for performance tests conducted to determine compliance with the emission limits for process vessels.

* * * * *

(5) Beginning on the compliance dates specified in § 63.7995(e), § 63.7(e)(1) no longer applies and performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Representative conditions exclude periods of startup and shutdown unless specified by the Administrator or an applicable subpart. The owner or operator may not conduct performance tests during periods of malfunction. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(e) *Establishing operating limits.* You must establish operating limits under the conditions required for your initial compliance demonstration and periodic performance tests, except you may elect to establish operating limit(s) for conditions other than those under which a performance test was conducted as specified in paragraph (e)(1) of this section and, if applicable, paragraph (e)(2) of this section.

* * * * *

(2) If you elect to establish separate operating limits for different emission episodes, you must maintain records as specified in § 63.8080(g) of each point at which you change from one operating limit to another, even if the duration of

the monitoring for an operating limit is less than 15 minutes.

* * * * *

(g) *Flow indicators.* If flow to a control device could be intermittent or bypassed, you must install, calibrate, and operate a flow indicator at the inlet or outlet of the control device to identify periods of no flow, or you must comply with the alternatives requirements of paragraph (g)(1) or (2) of this section. Periods of no flow may not be used in daily or block averages. You must perform a flow meter verification check annually for at least two points: One at the instrument’s zero and the other at the instrument’s span.

(1) You must use a valve position or bypass damper position indicator that provides a continuous reading and record of the bypass valve or damper position when the control device is in operation. You must inspect the monitoring system semiannually to verify that the monitor will indicate valve position.

(2) You must secure the bypass line valve or bypass damper in the non-diverting position with a car-seal or a lock-and-key type configuration. You must visually inspect the seal or closure mechanism at least once every month to ensure that the valve is maintained in the non-diverting position and that the vent stream is not diverted through the bypass line. You must also record the occurrence of all periods when the seal or closure mechanism is broken, or the key for a lock-and-key type lock has been checked out.

(h) *Bypass.* Beginning no later than the compliance date specified in § 63.7995(e), when determining compliance with the percent emission reduction requirements in Table 1 to this subpart, you must account for the time that the control device was bypassed. You must use Equation 1 to this section to determine the allowable total hours of bypass for each semi-annual compliance period. To demonstrate compliance, the actual total hours of bypass must not exceed the allowable total hours of bypass calculated by Equation 1 to this section.

$$T_{byp} = (R - OCE) / R * T_{op} \text{ Eq. 1}$$

T_{byp} = Total allowable source operating time (hours) when the control device for stationary process vessels can be bypassed during the semiannual compliance period for any reason.

R = Control efficiency of control device, percent, as determined by Equation 6 in § 63.997(e)(2)(iv)(C).

OCE = The applicable percent emission reduction requirement in Table 1 to this subpart.

T_{op} = Total source operating time (hours) for stationary process vessels during the semiannual compliance period.

8. Section 63.8010 is amended by revising paragraph (a) to read as follows:

§ 63.8010 What requirements apply to my storage tanks?

(a) *Introduction.* You must meet each emission limit in Table 2 to this subpart that applies to your storage tanks, and you must meet each applicable requirement specified in § 63.8000(b). For each control device used to comply with Table 2 to this subpart, you must comply with subpart SS of this part as specified in § 63.8000(c), except as specified in § 63.8000(d) and (f) and paragraphs (b) through (d) of this section.

* * * * *

■ 9. Section 63.8025 is amended by revising paragraph (a) to read as follows:

§ 63.8025 What requirements apply to my transfer operations?

(a) You must comply with each emission limit and work practice standard in Table 5 to this subpart that applies to your transfer operations, and you must meet all applicable requirements specified in § 63.8000(b). For each control device used to comply with Table 5 to this subpart, you must comply with subpart SS of this part as specified in § 63.8000(c), except as specified in § 63.8000(d) and (f) and paragraph (b) of this section.

* * * * *

■ 10. Section 63.8050 is amended by adding paragraphs (c)(3)(i) through (iii) to read as follows:

§ 63.8050 How do I comply with emissions averaging for stationary process vessels at existing sources?

* * * * *

(c) * * *

(3) * * *

(i) If emissions are routed through a closed-vent system to a condenser control device, determine controlled emissions using the procedures specified in § 63.1257(d)(3).

(ii) If emissions are routed through a closed-vent system to any control device other than a condenser, determine actual emissions after determining the efficiency of the control device using the procedures in subpart SS of this part as specified in § 63.8000(c).

(iii) If the vessel is vented to the atmosphere, then actual emissions are equal to the uncontrolled emissions estimated in accordance with paragraph (c)(1) of this section.

* * * * *

■ 11. Section 63.8055 is amended by revising paragraphs (b)(1), (2), and (4) to read as follows:

§ 63.8055 How do I comply with a weight percent HAP limit in coating products?

* * * * *

(b) * * *

(1) Method 311 (appendix A to this part). As an alternative to Method 311, you may use California Air Resources Board Method 310, Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds (ROC) in Aerosol Coating Products (incorporated by reference, *see* § 63.14) for use with aerosol cans.

(2) Method 24 (appendix A to 40 CFR part 60). You may use Method 24 to determine the mass fraction of volatile matter and use that value as a substitute for the mass fraction of HAP, or one of the alternatives in paragraphs (b)(2)(i) through (iii) of this section.

(i) ASTM D2369–10 (Reapproved 2015)e1, (incorporated by reference, *see* § 63.14);

(ii) ASTM D2697–03 (Reapproved 2014) (incorporated by reference, *see* § 63.14); or

(iii) ASTM D3960–98 (incorporated by reference, *see* § 63.14).

* * * * *

(4) You may rely on formulation data from raw material suppliers if it represents each organic HAP that is present at 0.1 percent by mass or more for the HAP listed in Table 11 to this subpart, and at 1.0 percent by mass or more for other compounds. If the HAP weight percent estimated based on formulation data conflicts with the results of a test conducted according to paragraphs (b)(1) through (3) of this section, then there is a rebuttal presumption that the test results are accurate unless, after consultation, you demonstrate to the satisfaction of the permitting authority that the test results are not accurate and that the formulation data are more appropriate.

■ 12. Section 63.8070 is amended by revising paragraph (c) to read as follows:

§ 63.8070 What notifications must I submit and when?

* * * * *

(c) *Notification of performance test.* If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1). For any performance test required as part of the compliance procedures for process vessels in Table 1 to this subpart, you must also submit the test plan required by § 63.7(c) and the emission profile with the notification of the performance test.

■ 13. Section 63.8075 is amended by:

■ a. Revising paragraphs (c)(1), (d) introductory text, (d)(1), (d)(2)(ii), (e)(5)

introductory text, (e)(6)(ii) introductory text, and (e)(6)(ii)(B);

■ b. Adding paragraph (e)(6)(ii)(D);

■ c. Revising paragraphs (e)(6)(iii) introductory text and (e)(6)(iii)(C) and (E);

■ d. Adding paragraph (e)(6)(iii)(L);

■ e. Removing and reserving paragraph (e)(8)(ii)(B); and

■ f. Adding paragraphs (f) through (k).

The revisions and additions read as follows:

§ 63.8075 What reports must I submit and when?

* * * * *

(c) * * *

(1) Requests for approval to set operating limits for parameters other than those specified in §§ 63.8005 through 63.8030, including parameters for enhanced biological treatment units. Alternatively, you may make these requests according to § 63.8(f).

* * * * *

(d) *Notification of compliance status report.* You must submit a notification of compliance status report according to the schedule in paragraph (d)(1) of this section, and the notification of compliance status report must include the information specified in paragraph (d)(2) of this section.

(1) You must submit the notification of compliance status report no later than 150 days after the applicable compliance date specified in § 63.7995. You must submit a separate notification of compliance status report after the applicable compliance date specified in § 63.7995(e).

(2) * * *

(ii) The results of performance tests, engineering analyses, design evaluations, flare compliance assessments, inspections and repairs, and calculations used to demonstrate compliance according to §§ 63.8005 through 63.8030 and 63.8055. For performance tests, results must include descriptions of sampling and analysis procedures and quality assurance procedures.

* * * * *

(e) * * *

(5) For each SSM during which excess emissions occur, the compliance report must include the information specified in paragraphs (e)(5)(i) and (ii) of this section. On and after the compliance date specified in § 63.7995(e), this paragraph (e)(5) no longer applies.

* * * * *

(6) * * *

(ii) For each deviation from an emission limit, operating limit, and work practice standard that occurs at an affected source where you are not using

a continuous monitoring system (CMS) to comply with the emission limit or work practice standards in this subpart, you must include the information in paragraphs (e)(6)(ii)(A) through (D) of this section.

* * * * *

(B) Before the compliance date specified in § 63.7995(e), information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken. On and after the compliance date specified in § 63.7995(e), report the number of failures to meet an applicable standard. For each instance, report the date, time, and duration of each failure. For each failure the report must include a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, a description of the method used to estimate the emissions, and the cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

* * * * *

(D) On and after the compliance date specified in § 63.7995(e), report the total bypass hours, as monitored according to the provisions of § 63.8080(h).

(iii) For each deviation from an emission limit or operating limit occurring at an affected source where you are using a CMS to comply with the emission limit in this subpart, you must include the information in paragraphs (e)(6)(iii)(A) through (L) of this section. This includes periods of SSM.

* * * * *

(C) Before the compliance date specified in § 63.7995(e), the date and time that each deviation started and stopped, and whether each deviation occurred during a period of SSM or during another period. On and after the compliance date specified in § 63.7995(e), report the number of failures to meet an applicable standard. For each instance, report the date, time, and duration of each failure. For each failure the report must include a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, a description of the method used to estimate the emissions, and the cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

* * * * *

(E) Before the compliance date specified in § 63.7995(e), a breakdown of the total duration of the deviations during the reporting period into those

that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes. On and after the compliance date specified in § 63.7995(e), a breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

* * * * *

(L) A summary of the total duration of CMS data unavailability during the reporting period, and the total duration as a percent of the total source operating time during that reporting period.

* * * * *

(f) *Performance test report.* On and after August 14, 2023, within 60 days after the date of completing each performance test required by § 63.8000, § 63.8005, or § 63.8010, you must submit the results of the performance test following the procedures specified in paragraphs (f)(1) through (3) of this section. The requirements of this paragraph (f) do not affect the schedule for completing performance tests specified in §§ 63.8000, 63.8005, and 63.8010.

(1) *Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (<https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>) at the time of the test.* Submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>). The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website. 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 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).* If you claim that some of the performance test information being submitted under paragraph (f) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAPQS/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 (f).

(g) *Performance evaluation report.* On and after August 14, 2023, within 60 days after the date of completing each CMS performance evaluation (as defined in § 63.2), you must submit the results of the performance evaluation following the procedures specified in paragraphs (g)(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) *CBI.* If you claim some of the information submitted under paragraph (g) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML

schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (f) of this section.

(h) *Reporting*. You must submit to the Administrator initial compliance reports, notification of compliance status reports, and compliance reports of the following information. Beginning on and after August 14, 2023, submit all subsequent reports following the procedure specified in paragraph (i) of this section.

(i) *CEDRI reports*. If you are required to submit reports following the procedure specified in this paragraph (i), you must submit reports to the EPA via CEDRI, which can be accessed through the EPA's CDX (<https://cdx.epa.gov>).

(1) *Compliance reports*. The requirements of this paragraph (i) do not affect the schedule for submitting the initial notification or the notification of compliance status reports. You must use the appropriate electronic compliance report template on the CEDRI website (<https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri>) for this subpart. The date report templates become available will be listed on the CEDRI website.

(2) *Initial notification reports and notification of compliance status reports*. You must upload to CEDRI a portable document format (PDF) file of each initial notification and of each notification of compliance status.

(3) *All reports*. The report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. If you claim some of the information required to be submitted via CEDRI is CBI, submit a complete report, including information claimed to be CBI, to the EPA. The report must be generated using the appropriate form on the CEDRI website, where applicable. 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 shall be submitted to the EPA

via the EPA's CDX as described in this paragraph (i).

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

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

(2) The outage must have occurred within the period of time beginning 5 business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

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

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

(i) The date(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 reporting requirement at the time of the notification, the date you reported.

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

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

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

(4) The decision to accept the claim of *force majeure* and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting must occur as soon as possible after the *force majeure* event occurs.

■ 14. Section 63.8080 is amended by revising the introductory text and paragraphs (c), (e), and (f) and adding paragraphs (h) through (j) to read as follows:

§ 63.8080 What records must I keep?

You must keep the records specified in paragraphs (a) through (h) of this section.

* * * * *

(c) Before the compliance date specified in § 63.7995(e), a record of each time a safety device is opened to avoid unsafe conditions in accordance with § 63.8000(b)(2). On and after the compliance date specified in § 63.7995(e), a record of the information in paragraphs (c)(1) through (3) of this section.

(1) The source, nature, and cause of the opening.

(2) The date, time, and duration of the opening.

(3) An estimate of the quantity of total HAP emitted during the opening and the method used for determining this quantity.

* * * * *

(e) Before the compliance date specified in § 63.7995(e), for each CEMS, you must keep the records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of SSM or during another period. On and after the compliance date specified in § 63.7995(e), for each CEMS, you must keep the records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of SSM or during another period.

(f) Before the compliance date specified in § 63.7995(e), in the SSMP required by § 63.6(e)(3), you are not required to include Group 2 or non-affected emission points. For equipment leaks only, the SSMP requirement is limited to control devices and is optional for other equipment. On and after the compliance date specified in § 63.7995(e), the requirements of this paragraph (f) no longer apply.

* * * * *

(h) On and after the compliance date specified in § 63.7995(e), records of the total source operating time (hours) for stationary process vessels during the semiannual compliance period, and the source operating time (hours) when the control device for stationary process vessels was bypassed during the semiannual compliance period for any reason, as used in determining compliance with the percent emission reduction requirements in Table 1 to this subpart, as specified in § 63.8005(h).

(i) On and after the compliance date specified in § 63.7995(e), for each deviation from an emission limitation

reported under § 63.8075(e)(5), a record of the information specified in paragraphs (i)(1) and (2) of this section, as applicable.

(1) 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, and duration of each failure.

(2) For each failure to meet an applicable standard, record and retain a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(j) Any records required to be maintained by this subpart 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 63.8090 is amended by revising paragraph (b) to read as follows:

§ 63.8090 What compliance options do I have if part of my plant is subject to both this subpart and another subpart?

* * * * *

(b) *Compliance with 40 CFR part 60, subpart Kb.* After the compliance dates specified in § 63.7995, you are in compliance with this subpart for any storage tank that is assigned to miscellaneous coating manufacturing operations and that is both controlled with a floating roof and in compliance with the provisions of 40 CFR part 60, subpart Kb. You are in compliance with this subpart if you have a storage tank with a fixed roof, closed-vent system, and control device in compliance with 40 CFR part 60, subpart Kb, and you are in compliance with the monitoring,

recordkeeping, and reporting requirements in this subpart. You must also identify in your notification of compliance status report required by § 63.8075(d) which storage tanks are in compliance with 40 CFR part 60, subpart Kb.

* * * * *

■ 16. Section 63.8105 is amended in paragraph (g) by revising the definition for "Deviation" and removing the definition for "Small control device" to read as follows:

§ 63.8105 What definitions apply to this subpart?

* * * * *

(g) * * *

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(i) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limit, operating limit, or work practice standard;

(ii) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(iii) Before the compliance date specified in § 63.7995(e), fails to meet any emission limit, operating limit, or work practice standard in this subpart during SSM, regardless of whether or not such failure is permitted by this subpart. On and after the compliance date specified in § 63.7995(e), this paragraph (iii) no longer applies.

* * * * *

■ 17. Table 1 to subpart HHHHH of part 63 is amended by revising row 4 to read as follows:

* * * * *

TABLE 1 TO SUBPART HHHHH OF PART 63—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR PROCESS VESSELS

For each . . .	You must . . .	And you must . . .
* * * * *	* * * * *	* * * * *
4. Halogenated vent stream from a process vessel subject to the requirements of item 2 or 3 of this table for which you use a combustion control device to control organic HAP emissions.	a. Use a halogen reduction device after the combustion control device; or b. Use a halogen reduction device before the combustion control device.	i. Reduce overall emissions of hydrogen halide and halogen HAP by ≥95 percent; or ii. Reduce overall emissions of hydrogen halide and halogen HAP to ≤0.45 kilogram per hour (kg/hr). Reduce the halogen atom mass emission rate to ≤0.45 kg/hr.

■ 18. Table 3 to subpart HHHHH of part 63 is revised to read as follows:

As required in § 63.8015, you must meet each requirement in the following

table that applies to your equipment leaks.

TABLE 3 TO SUBPART HHHHH OF PART 63—REQUIREMENTS FOR EQUIPMENT LEAKS

For all . . .	You must . . .
1. Equipment that is in organic HAP service at an existing source	a. Comply with the requirements in §§63.424(a) through (d) and 63.428(e), (f), and (h)(4), except as specified in § 63.8015(b); or b. Comply with the requirements of subpart TT of this part, except as specified in § 63.8000(f); or c. Comply with the requirements of subpart UU of this part, except as specified in §§ 63.8000(f) and 63.8015(c) and (d).
2. Equipment that is in organic HAP service at a new source	a. Comply with the requirements of subpart TT of this part, except as specified in § 63.8000(f); or b. Comply with the requirements of subpart UU of this part, except as specified in §§ 63.8000(f) and 63.8015(c) and (d).

■ 19. Table 7 to subpart HHHHH of part 63 is revised to read as follows: As specified in § 63.8020, the treatment requirements in this subpart partially soluble HAP in wastewater that are listed in the following table: are subject to management and

TABLE 7 TO SUBPART HHHHH OF PART 63—PARTIALLY SOLUBLE HAZARDOUS AIR POLLUTANTS

Chemical name . . .	CAS No.
1. 1,1,1-Trichloroethane (methyl chloroform)	71556
2. 1,1,2,2-Tetrachloroethane	79345
3. 1,1,2-Trichloroethane	79005
4. 1,1-Dichloroethylene (vinylidene chloride)	75354
5. 1,2-Dibromoethane	106934
6. 1,2-Dichloroethane (ethylene dichloride)	107062
7. 1,2-Dichloropropane	78875
8. 1,3-Dichloropropene	542756
9. 2,4,5-Trichlorophenol	95954
10. 1,4-Dichlorobenzene	106467
11. 2-Nitropropane	79469
12. 4-Methyl-2-pentanone (MIBK)	108101
13. Acetaldehyde	75070
14. Acrolein	107028
15. Acrylonitrile	107131
16. Allyl chloride	107051
17. Benzene	71432
18. Benzyl chloride	100447
19. Biphenyl	92524
20. Bromoform (tribromomethane)	75252
21. Bromomethane	74839
22. Butadiene	106990
23. Carbon disulfide	75150
24. Chlorobenzene	108907
25. Chloroethane (ethyl chloride)	75003
26. Chloroform	67663
27. Chloromethane	74873
28. Chloroprene	126998
29. Cumene	98828
30. Dichloroethyl ether	111444
31. Dinitrophenol	51285
32. Epichlorohydrin	106898
33. Ethyl acrylate	140885
34. Ethylbenzene	100414
35. Ethylene oxide	75218
36. Ethylidene dichloride	75343
37. Hexachlorobenzene	118741
38. Hexachlorobutadiene	87683
39. Hexachloroethane	67721
40. Methyl methacrylate	80626
41. Methyl-t-butyl ether	1634044
42. Methylene chloride	75092
43. N-hexane	110543
44. N,N-dimethylaniline	121697
45. Naphthalene	91203
46. Phosgene	75445
47. Propionaldehyde	123386
48. Propylene oxide	75569
49. Styrene	100425
50. Tetrachloroethylene (perchloroethylene)	127184
51. Tetrachloromethane (carbon tetrachloride)	56235

TABLE 7 TO SUBPART HHHHH OF PART 63—PARTIALLY SOLUBLE HAZARDOUS AIR POLLUTANTS—Continued

Chemical name . . .	CAS No.
52. Toluene	108883
53. Trichlorobenzene (1,2,4-)	120821
54. Trichloroethylene	79016
55. Trimethylpentane	540841
56. Vinyl acetate	108054
57. Vinyl chloride	75014
58. Xylene (m)	108383
59. Xylene (o)	95476
60. Xylene (p)	106423

■ 20. The heading of table 8 to subpart HHHHH of part 63 is revised to read as follows:

TABLE 8 TO SUBPART HHHHH OF PART 63—SOLUBLE HAZARDOUS AIR POLLUTANTS

* * * * *

■ 21. Table 9 to subpart HHHHH of part 63 is amended by adding rows 4 and 5 to read as follows:

* * * * *

TABLE 9 TO SUBPART HHHHH OF PART 63—REQUIREMENTS FOR REPORTS

You must submit a . . .	The report must contain . . .	You must submit the report . . .
* * * * *	* * * * *	* * * * *
4. Performance test report	The information specified in § 63.8075(f)	Within 60 days after completing each performance test according to the requirements in § 63.8075(f).
5. Performance evaluation report	The information specified in § 63.8075(g)	Within 60 days after completing each CMS performance evaluation according to the requirements in § 63.8075(g).

■ 22. Table 10 to subpart HHHHH of part 63 is revised to read as follows:

As specified in § 63.8095, the parts of the general provisions that apply to you are shown in the following table:

TABLE 10 TO SUBPART HHHHH OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART

Citation	Subject	Explanation
§ 63.1	Applicability	Yes.
§ 63.2	Definitions	Yes.
§ 63.3	Units and Abbreviations	Yes.
§ 63.4	Prohibited Activities	Yes.
§ 63.5	Construction/Reconstruction	Yes.
§ 63.6(a)	Applicability	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed sources	Yes.
§ 63.6(b)(5)	Notification	Yes.
§ 63.6(b)(6)	[Reserved]	
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources	Yes.
§ 63.6(c)(3)–(4)	[Reserved]	
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major ...	Yes.
§ 63.6(d)	[Reserved]	
§ 63.6(e)(1)(i)	General Duty to Minimize Emissions	Yes, before the compliance date specified in § 63.7995(e). No, on and after the compliance date specified in § 63.7995(e). See § 63.8000(e) for the general duty requirement.
§ 63.6(e)(1)(ii)	Requirement to Correct Malfunctions as Soon as Possible	Yes, before the compliance date specified in § 63.7995(e). No, on and after the compliance date specified in § 63.7995(e).
§ 63.6(e)(1)(iii)–(2)	Operation and Maintenance	Yes.
§ 63.6(e)(3)	SSM Plan	Yes, before the compliance date specified in § 63.7995(e). No, on and after the compliance date specified in § 63.7995(e).
§ 63.6(f)(1)	Compliance with Non-Opacity Standards Except During SSM	No. See § 63.8000(a).
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Yes.
§ 63.6(h)(1)	Compliance with Opacity/Visible Emission (VE) Standards Except During SSM	No. See § 63.8000(a).
§ 63.6(h)(2)–(9)	Opacity/VE Standards	Only for flares for which Method 22 of 40 CFR part 60, appendix A–7, observations are required as part of a flare compliance assessment.
§ 63.6(i)(1)–(14)	Compliance Extension	Yes.
§ 63.6(j)	Presidential Compliance Exemption	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates	Yes, except substitute 150 days for 180 days.
§ 63.7(a)(3)–(4)	CAA Section 114 Authority, Force Majeure	Yes, and these paragraphs also apply to flare compliance assessments as specified under § 63.997(b)(2).

TABLE 10 TO SUBPART HHHHH OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART—Continued

Citation	Subject	Explanation
§ 63.7(b)(1)	Notification of Performance Test	Yes.
§ 63.7(b)(2)	Notification of Rescheduling	Yes.
§ 63.7(c)	Quality Assurance/Test Plan	Yes, except the test plan must be submitted with the notification of the performance test if the control device controls process vessels.
§ 63.7(d)	Testing Facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests	Yes, before the compliance date specified in § 63.7995(e), except that performance tests for process vessels must be conducted under worst-case conditions as specified in § 63.8005. No, on and after the compliance date specified in § 63.7995(e). See § 63.8005(d).
§ 63.7(e)(2)	Conditions for Conducting Performance Tests	Yes.
§ 63.7(e)(3)	Test Run Duration	Yes.
§ 63.7(f)	Alternative Test Method	Yes.
§ 63.7(g)	Performance Test Data Analysis	Yes.
§ 63.7(h)	Waiver of Tests	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements	Yes.
§ 63.8(a)(2)	Performance Specifications	Yes.
§ 63.8(a)(3)	[Reserved]	
§ 63.8(a)(4)	Monitoring with Flares	Yes.
§ 63.8(b)(1)	Monitoring	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance	Yes.
§ 63.8(c)(1)(i)	Maintain and operate CMS	Yes, before the compliance date specified in § 63.7995(e). No, on and after the compliance date specified in § 63.7995(e). See § 63.8000(e) for the general duty to maintain and operate each CMS.
§ 63.8(c)(1)(ii)	Routine repairs	Yes.
§ 63.8(c)(1)(iii)	Requirement to develop SSM plan for CMS	Yes, before the compliance date specified in § 63.7995(e). No, on and after the compliance date specified in § 63.7995(e).
§ 63.8(c)(2)–(3)	Monitoring System Installation	Yes.
§ 63.8(c)(4)	Requirements	Only for CEMS; requirements for CPMS are specified in referenced subpart SS of this part. This subpart does not contain requirements for continuous opacity monitoring systems (COMS).
§ 63.8(c)(4)(i)	CMS Requirements	No. This subpart does not require COMS.
§ 63.8(c)(4)(ii)	CMS requirements	Yes.
§ 63.8(c)(5)	COMS Minimum Procedures	No. This subpart does not contain opacity or VE limits.
§ 63.8(c)(6)	CMS Requirements	Only for CEMS; requirements for CPMS are specified in referenced subpart SS of this part.
§ 63.8(c)(7)–(8)	CMS Requirements	Only for CEMS. Requirements for CPMS are specified in referenced subpart SS of this part.
§ 63.8(d)(1)–(2)	CMS Quality Control	Only for CEMS; requirements for CPMS are specified in referenced subpart SS of this part.
§ 63.8(d)(3)	Written procedures for CMS	Yes, before the compliance date specified in § 63.7995(e). No, on and after the compliance date specified in § 63.7995(e). See § 63.8000(d)(8).
§ 63.8(e)	CMS Performance Evaluation	Section 63.8(e)(6)(ii) does not apply because this subpart does not require COMS. Other sections apply only for CEMS; requirements for CPMS are specified in referenced subpart SS of this part.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Yes, except you may also request approval using the precompliance report.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	Only for CEMS.
§ 63.8(g)(1)–(4)	Data Reduction	Only when using CEMS, except § 63.8(g)(2) does not apply because data reduction requirements for CEMS are specified in § 63.8000(d)(4)(iv).
§ 63.8(g)(5)	Data Reduction	The requirements for COMS do not apply because this subpart has no opacity or VE limits. No. Requirements for CEMS are specified in § 63.8000(d)(4). Requirements for CPMS are specified in referenced subpart SS of this part.
§ 63.9(a)	Notification Requirements	Yes.
§ 63.9(b)(1)–(5)	Initial Notifications	Yes.
§ 63.9(c)	Request for Compliance Extension	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source	Yes.
§ 63.9(e)	Notification of Performance Test	Yes.
§ 63.9(f)	Notification of VE/Opacity Test	No. This subpart does not contain opacity or VE limits.
§ 63.9(g)	Additional Notifications When Using CMS	Only for CEMS; requirements for CPMS are specified in referenced subpart SS of this part.
§ 63.9(h)(1)–(6)	Notification of Compliance Status	Yes, except this subpart has no opacity or VE limits, and § 63.9(h)(2) does not apply because § 63.8075(d) specifies the required contents and due date of the notification of compliance status report.
§ 63.9(i)	Adjustment of Submittal Deadlines	Yes.
§ 63.9(j)	Change in Previous Information	No, § 63.8075(e)(8) specifies reporting requirements for process changes.
§ 63.10(a)	Recordkeeping/Reporting	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	Yes.
§ 63.10(b)(2)(i)–(ii)	Records related to SSM	No. Before the compliance date specified in § 63.7995(e), see § 63.998(c)(1)(ii)(D) through (G) and (d)(3) for recordkeeping requirements for periods of SSM. On and after the compliance date specified in § 63.7995(e), see § 63.8080(i).

TABLE 10 TO SUBPART HHHHH OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART—Continued

Citation	Subject	Explanation
§ 63.10(b)(2)(iii)	Records related to maintenance of air pollution control equipment ..	Yes.
§ 63.10(b)(2)(iv)–(v)	Records related to SSM	Yes, before the compliance date specified in § 63.7995(e). No, on and after the compliance date specified in § 63.7995(e).
§ 63.10(b)(2)(vi), (x), and (xi).	CMS Records	Only for CEMS; requirements for CPMS are specified in referenced subpart SS of this part.
§ 63.10(b)(2)(vii)–(ix)	Records	Yes.
§ 63.10(b)(2)(xii)	Records	Yes.
§ 63.10(b)(2)(xiii)	Records	Yes.
§ 63.10(b)(2)(xiv)	Records	Yes.
§ 63.10(b)(3)	Records	Yes.
§ 63.10(c)(1)–(6), (9)–(14)	Records	Only for CEMS; requirements for CPMS are specified in referenced subpart SS of this part.
§ 63.10(c)(7)–(8), (15)	Records	No. Recordkeeping requirements are specified in § 63.8080.
§ 63.10(d)(1)	General Reporting Requirements	Yes.
§ 63.10(d)(2)	Report of Performance Test Results	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations	No. This subpart does not contain opacity or VE limits.
§ 63.10(d)(4)	Progress Reports	Yes.
§ 63.10(d)(5)(i)	SSM Reports	No. Before the compliance date specified in § 63.7995(e), see § 63.8075(e)(5) and (6) for the SSM reporting requirements. On and after the compliance date specified in § 63.7995(e), these requirements no longer apply.
§ 63.10(d)(5)(ii)	Immediate SSM reports	No.
§ 63.10(e)(1)–(2)	Additional CMS Reports	Only for CEMS, but § 63.10(e)(2)(ii) does not apply because this subpart does not require COMS.
§ 63.10(e)(3)	Reports	No. Reporting requirements are specified in § 63.8075.
§ 63.10(e)(3)(i)–(iii)	Reports	No. Reporting requirements are specified in § 63.8075.
§ 63.10(e)(3)(iv)–(v)	Excess Emissions Reports	No. Reporting requirements are specified in § 63.8075.
§ 63.10(e)(3)(vi)–(viii)	Excess Emissions Report and Summary Report	No. Reporting requirements are specified in § 63.8075.
§ 63.10(e)(4)	Reporting COMS data	No. This subpart does not contain opacity or VE limits.
§ 63.10(f)	Waiver for Recordkeeping/Reporting	Yes.
§ 63.11	Control and work practice requirements	Yes.
§ 63.12	Delegation	Yes.
§ 63.13	Addresses	Yes.
§ 63.14	Incorporation by Reference	Yes.
§ 63.15	Availability of Information	Yes.

■ 23. Table 11 to subpart HHHHH of part 63 is added to read as follows:

TABLE 11 TO SUBPART HHHHH OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS

Chemical name	CAS No.
1,1,2,2-Tetrachloroethane	79–34–5
1,1,2-Trichloroethane	79–00–5
1,1-Dimethylhydrazine	57–14–7
1,2-Dibromo-3-chloropropane	96–12–8
1,2-Diphenylhydrazine	122–66–7
1,3-Butadiene	106–99–0
1,3-Dichloropropene	542–75–6
1,4-Dioxane	123–91–1
2,4,6-Trichlorophenol	88–06–2
2,4/2,6-Dinitrotoluene (mixture)	25321–14–6
2,4-Dinitrotoluene	121–14–2
2,4-Toluene diamine	95–80–7
2-Nitropropane	79–46–9
3,3'-Dichlorobenzidine	91–94–1
3,3'-Dimethoxybenzidine	119–90–4
3,3'-Dimethylbenzidine	119–93–7
4,4'-Methylene bis(2-chloroaniline)	101–14–4
Acetaldehyde	75–07–0
Acrylamide	79–06–1
Acrylonitrile	107–13–1
Allyl chloride	107–05–1
alpha-Hexachlorocyclohexane (a-HCH)	319–84–6
Aniline	62–53–3
Benzene	71–43–2
Benzidine	92–87–5
Benzotrichloride	98–07–7
Benzyl chloride	100–44–7
beta-Hexachlorocyclohexane (b-HCH)	319–85–7
Bis(2-ethylhexyl)phthalate	117–81–7
Bis(chloromethyl)ether	542–88–1

TABLE 11 TO SUBPART HHHHH OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS—Continued

Chemical name	CAS No.
Bromoform	75-25-2
Captan	133-06-2
Carbon tetrachloride	56-23-5
Chlordane	57-74-9
Chlorobenzilate	510-15-6
Chloroform	67-66-3
Chloroprene	126-99-8
Cresols (mixed)	1319-77-3
DDE	3547-04-4
Dichloroethyl ether	111-44-4
Dichlorvos	62-73-7
Epichlorohydrin	106-89-8
Ethyl acrylate	140-88-5
Ethylene dibromide	106-93-4
Ethylene dichloride	107-06-2
Ethylene oxide	75-21-8
Ethylene thiourea	96-45-7
Ethylidene dichloride (1,1-Dichloroethane)	75-34-3
Formaldehyde	50-00-0
Heptachlor	76-44-8
Hexachlorobenzene	118-74-1
Hexachlorobutadiene	87-68-3
Hexachloroethane	67-72-1
Hydrazine	302-01-2
Isophorone	78-59-1
Lindane (hexachlorocyclohexane, all isomers)	58-89-9
m-Cresol	108-39-4
Methylene chloride	75-09-2
Naphthalene	91-20-3
Nitrobenzene	98-95-3
Nitrosodimethylamine	62-75-9
o-Cresol	95-48-7
o-Toluidine	95-53-4
Parathion	56-38-2
p-Cresol	106-44-5
p-Dichlorobenzene	106-46-7
Pentachloronitrobenzene	82-68-8
Pentachlorophenol	87-86-5
Propoxur	114-26-1
Propylene dichloride	78-87-5
Propylene oxide	75-56-9
Quinoline	91-22-5
Tetrachloroethene	127-18-4
Toxaphene	8001-35-2
Trichloroethylene	79-01-6
Trifluralin	1582-09-8
Vinyl bromide	593-60-2
Vinyl chloride	75-01-4
Vinylidene chloride	75-35-4

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Department of the Treasury

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26 CFR Part 1

Guidance Under Section 1061; Proposed Rule

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[REG–107213–18]

RIN 1545–BO81

Guidance Under Section 1061**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance under section 1061 of the Internal Revenue Code (Code). Section 1061 recharacterizes certain net long-term capital gains of a partner that holds one or more applicable partnership interests as short-term capital gains. An applicable partnership interest is an interest in a partnership that is transferred to or held by a taxpayer, directly or indirectly, in connection with the performance of substantial services by the taxpayer, or any other related person, in any applicable trade or business. These proposed regulations also amend existing regulations on holding periods to clarify the holding period of a partner's interest in a partnership that includes in whole or in part an applicable partnership interest and/or a profits interest. These regulations affect taxpayers who directly or indirectly hold applicable partnership interests in partnerships and the passthrough entities in which the applicable partnership interest is held, directly or indirectly.

DATES: Written or electronic comments and requests for a public hearing must be received by October 5, 2020, which is 60 days after the date of filing for public inspection with the Office of the Federal Register. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG–107213–18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable.

The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG–107213–18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments and/or requests for a public hearing, Regina L. Johnson at (202) 317–5177 (not a toll-free number); Email address: fdms.database@irs.counsel.treas.gov; concerning the proposed regulations, Kara K. Altman or Sonia K. Kothari at (202) 317–6850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background and Overview**

This document contains proposed regulations under section 1061 of the Code to amend the Income Tax Regulations (26 CFR part 1). Section 1061 was added to the Code on December 22, 2017, by the enactment of section 13309 of Public Law 115–97, 131 Stat. 2054 (2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA). Section 1061 applies to taxable years beginning after December 31, 2017. Section 1061 recharacterizes certain net long-term capital gain with respect to applicable partnership interests (*APIs*) as short-term capital gain. This Background and Overview section provides an overview of the statutory provisions and highlights certain critical concepts and terms used in the proposed regulations. The Explanation of Provisions section describes the proposed regulations in greater detail.

Section 1061(a): Recharacterization Amount, Owner Taxpayer, and Related Concepts

Section 1061(a) recharacterizes as short-term capital gain the difference between a taxpayer's net long-term capital gain with respect to one or more APIs and the taxpayer's net long-term capital gain with respect to these APIs if paragraphs (3) and (4) of section 1222, which define the terms long-term capital gain and long-term capital loss, respectively, for purposes of subtitle A of the Code, are applied using a three-year holding period instead of a one-year holding period. These proposed regulations refer to this difference as the *Recharacterization Amount*.

The proposed regulations provide that the person who is subject to Federal income tax on the Recharacterization Amount is required to calculate such

amounts and refer to this person as the *Owner Taxpayer*.

Although an API can be held directly by an Owner Taxpayer, it also may be held indirectly through one or more passthrough entities (*Passthrough Entities*). The proposed regulations provide a framework for determining the Recharacterization Amount when an API is held through one or more tiers of Passthrough Entities (tiered structure).

Section 1061(a) applies to a taxpayer's net long-term capital gain with respect to one or more APIs held during the taxable year. The proposed regulations provide that the determination of a taxpayer's net long-term capital gain with respect to the taxpayer's APIs held during the taxable year includes the taxpayer's combined net distributive share of long-term capital gain or loss from all APIs held during the taxable year and the Owner Taxpayer's long-term capital gain and loss from the disposition of any APIs during the taxable year. The proposed regulations refer to long-term capital gains and losses recognized with respect to an API as *API Gains and Losses*. *Unrealized API Gains and Losses* are capital gains and losses with respect to an API that have not yet been realized. In a tiered structure of Passthrough Entities, API Gains and Losses and Unrealized API Gains and Losses retain their character as API Gains and Losses as they are allocated through the tiers.

The proposed regulations provide that API Gains and Losses do not include long-term capital gain determined under sections 1231 and 1256, qualified dividends described in section 1(h)(11)(B), and any other capital gain that is characterized as long-term or short-term without regard to the holding period rules in section 1222, such as capital gain characterized under the identified mixed straddle rules described in section 1092(b). Additionally, API Gains and Losses do not include *API Holder Transition Amounts* and *Capital Interest Gains and Losses*. API Holder Transition Amounts are allocations to the holder of an API (*API Holder*) of long-term capital gain and loss recognized on the disposition of assets held by the partnership for more than three years as of January 1, 2018, if the partnership has elected to treat these amounts as API Holder Transition Amounts. Capital Interest Gains and Losses are long-term capital gains and losses with respect to an API Holder's capital investment in a Passthrough Entity.

Section 1061(c)(1): Definition of an Applicable Partnership Interest

Section 1061(c)(1) provides that an API is a partnership interest held by, or transferred to, a taxpayer, directly or indirectly, in connection with the performance of substantial services by the taxpayer, or by any other related person, in any applicable trade or business (ATB).

An API is an interest in a partnership's profits that is transferred or held in connection with the performance of services. There may be one or more tiers of Passthrough Entities between the partnership that originally issued the API and the Passthrough Entity in which the Owner Taxpayer holds its indirect interest in the API. Each Passthrough Entity in the tiered structure is treated as holding an API under the proposed regulations, that is, each Passthrough Entity is an API Holder. An API Holder may be an individual, partnership, trust, estate, S corporation, or a passive foreign investment company (PFIC) with respect to which the shareholder has a qualified electing fund (QEF) election in effect under section 1295.

Section 1061(c)(1), similar to section 1061(a), uses the term "taxpayer." The proposed regulations provide that an Owner Taxpayer is the taxpayer for purposes of section 1061(a). However, section 1061(c)(1) requires that an API be transferred to a taxpayer in connection with services performed by the taxpayer or by a related person. The proposed regulations provide that the reference to "taxpayer" in section 1061(c)(1) includes not only an Owner Taxpayer, but also includes a *Passthrough Taxpayer*. The proposed regulations provide that a Passthrough Taxpayer is a Passthrough Entity that is treated as a taxpayer for the purpose of determining the existence of an API, regardless of whether the Passthrough Entity itself is subject to Federal income tax. Generally, if an interest in a partnership is transferred to a Passthrough Taxpayer in connection with the performance of its own services, the services of its owners, or the services of persons related to either the Passthrough Entity or its owners, the interest is an API as to the Passthrough Taxpayer. The Passthrough Taxpayer's ultimate owners will be treated as Owner Taxpayers, unless otherwise excepted.

A partnership interest is an API if it is transferred in connection with the performance of substantial services. The proposed regulations presume that services are substantial with respect to the partnership interest transferred in

connection with those services. This presumption is based on the assumption that the parties have economically equated the services performed with the potential value of the partnership interest transferred. The proposed regulations provide that once a partnership interest is an API, it remains an API and never loses that character, unless one of the exceptions to the definition of an API applies.

Section 1061(c)(2): Definition of an Applicable Trade or Business

Under section 1061, for an interest in a partnership to be an API, the interest must be held or transferred in connection with the performance of services in an ATB. An ATB is defined in section 1061(c)(2) as any activity conducted on a regular, continuous, and substantial basis which consists, in whole or in part, of raising or returning capital, and either (i) investing in (or disposing of) specified assets (or identifying specified assets for such investing or disposition), or (ii) developing specified assets. The proposed regulations refer to these actions, respectively, as *Raising or Returning Capital Actions* and *Investing or Developing Actions* (referred to as *Specified Actions* in the aggregate). The proposed regulations provide that an activity is conducted on a regular, continuous, and substantial basis if it meets the *ATB Activity Test*. The ATB Activity Test is met if the total level of activity (conducted in one or more entities) meets the level of activity required to establish a trade or business for purposes of section 162.

In applying the ATB Activity Test, the proposed regulations provide that, in some cases, it is not necessary for both Raising or Returning Capital Actions and Investing or Developing Actions to occur in a single year for an ATB to exist in that year. Further, Raising or Returning Capital Actions and Investing or Developing Actions of related persons are aggregated together to determine if the ATB Activity Test is met.

Section 1061(c)(3) provides that specified assets (*Specified Assets*) are securities, as defined in section 475(c)(2) (without regard to the last sentence thereof), commodities, as defined in section 475(e)(2), real estate held for rental or investment, cash or cash equivalents, options or derivative contracts with respect to any of the foregoing, and an interest in a partnership to the extent of the partnership's proportionate interest in any of the foregoing. The definition of Specified Assets in the proposed regulations generally tracks the statutory

language. It also includes an option or derivative contract on a partnership interest to the extent that the partnership interest represents an interest in other Specified Assets.

Section 1061(c)(4): Exceptions

Section 1061(c)(4)(A) provides that an API does not include any interest in a partnership directly or indirectly held by a corporation. In Notice 2018-18 (2018-12 IRB 443, March 19, 2018), the Treasury Department and the IRS provided notice that the regulations under section 1061 would provide that the term "corporation" for purposes of section 1061(c)(4)(A) does not include an S corporation. Any timely comments received on Notice 2018-18 will be considered as part of the Treasury decision adopting these proposed regulations as final regulations.

Section 1061(c)(4)(B) also provides that an API does not include certain capital interests. The proposed regulations implement the capital interest exception by excepting long-term capital gains and losses that represent a return on an API Holder's invested capital in a Passthrough Entity from recharacterization under section 1061. The proposed regulations refer to these amounts as *Capital Interest Gains and Losses*. Specifically, under the proposed regulations, *Capital Interest Allocations*, *Passthrough Interest Capital Allocations* and *Capital Interest Disposition Amounts* are treated as Capital Interest Gains and Losses.

Under the proposed regulations, a partner's invested capital in a partnership that maintains capital accounts under § 1.704-1(b)(2)(iv) is the partner's capital account. In the case of a Passthrough Entity that is not a partnership (or a partnership that does not maintain capital accounts under § 1.704-1(b)(2)(iv)), if the Passthrough Entity maintains and determines accounts for its owners in a manner similar to that provided in § 1.704-1(b)(2)(iv), those accounts will be treated as capital accounts for purposes of the proposed regulations. In order for an allocation to be treated as a Capital Interest Allocation or a Passthrough Interest Capital Allocation, the allocation must be based on an API Holder's relative capital account balance in the Passthrough Entity. Although Unrealized API Gain or Loss is included in an owner's capital account, the gain or loss will be treated as API Gain or Loss and not as Capital Interest Gain or Loss when recognized. An allocation of API Gain or Loss from a lower-tier entity to an upper-tier entity is always API Gain or Loss when further allocated by the upper-tier entity to its direct interest

holders. Capital Interest Gains and Losses never include API Gains and Losses, Unrealized API Gains and Losses, or API Holder Transition Amounts.

If an owner disposes of an interest that is composed of a capital interest and an API, the proposed regulations provide a mechanism for the owner to determine the portion of long-term capital gain or loss recognized on the disposition that is treated as a Capital Interest Disposition Amount and thus, a Capital Interest Gain or Loss.

Other Exceptions

Section 1061(c)(1) provides an exception for certain partnership interests held by employees of entities that are not engaged in an ATB. The proposed regulations track the statutory language. Also, the proposed regulations add an exception for an API that is acquired by a bona fide purchaser who (i) does not provide services, (ii) is unrelated to any service provider, and (iii) acquired the interest for fair market value.

Section 1061(b) provides regulatory authority to establish an exception to section 1061(a) for gain attributable to any assets not held for portfolio investment on behalf of third party investors. The proposed regulations reserve on the exercise of this authority.

Section 1061(d): Transfer of API to a Related Party

Section 1061(d) accelerates the recognition of capital gain on a direct or indirect transfer that would not otherwise be a taxable event and recharacterizes certain long-term capital gain as short-term capital gain. Under section 1061(d), if a taxpayer transfers an API to a related person described in section 1061(d)(2), then, without regard to whether the transfer is otherwise a taxable event, the taxpayer includes in gross income, as short-term capital gain, the excess of (A) the net built-in long-term capital gain in assets attributable to the transferred interest with a holding period of three years or less, over (B) the amount of long-term capital gain treated as short term capital gain under section 1061(a) on the transfer. The proposed regulations provide that the term transfer includes, but is not limited to, contributions, distributions, sales and exchanges, and gifts. A related person for purposes of section 1061(d)(2) is defined more narrowly than a related person for purposes of section 1061(c)(1) and includes only members of the taxpayer's family within the meaning of section 318(a)(1), the taxpayer's colleagues (those who provided services in the ATB during

certain time periods) and, under the proposed regulations, a Passthrough Entity to the extent that a member of the taxpayer's family or a colleague is an owner. The proposed regulations provide that a contribution under section 721(a) to a partnership is not treated as a transfer to a Section 1061(d) Related Person because the proposed regulations require that, under the principles of section 704(c) and §§ 1.704-1(b)(2)(iv)(f) and 1.704-3(a)(9), all Unrealized API Gains at the time of contribution must be allocated to the API Holder contributing the interest when those gains are recognized by the partnership.

Section 1061(e): Reporting

Section 1061(e) provides that the Secretary of the Treasury or his delegate (Secretary) shall require such reporting as is necessary to carry out the purposes of section 1061. The proposed regulations include rules for providing information required to compute the Recharacterization Amount when there is a tiered structure.

Regulatory Authority

The statute requires that the Secretary issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of section 1061. The legislative history indicates that such guidance is to address the prevention of abuse of the purposes of the provision. See H.R. Conf. Rep. No. 115-466 at 422 (2017) (Conference Report); see also Joint Committee on Taxation, General Explanation of Public Law 115-97, JCS-1-18, at 203 (2017) (Blue Book). The Conference Report and the Blue Book also state that the guidance is to address the application of the provision to tiered structures of entities. See *id.*

Explanation of Provisions

Section 1.1061-1 provides definitions of the terms used in §§ 1.1061-1 through 1.1061-6 of these proposed regulations. Section 1.1061-2 provides rules and examples regarding APIs and ATBs. Section 1.1061-3 provides guidance on the exceptions to an API, including the capital interest exception. Section 1.1061-4 provides guidance on the computation of the Recharacterization Amount and computation examples. Section 1.1061-5 provides guidance regarding the application of section 1061(d) to transfers to certain related parties. Section 1.1061-6 provides reporting rules. Because the application of section 1061 requires a clear determination of the holding period of a partnership interest that is, in whole or in part, an API, these proposed regulations also

provide clarifying amendments to § 1.1223-3. Additional clarifying amendments to § 1.702-1(a)(2) and § 1.704-3(e) are also proposed.

I. Sections 1.1061-1 and 1.1061-2: Definitions, Operational Rules, and Examples

Section 1.1061-1 provides definitions of terms used in §§ 1.1061-1 through 1.1061-6 of these proposed regulations. The definitions in § 1.1061-1 combined with the operational rules in § 1.1061-2 identify the taxpayer to which section 1061 applies, when an interest is an API, what constitutes an ATB, and who is a related party. These definitions include terms for identifying interests when an API is held through one or more passthrough entities. For purposes of these regulations, a *Passthrough Entity* is defined as a partnership, an S corporation, or a PFIC with respect to which the shareholder has a QEF election in effect.

A. API, Owner Taxpayer, Passthrough Taxpayer, Indirect API, and Passthrough Interest

1. Definitions

Section 1061(a) refers to a taxpayer in terms of the person whose net long-term capital gains from one or more APIs are recharacterized as net short-term capital gain under the statute. The proposed regulations refer to this amount as the *Recharacterization Amount*. Section 1061(c) also refers to a taxpayer as the person to whom the API is transferred or who holds the API in connection with the taxpayer's or a related person's services.

Section 1061(c)(1) defines an API as any interest in a partnership which, directly or indirectly, is transferred to (or held by) the taxpayer in connection with the performance of substantial services by the taxpayer, or by any other related person, in any ATB. These proposed regulations also provide that solely for purposes of section 1061, an interest in a partnership includes any financial instrument or contract, the value of which is determined, in whole or in part, by reference to the partnership (including the amount of partnership distributions, the value of partnership assets, or the results of partnership operations).

a. API, Owner Taxpayer, and Passthrough Taxpayer

Comments and other commentary (collectively referred to as comments) considered by the Treasury Department and the IRS highlight the importance of the definition of the term "taxpayer" for purposes of section 1061(a) with respect

to the determination of the Recharacterization Amount. Additionally, the definition of the term “taxpayer” for purposes of section 1061(c) is important for the determination of whether a partnership interest is an API. These comments describe three potential approaches to the definition of “taxpayer.” These approaches are the aggregate approach, the partial entity approach, and the full entity approach. Under the aggregate approach, both the existence of the API and the Recharacterization Amount are determined solely at the owner level. If the Recharacterization Amount is calculated at the owner level, gains and losses from multiple APIs held by the owner can be combined and netted with each other to determine the Recharacterization Amount. In contrast, under the full entity approach, the Recharacterization Amount and the existence of an API both are determined at the entity level. Additionally, under the full entity approach, the Recharacterization Amount would be calculated for each entity and then netted and combined at the owner level. Under the partial entity approach, the existence of an API is determined at the entity level, but the Recharacterization Amount is determined at the owner level.

The proposed regulations adopt a partial entity approach. To apply this approach, the proposed regulations provide for two definitions of a taxpayer (*Owner Taxpayer* and *Passthrough Taxpayer*) for purposes of section 1061. These definitions are provided to define the scope of the term “taxpayer” for purposes of computing the Recharacterization Amount and for purposes of determining whether a partnership interest is an API. The proposed regulations define the term *Owner Taxpayer* as the person subject to tax on the net gain with respect to the API. Under the proposed regulations, the Recharacterization Amount is determined solely by the *Owner Taxpayer*. For this purpose, the term *Owner Taxpayer* includes individuals, simple and complex trusts, and estates. Thus, if an *Owner Taxpayer* holds one or more APIs indirectly (through one or more *Passthrough Entities*), amounts subject to section 1061 flow through those entities and are netted at the *Owner Taxpayer* level to determine the Recharacterization Amount.

The proposed regulations define the term *Passthrough Taxpayer* as an entity that generally does not pay tax itself, notwithstanding that a *Passthrough Taxpayer* could be responsible for paying an imputed underpayment calculated based on adjustments to

partnership related items under section 6225 (Partnership adjustment by the Secretary) or that a *Passthrough Taxpayer* that is an electing 1987 partnership (as defined in section 7704(g)(2)) could be responsible for paying the tax set forth in section 7704(g)(3). An *Owner Taxpayer* and a *Passthrough Taxpayer* each are treated as a taxpayer for the purpose of determining whether an API exists. In determining whether the elements of an API are present, a *Passthrough Taxpayer* can be (i) the service provider, (ii) a person related to the service provider, (iii) engaged in an ATB, or (iv) the recipient of an interest in connection with the performance of substantial services in an ATB. If a *Passthrough Taxpayer* is treated as the recipient (or holder) of a partnership interest, directly or indirectly, for purposes of determining the existence of an API, the ultimate owners of the *Passthrough Taxpayer* are treated as *Owner Taxpayers* for the purpose of determining the Recharacterization Amount. *Owner Taxpayers* do not include owners of a *Passthrough Taxpayer* who are excepted from the application of section 1061 under § 1.1061-3. Additionally, *Owner Taxpayers* to whom a partnership interest is directly or indirectly transferred in connection with the *Owner Taxpayer's* or a related party's performance of substantial services in an ATB are also treated as taxpayers for purposes of determining the existence of an API. Section 1.1061-2 of the proposed regulations provides examples of how the existence of an API is determined.

b. Interaction With Revenue Procedures 93-27 and 2001-43

Revenue Procedure 93-27 (1993-2 C.B. 343) defines a profits interest and provides a safe harbor under which the IRS will not treat the receipt of a profits interest as a taxable event for the partner or the partnership if certain requirements are met. *See also* Revenue Procedure 2001-43 (2001-2 C.B. 191). Section 1061 applies to all partnership interests that meet the definition of an API, regardless of whether the receipt of the interest is treated as a taxable event under Revenue Procedure 93-27. Accordingly, taxpayers should not equate an interest that meets the definition of an API with an interest the receipt of which would not be treated as a taxable event under Revenue Procedure 93-27. For example, Revenue Procedure 93-27 applies to a person who receives a profits interest for the provision of services to or for the benefit of a partnership in a partner capacity or

in anticipation of being a partner. Section 1061 applies to partnership interests transferred or held in connection with the performance of substantial services in an ATB. Further, these proposed regulations address only the application of section 1061 and should not be interpreted as providing guidance regarding the application of Revenue Procedure 93-27 to transactions in which one party provides services and another party receives a seemingly associated allocation and distribution of partnership income and gain. Lastly, although a financial instrument or contract may be treated as an API under section 1061, a financial instrument or contract is not an interest in a partnership for purposes of Revenue Procedure 93-27, unless it is otherwise a partnership interest for Federal tax purposes. The Treasury Department and the IRS note that arrangements that are not partnership interests for Federal tax purposes are not eligible for the safe harbor described in Revenue Procedures 93-27 and 2001-43.

c. API Holder

The proposed regulations include the term *API Holder* to refer to any person who holds an interest in a particular API. An *API Holder* can include either or both a *Passthrough Taxpayer* and an *Owner Taxpayer*.

d. Indirect API

The proposed regulations define an *Indirect API* as an API that is held through one or more *Passthrough Entities*.

e. Passthrough Interest

A *Passthrough Interest* under the proposed regulations is an interest in a *Passthrough Entity* that represents, in whole or in part, an API.

f. API Gains and Losses and Unrealized API Gains and Losses

API Gains and Losses are long-term capital gains and losses recognized with respect to an API. The proposed regulations provide that *API Gains and Losses* include long-term capital gain or loss from a deemed or actual disposition of the API (including gain and loss recognized under section 731(a) and section 752(b)) and the holder's distributive share of net long-term capital gain or loss from the partnership under sections 702 and 704 with respect to the API. The proposed regulations also treat long-term capital gain or loss on the disposition of a capital asset distributed from a partnership with respect to an API (*Distributed API Property*) as *API Gain* or *Loss* if the asset

is held for more than one year but not more than three years at the time the distributee-partner disposes of the property. The holding period of the asset in the partner's hands includes the partnership's holding period with respect to the asset.

Unrealized API Gains and Losses include unrealized short-term and long-term capital gains and losses that would be allocated to the API Holder with respect to its API if the partnership sold all of its assets at fair market value and the proceeds were distributed in a complete liquidation of the partnership on any relevant date. For example, Unrealized API Gains and Losses include all capital gains and losses that would be allocated to the API pursuant to a capital account revaluation under § 1.704-1(b)(2)(iv)(f) or § 1.704-1(b)(2)(iv)(s).

In the case of a Passthrough Entity that contributes property that on disposition would generate capital gain or loss subject to section 1061 to another Passthrough Entity, Unrealized Capital Gains and Losses include the appreciation or depreciation in the value of the property at the time of the contribution. Accordingly, Unrealized API Gains and Losses include the capital gains and losses that would be allocated to the API Holder with respect to the API if the property contributed by the Passthrough Entity to the lower-tier Passthrough Entity were sold immediately before the contribution for the amount that is included in the invested capital of the lower-tier Passthrough Entity (*i.e.*, included in a partnership's capital account or a similar account maintained by another type of Passthrough Entity under § 1.1061-3(c)(3)(ii) of these proposed regulations) with respect to the contributed property.

In the case of a revaluation of the property of a partnership that owns an interest in a tiered structure of partnerships or in the case of the contribution of an API to another Passthrough Entity, the proposed regulations provide that Unrealized API Gains and Losses include capital gains and losses that would be allocated directly or indirectly to the API Holder by lower-tier partnerships determined as if a taxable disposition of the property of each of the lower-tier partnerships also occurred on the date of the revaluation or contribution.

Although the proposed regulations do not require revaluations under section 1.704-1(b)(2)(iv)(f), solely to determine and identify Unrealized API Gains and Losses for purposes of section 1061 upon the occurrence of a revaluation or contribution, these regulations require

that a revaluation under the principles of § 1.704-1(b)(2)(iv)(f) be made through each relevant tier of partnerships. Thus, the proposed regulations require revaluations of all the properties held by all relevant partnerships in a tiered structure to determine the extent to which the partnership has Unrealized API Gains and Losses. If a partnership is required to revalue its assets for purposes of section 1061, such partnership is permitted to revalue its property for purposes of section 704 as though an event in § 1.704-1(b)(2)(iv)(f)(5) had occurred.

Further, the proposed regulations require that Unrealized API Gains and Losses of a partnership be allocated when recognized under principles consistent with § 1.704-3(a)(9). Accordingly, if at the time an API Holder contributes an interest in a lower-tier partnership to an upper-tier partnership, and the lower-tier partnership holds property with Unrealized API Gains and Losses that are allocable to the API Holder, those gains and losses when recognized by the lower-tier partnership must be allocated by the upper-tier partnership to the API Holder for purposes of section 1061.

The Treasury Department and the IRS believe that these rules serve two purposes. First, the rules ensure that capital gains and losses that would be API Gains and Losses are not converted to Capital Interest Gains and Losses by virtue of a revaluation or a contribution. Second, these rules also ensure that Unrealized API Gains and Losses of a partnership when recognized are properly allocated to the correct API Holder in a tiered structure of partnerships. The Treasury Department and the IRS request comments on whether such section 1061 revaluations are necessary or whether there is another mechanism that would ensure that API Gain or Loss is allocated to API Holders when there is a revaluation event in one or more of the tiers of entities. Further, comments are requested on whether the section 704(b) regulations should be amended to specifically include revaluations when such partnership revalues its assets for purposes of section 1061 or to address revaluations through tiers of partnerships for purposes of section 704 more generally.

Unrealized API Gains and Losses that are recognized with respect to an asset or API held for more than one year on the date of its disposition become API Gains and Losses at the time they are recognized and do not lose their character as they are allocated through Passthrough Entities in a tiered structure. API Gains and Losses do not

include any amounts that otherwise are treated as ordinary income under any Code section including section 751 and section 1245.

The Treasury Department and the IRS are aware that taxpayers may seek to circumvent section 1061(a) by waiving their rights to gains generated from the disposition of a partnership's capital assets held for three years or less and substituting for these amounts gains generated from capital assets held for more than three years. Alternatively, taxpayers may waive their rights to API Gains and substitute gains that are not taken into account for purposes of determining the Recharacterization Amount. Some arrangements also may include the ability for an API Holder to periodically waive its right to an allocation of capital gains from all assets in favor of an allocation of capital gains from assets held for more than three years and/or a priority fill up allocation designed to replicate the economics of an arrangement in which the API Holder shares in all realized gains over the life of the fund. These arrangements are often referred to as carry waivers or carried interest waivers. Taxpayers should be aware that these and similar arrangements may not be respected and may be challenged under section 707(a)(2)(A), §§ 1.701-2 and 1.704-1(b)(2)(iii), and/or the substance over form or economic substance doctrines.

g. Related Persons

Section 1061(c)(1) provides that an API includes an interest transferred to or held by a taxpayer in connection with the performance of substantial services by the taxpayer or a related person in an applicable trade or business. Section 1061(d) also provides a rule for transfers of APIs to certain related persons. Section 1061(d)(2) provides a definition of related person that applies solely to transfers subject to section 1061(d) and the proposed regulations refer to that person as a *Section 1061(d) Related Person*. However, section 1061 does not include a definition of related person for the remainder of section 1061. Accordingly, in defining *Related Person*, the proposed regulations use the general definition of a person or entity that is related under sections 707(b) or 267(b) of the Code.

2. API Operational Rules

a. An API Retains Its Status as an API

Section 1061 does not contain a provision that would cause an interest to cease to be an API unless and until one of the exceptions to the definition of API applies. Therefore, the proposed regulations clarify that once a

partnership interest becomes an API, the partnership interest remains an API unless and until an exception applies, regardless of whether the taxpayer or a Related Person continues to provide services in an ATB. Therefore, even after a partner retires and provides no further services, if the retired partner continues to hold the partnership interest, it remains an API. Similarly, if the partner provides services, but the ATB Activity Test (as defined below) is not met in a later year, the partnership interest will continue to be an API. Further, an API remains an API if it is contributed to another Passthrough Entity or a trust or is held by an estate. As discussed with respect to the definition of API Gains and Losses and further in paragraph I.A.2.b. of this Explanation of Provisions, any unrecognized API Gains and Losses included in a capital account upon contribution of an API to a Passthrough Entity remain subject to section 1061 when they are recognized under the Code.

b. API Gains and Losses and Unrealized API Gains and Losses Retain Their Character

API Gain or Loss retains its character as API Gain or Loss as it is allocated through tiered Passthrough Entities. Similarly, Unrealized API Gain or Loss retains its character even though it is included in the invested capital of a Passthrough Entity (*i.e.*, included in a partnership's capital account or a similar account maintained by another type of Passthrough Entities under § 1.1061-3(c)(3)(ii)).

c. Substantial Services

Section 1061(c)(1) provides that an interest in a partnership is an API only if the interest is transferred to or held by the taxpayer in connection with the performance of substantial services by the taxpayer, or by a related person, in an ATB. If a taxpayer provides any services in an ATB and an allocation of a partnership's profits is transferred to or held by the taxpayer in connection with those services, the proposed regulations presume that those services are substantial for purposes of Section 1061. The Treasury Department and the IRS have concluded that if an interest is granted in connection with the performance of services, such services are presumed substantial with respect to the interest transferred. This presumption is appropriate because the parties to the arrangement have economically equated the potential value of the interest granted with the value of the services performed. Therefore, the services provided are

presumed to be substantial with respect to the interest transferred.

The Treasury Department and the IRS request comments on this presumption and the specifics of any arrangements in which insubstantial services could be performed in connection with the receipt of a profits interest such that the presumption could be overcome. Those comments also should address how and why Revenue Procedure 93-27 and Revenue Procedure 2001-43 would apply to partnership interests received in exchange for such insubstantial services.

d. Disregarded Entities

Entities that are disregarded from their owners (collectively, disregarded entities) under any provision of the Code or regulations, including grantor trusts and qualified subchapter S subsidiaries, are disregarded for purposes of these regulations. Accordingly, if an API is held by or transferred to a disregarded entity, the API is treated as held by or transferred to the disregarded entity's owner.

B. ATB and the ATB Activity Test

1. Relevant Definitions

The proposed regulations provide that an ATB means any activity for which the *ATB Activity Test* with respect to *Specified Actions* is met. The proposed regulations provide that the ATB Activity Test is met if Specified Actions are conducted at a level of activity required for an activity to constitute a trade or business under section 162. For purposes of determining if the ATB Activity Test is met, all of the Specified Actions conducted by Related Persons are combined. If these Specified Actions, all taken together, rise to the level of activity required to establish a trade or business under section 162, then each Related Person is determined to be engaged in the *Relevant ATB*. A Relevant ATB is the ATB in which services were performed in connection with which the API was transferred. Multiple Related Persons' actions are combined and then attributed to each Related Person. Therefore, a single ATB under section 1061 can include the actions taken by multiple Related Persons. The definition of an ATB is not the same as the definition of activity under section 469 and does not take into account any of the grouping rules under section 469. The definition of an ATB is solely for purposes of section 1061.

Specified Actions include both *Raising or Returning Capital Actions* and *Investing or Developing Actions*. The proposed regulations' description of Raising or Returning Capital Actions

tracks the statutory language of section 1061(c)(2)(A). Similarly, the proposed regulations' description of Investing or Developing Actions tracks the statutory language of section 1061(c)(2)(B). The proposed regulations also include guidance regarding developing Specified Assets from the Conference Report. Specifically, the Conference Report states that developing specified assets takes place, for example, if it is represented to investors, lenders, regulators, or others that the value, price, or yield of a portfolio business may be enhanced or increased in connection with choices or actions of a service provider or of others acting in concert with or at the direction of a service provider. However, merely voting shares owned does not amount to development; for example, a mutual fund that merely votes proxies received with respect to shares of stock it holds is not engaged in development. Conference Report at 421. The proposed regulations provide that Raising or Returning Capital Actions do not include Investing or Developing Actions.

The definition of Specified Assets in the proposed regulations generally tracks the statutory definition of specified assets in section 1061(c)(3). Both the statute and the proposed regulations provide that a Specified Asset generally includes a security as defined in section 475(c)(2). Thus, all corporate stock, regardless of the size of the corporation or whether the corporation is publicly traded, is a specified asset. Additionally, the proposed regulations, consistent with the definition of security in section 475(c)(2), provide that an interest in a partnership or a beneficial ownership interest in a trust is a Specified Asset if it is a security described in section 475(c)(2). The proposed regulations follow the statute to provide that options or derivative contracts with respect to any of the foregoing Specified Assets are also Specified Assets. Further, as provided in section 1061(c)(3), an interest in a partnership is also a Specified Asset to the extent that the partnership itself holds Specified Assets. The Blue Book provides an example in which a hedge fund acquires an interest in a partnership that is neither publicly traded nor widely held and whose assets consist of stocks, bonds, positions that are clearly identified hedges with respect to securities, and commodities. The Blue Book provides that the partnership interest is a specified asset for purposes of the provision. Blue Book at 203. The proposed regulations

incorporate this concept as illustrated by the Blue Book. Similar to the statute's treatment of options or derivative contracts of other Specified Assets as Specified Assets, the proposed regulations provide that, solely for purposes of section 1061, Specified Assets also include a derivative of a partnership interest to the extent not otherwise included in the definition of Specified Assets.

2. The ATB Activity Test

a. Actions Taken With Respect to Specified Assets Held by a Partnership

In the case of a partnership that directly holds Specified Assets, actions taken with respect to or on account of these assets, as well as a percentage of the actions taken with respect to the partnership interest as a whole, will be taken into account for purposes of the ATB Activity Test. The percentage of the actions taken with respect to the partnership as a whole that are taken into account for the test is the ratio of the value of the partnership's Specified Assets over the value of all of the partnership's assets. Actions taken to manage working capital will not be taken into account for purposes of the ATB Activity Test. The Treasury Department and the IRS request comments on the application of this rule and how it can be tailored to accomplish the purposes of section 1061.

b. Application of the ATB Activity Test

i. Aggregate Actions Taken Into Account

The proposed regulations provide that the ATB Activity Test takes into account the aggregate actions conducted with respect to Raising or Returning Capital Actions and Investing or Developing Actions. In other words, the ATB Activity Test does not require that Raising or Returning Capital Actions and Investing or Developing Actions each individually meet the required activity level for the ATB Activity Test to be satisfied.

ii. Raising or Returning Capital Actions and Investing or Developing Actions Are Not Required To Be Taken Every Year

The Treasury Department and the IRS recognize that, in some cases, once sufficient capital to engage in Investing or Developing Actions has been raised, actions involving raising or returning capital may not be taken for a period of time. Additionally, at the beginning and the end of the activity, actions involving the raising or returning of capital may be significant and actions involving investing or developing may not be

taken. The ATB Activity Test looks at the actions taken as a whole. Accordingly, the proposed regulations provide that the ATB Activity Test is met if Investing or Developing Actions alone satisfy the ATB Activity Test in the current year if Raising or Returning Capital Actions have been taken in prior years. Additionally, the test is satisfied if Raising or Returning Capital Actions during the year satisfy the ATB Activity Test and Investing or Developing Actions are anticipated but not yet taken.

iii. Actions of Related Persons Taken Into Account

The proposed regulations further provide that in applying the ATB Activity Test, the actions of one or more Related Persons are taken into account, regardless of whether an entity conducts only Raising or Returning Capital Actions or only Investing or Developing Actions.

iv. Interests Transferred Prior to Existence of an ATB

An API arises when an interest in a partnership is transferred or held in connection with services in an ATB. The Treasury Department and the IRS are aware that interests in a partnership may be issued to a service provider in anticipation of the service provider providing services to an ATB, but because an ATB does not exist at the time of the transfer, the interest is not an API. The Treasury Department and the IRS have concluded that once the service provider is providing services in an ATB, the interest becomes an API. Once the interest becomes an API, its status as an API does not depend on whether the ATB continues to meet the ATB Activity Test.

II. Section 1.1061-3: Exceptions to the Definition of API

Section 1061 includes four exceptions to its application. Additionally, these regulations provide an additional exception. First, the statutory definition of an API excepts an interest held by a person who is employed by another entity that is conducting a trade or business (other than an ATB) and provides services only to such other entity (non-ATB employee exception). Second, section 1061(c)(4)(A) provides that an API does not include any interest in a partnership directly or indirectly held by a corporation (corporate exception). Third, section 1061(c)(4)(B) provides that an API does not include any capital interest in the partnership (Capital Interest Gains and Losses exception). Fourth, section 1061(b) provides that to the extent

provided by the Secretary, section 1061 will not apply to income or gain attributable to any asset not held for portfolio investment on behalf of third party investors (Section 1061(b) exception). Lastly, § 1.1061-3 introduces a fifth exception that applies to an unrelated purchaser who is a non-service provider (bona fide unrelated purchaser exception).

A. Non-ATB Employee Exception

Section 1061(c)(1) provides that an API is not held by a person who is employed by another entity that is conducting a trade or business (other than an ATB) and provides services only to such other entity. The proposed regulations track the language of the statute.

B. Corporate Exception

Section 1061(c)(4)(A) provides that the term API does not include a partnership interest directly or indirectly held by a corporation. On March 19, 2018, the Treasury Department and the IRS issued Notice 2018-18, notifying taxpayers that the Treasury Department and the IRS intended to issue regulations providing that the term corporation as used in section 1061(c)(4)(A) does not include an S corporation. The notice informed taxpayers that the regulations under section 1061 would provide that this rule is effective for taxable years beginning after December 31, 2017 to prevent taxpayers from avoiding the application of section 1061 through the use of an S corporation. See section 7805(b)(3). The Blue Book also provides that the term corporation for purposes of section 1061(c)(4)(A) does not include an S corporation. Blue Book, page 201. Accordingly, these proposed regulations provide that partnership interests held by S corporations are treated as APIs if the interest otherwise meets the API definition.

The Treasury Department and the IRS also have concluded that a partnership interest held by a PFIC with respect to which a taxpayer has a QEF election in effect is treated as an API if the interest meets the API definition. Under section 1291, generally, a U.S. person who owns stock of a PFIC is subject to an interest charge regime in which interest is charged with respect to certain PFIC distributions and dispositions of PFIC shares. However, the shareholder can avoid the interest charge regime by making an election under section 1295 to treat the PFIC as a QEF. If this election is made, then the holder of the stock generally is not subject to the interest charge regime and instead includes in income each taxable year its

pro rata share of the ordinary income and long-term capital gain of the QEF. The Treasury Department and the IRS are concerned that, absent this rule, taxpayers may use PFICs with respect to which they have made QEF elections to avoid the application of section 1061. Such taxpayers would have the benefit of passthrough tax treatment without the application of section 1061. The Treasury Department and the IRS believe it is inappropriate for a PFIC with respect to which the shareholder has elected to receive passthrough treatment to be treated as a corporation for purposes of section 1061. Therefore, the proposed regulations clarify that a PFIC with respect to which the shareholder has a QEF election in effect is not treated as corporation for purposes of section 1061(c)(4)(A). As a result, a partnership interest held by a PFIC with respect to which the shareholder has a QEF election in effect will be treated as an API if the interest otherwise meets the API definition.

Section 1061(f) provides that the Secretary has authority to issue regulations as are necessary or appropriate to carry out the purposes of section 1061. Both the Conference Report and the Blue Book further direct the Treasury Department and the IRS to issue regulations to address the prevention of abuse of the purposes of the provision. The Treasury Department and the IRS have concluded that the grant of regulatory authority in section 1061 is sufficient for the government to issue regulations providing that the exception in section 1061(c)(4)(A) does not include S corporations and PFICs with respect to which shareholders have QEF elections in effect. The rule that the exception in section 1061(c)(4)(A) does not apply to a PFIC with respect to which the shareholder has a QEF election in effect applies to all taxable years beginning after the date the proposed regulations are published in the **Federal Register**.

C. Capital Interest Gains and Losses Exception

Section 1061(c)(4)(B) provides that an API does not include a capital interest in the partnership that provides a right to share in partnership capital commensurate with (i) the amount of capital contributed (determined at the time of receipt of such partnership interest), or (ii) the value of such interest subject to tax under section 83 upon the receipt or vesting of such interest. The statutory language creates an exception from recharacterization under section 1061 for capital gains and losses with respect to a capital interest. The Conference Report includes an

example in which a partnership agreement provides that a partner's share of the partnership's capital is commensurate with the amount of capital the partner contributed at the time the partnership interest was received compared to the total partnership capital. The reference to the amount of capital contributed in section 1061(c)(4)(B)(i) and a similar reference in the Conference Report indicate that the exception for capital interests should apply only to the extent that a service provider's rights with respect to its contributed capital matches the rights of other non-service partners with respect to their shares of contributed capital. Conference Report at 420–21.

These proposed regulations provide rules for determining if capital gains and losses allocated to an API Holder are treated as allocations with respect to its capital investment and therefore, excluded from the application of section 1061. As discussed in more detail in section II.C.1, of this Explanation of Provisions, General Rules Applicable to the Determination of Capital Interest Allocations and Passthrough Interest Allocations, an allocation must be made in proportion to the relative value of the API Holder's capital account (including unrealized gains and losses) in the Passthrough Entity in order to be an allocation with respect to a capital investment. The proposed regulations also provide rules for determining the amount of gain or loss recognized on the disposition of a Passthrough Interest that is allocable to the capital interest.

The proposed regulations refer to capital gains and losses with respect to a capital interest as Capital Interest Gains and Losses. Specifically, the proposed regulations provide that Capital Interest Gains and Losses are Capital Interest Allocations, Passthrough Interest Capital Allocations and Capital Interest Disposition Amounts.

1. General Rules Applicable to the Determination of Capital Interest Allocations and Passthrough Interest Capital Allocations

a. In the Same Manner

The proposed regulations provide that allocations based on the partners' capital account balances that have the same terms, the same priority, the same type and level of risk, the same rate of return, the same rights to cash or property distributions during partnership operations and on liquidation will be treated as made in the same manner. The proposed regulations also provide that an allocation to an API Holder will not fail

to be treated as a Capital Interest Allocation solely because it is subordinated to an allocation to Unrelated Non-service Partners or because it is not reduced by the cost of services provided by the API Holder or by a related person.

b. Capital Accounts

In the case of a partnership that maintains capital accounts under § 1.704–1(b)(2)(iv), in order for an allocation to qualify as a Capital Interest Allocation or a Passthrough Interest Capital Allocation, the allocation must be based on the capital account determined under § 1.704–1(b)(2)(iv). In the case of a Passthrough Entity that is not a partnership (or a partnership that does not maintain capital accounts under § 1.704–1(b)(2)(iv)), if the Passthrough Entity maintains and determines accounts for its owners in a manner similar to that provided under § 1.704–1(b)(2)(iv), those accounts will be treated as capital accounts under the proposed regulations. These accounts must be used in order for an allocation to qualify as a Capital Interest Allocation or a Passthrough Interest Capital Allocation. To qualify to be treated as a capital account for this purpose, each owner's account must be increased by the money and the net fair market value of property contributed to the Passthrough Entity and income and gain allocated to the owner. Each owner's account must be decreased by any money and the net fair market value of property distributed to the owner and allocations of expenditures, loss, and deduction.

Generally, Passthrough Interest Capital Allocations must be based on each owner's share of the Passthrough Entity's capital account in the partnership making the Capital Interest Allocations to the Passthrough Entity. Passthrough Interest Direct Investment Allocations generally must be based on each owner's share of the capital investment made by the Passthrough Entity. This amount is equal to the capital account of the owner reduced by that owner's share of a capital account held directly or indirectly by the Passthrough Entity in a lower-tier entity. However, if a Passthrough Entity allocates all Passthrough Interest Capital Allocations for the taxable year in the aggregate, regardless of whether they are Capital Interest Allocations or Passthrough Interest Direct Investment Allocations, the Passthrough Entity may allocate those allocations based on each owner's capital account in the Passthrough Entity, regardless of whether some or all of an owner's

capital contribution is included in the capital account of a lower-tier entity.

For purposes of section 1061, a capital account does not include the contribution of amounts directly or indirectly attributable to any loan or other advance made or guaranteed, directly or indirectly, by any other partner or the partnership (or any person related to any such other partner or the partnership). However, the repayments on the loan are included in capital accounts as those amounts are paid (unless the repayments are funded with a similar loan from the partners or the partnership or any person related to such partners or the partnership).

c. Items That Are Not Treated as Capital Interest Allocations or Passthrough Interest Capital Allocations

Capital Interest Allocations and Passthrough Interest Capital Allocations never include any amounts that are treated as API Gains and Losses or Unrealized API Gains and Losses that are allocated to the Passthrough Entity by a lower-tier Passthrough Entity. Such allocations also exclude Partnership Transition Amounts and other items not taken into account for purposes of section 1061 as described in section III.E of this Explanation of Provisions.

2. Capital Interest Allocations

Capital Interest Allocations can be made only by a partnership that has both API Holders and Unrelated Non-Service Partners. Unrelated Non-Service Partners are partners who do not (and did not) provide services in the Relevant ATB and who are not (and were not) related to an API Holder in the partnership or any person who provides services in the Relevant ATB. Capital Interest Allocations are allocations of long-term capital gain and loss made under the partnership agreement to the API Holder and Unrelated Non-Service Partners based on their respective capital account balances if: (1) The allocations are made to Unrelated Non-Service Partners with a significant aggregate capital account balance; (2) the allocations are made in the same manner to the API Holder and the Unrelated Non-Service Partners; and (3) the terms of the allocations to the API Holder and the Unrelated Non-Service Partners are identified both in the partnership agreement and on the partnership's books and records and the allocations are clearly separate and apart from allocations made with respect to the API.

These proposed regulations provide that allocations made to Unrelated Non-service Partners with an aggregate capital account balance of 5 percent or

more of the aggregate capital account balance at the time the allocation is made by the partnership will be treated as significant.

3. Passthrough Interest Capital Allocations

Passthrough Interest Capital Allocations are long-term capital gain and loss allocations made by a Passthrough Entity that holds an API. The proposed regulations provide for two types of Passthrough Interest Capital Allocations: Passthrough Capital Allocations and Passthrough Interest Direct Investment Allocations.

a. Passthrough Capital Allocations

Passthrough Capital Allocations are Capital Interest Allocations made directly or indirectly to the Passthrough Entity from a lower-tier entity with respect to its capital account balance in the lower-tier entity. Passthrough Capital Allocations must be made by the Passthrough Entity to each of its owners in the same manner based on each owner's share of the capital account in the lower-tier entity making the Capital Interest Allocation to the Passthrough Entity.

b. Passthrough Interest Direct Investment Allocations

Allocations are treated as Passthrough Interest Direct Investment Allocations if the allocations are comprised solely of long-term capital gains and losses derived from assets (other than an API) directly held by the Passthrough Entity and not through an allocation from a lower tier Passthrough Entity. Also, if a Passthrough Entity received Distributed API Property from a lower-tier entity and the property is no longer Distributed API Property because it has been held for more than three years, the property is included in the Passthrough Entity's direct investment at that time. Generally, allocations must be made in the same manner to each of the owners of the Passthrough Entity based on each owner's relative investment in the assets held by the Passthrough Entity. An allocation will not fail to qualify to be a Passthrough Interest Direct Investment Allocation if the Passthrough Entity is a partnership and allocations made to one or more Unrelated Non-Service Partners have more beneficial terms than allocations to the API Holders if the allocations to the API Holders are made in the same manner. For example, if an Unrelated Non-Service Partner receives a priority allocation and distribution of 10 percent of net long-term capital gain and loss and the other partners, including the API Holders, share the remaining 90 percent of the net long-

term capital gain from the Passthrough Entity's direct investments, allocations to the API Holders are Passthrough Interest Direct Investment Allocations. Further, allocations made in the same manner to some API Holders by a partnership will not fail to qualify to be treated as a Passthrough Interest Direct Investment Allocation as to those partners despite allocations being made to one or more service providers (or related parties) that are treated as APIs issued by the Passthrough Entity. For example, if (1) all of the partners of the Passthrough Entity are API Holders and one partner manages the Passthrough Entity's direct investments and receives a 20 percent interest in the net long-term capital gains from those investments that is treated as an API as to that partner and (2) the other API Holders share the remaining 80 percent of gain from those investments based on their relative investments in the Passthrough Entity, then (3) the allocation of the 80 percent of net long-term capital gain is a Passthrough Interest Direct Investment Allocation to those partners.

c. Aggregate Passthrough Interest Allocations

Instead of separately accounting for Passthrough Capital Allocations and Passthrough Interest Direct Investment Allocations, owners of the Passthrough Entity may prefer to allocate items of Capital Interest Gain or Loss without regard to whether these items arose from direct investment by the Passthrough Entity or from an investment in a lower-tier Passthrough Entity. Therefore, the proposed regulations permit an upper-tier Passthrough Entity to allocate its Passthrough Capital Allocations and Passthrough Interest Direct Investment Allocations in the same manner to all of its partners using the partners' capital accounts in such Passthrough Entity unreduced by amounts that are included in a capital account of the lower-tier entity.

4. Request for Comments Regarding Other Allocations

The Treasury Department and the IRS understand that the allocations in the proposed regulations do not include all allocation arrangements. The Treasury Department and the IRS request comments on other allocation arrangements that appropriately could be treated as Capital Interest Gains and Losses under the regulations without inappropriately expanding the capital interest exception, taking into account the statutory requirement that the API Holder's right with respect to its capital interest be commensurate with other

partners' rights with respect to their contributed capital.

5. Capital Interest Disposition Amounts

The proposed regulations provide rules for determining the extent to which long-term capital gain or loss recognized on the disposition of a Passthrough Interest comprised of both an API and a capital interest is excluded from section 1061 because it is treated as Capital Interest Gain or Loss. Nothing in section 1061 or these proposed regulations overrides existing law regarding the determination of gain recognized on the disposition of all or a portion of a Passthrough Interest. In particular, in the case of a disposition of a portion of a Passthrough Interest, Revenue Ruling 84-53 (1984-1 C.B. 159) applies and basis must be equitably apportioned between the portion of the interest disposed of and the portion retained. These proposed regulations contain amendments to § 1.1223-3 for determining a divided holding period when a partnership interest includes an API and/or a profits interest.

A commenter requested guidance on whether a capital interest can be disposed of separately from an API for purposes of section 1061(a). The disposition of a capital interest will be treated as such under section 1061 and the gain or loss on the disposition is treated as Capital Interest Gain or Loss if the interest being disposed of is clearly identified as a capital interest. However, nothing in section 1061 or these proposed regulations changes the established partnership principle that a partner has a unitary basis in its partnership interest. See Revenue Ruling 84-53. As noted above, the basis must be equitably apportioned to the transferred portion under the principles described in Rev. Rul. 84-53 and the holding period of the interest would be determined under the rules of § 1.1223-3. Thus, a partner may dispose of solely a capital interest or an API, but in either case, the partner's basis and holding period (including a split holding period) is apportioned between the interest retained and the interest transferred.

The proposed regulations provide that the amount of long-term capital gain or loss recognized on a disposition that is treated as a Capital Interest Disposition Amount is determined in a multi-step process. Amounts that are treated as ordinary income under section 751(a) or (b) as a result of the disposition are excluded from all steps of the calculation. The computation then proceeds as follows. First, the amount of gain or loss that would be allocated to the Passthrough Interest (or the portion of the Passthrough Interest sold) if all of

the assets of the Passthrough Entity were sold for their fair market value in a fully taxable transaction (deemed liquidation) immediately before the disposition is determined (Step One). Second, the amount of gain or loss from the deemed liquidation that is allocable to the Passthrough Interest as a result of Capital Interest Allocations, and Passthrough Interest Capital Allocations is determined (Step Two). If a transferor recognizes capital gain under section 751(b), any amount that constitutes API Gain or Loss is added to any API Gain or Loss that results from the disposition of the interest.

If gain is recognized under the Code on the disposition of a Passthrough Interest, and the Capital Interest Allocations, Passthrough Interest Capital Allocations, and API Holder Transition Amounts determined under Step Two would result in the allocation of a loss, then all the gain recognized on the disposition will be treated as API Gain. Similarly, if loss is recognized on the disposition of a Passthrough Interest, and the Capital Interest Allocations, Passthrough Interest Capital Allocations, and API Holder Transition Amounts determined under Step Two would result in an allocation of a gain, then all of the loss recognized on the disposition will be treated as an API Loss.

If gain is recognized under the Code on the disposition of a Passthrough Interest and gain would be recognized with respect to the Passthrough Interest under both Step One and Step Two, the API Holder must determine the portion of the gain that is attributable to the capital interest and the portion of the gain that is attributable to the API. To determine these portions, the taxpayer must divide the capital gain that would be allocated to the interest pursuant to Capital Interest Allocations, Passthrough Interest Capital Allocations, and API Holder Transition Amounts on the deemed liquidation of the partnership under Step Two by the total amount of gain that would be allocated to the interest on the deemed liquidation under Step One. This amount, expressed as a percentage, is then multiplied by the total amount of gain recognized on the sale to determine the amount of the gain that is treated as a Capital Interest Disposition Amount. A similar analysis would apply if a loss was recognized on the disposition of the interest, and both Steps One and Two resulted in a loss. To the extent that the gain or loss is not treated as a Capital Interest Disposition Amount, it is API Gain or Loss and subject to section 1061.

6. Recapitalizations and Divisions

The Treasury Department and the IRS are aware that some taxpayers have taken the position that a recapitalization or division is a capital contribution under section 1061(c)(4)(B) that would allow taxpayers to recharacterize what would be API Gains under these proposed regulations as Capital Interest Gains. Although a recapitalization or a division may be treated as a section 721 contribution, these transactions would not have the effect of recharacterizing API Gains and Losses as Capital Interest Gains and Losses under these proposed regulations. The section 1061 statutory language does not support this position and the Treasury Department and the IRS do not believe it to be a reasonable interpretation of the statute.

D. Section 1061(b) Exception

Section 1061(b) provides that to the extent provided by the Secretary, section 1061(a) shall not apply to income or gain attributable to any asset not held for portfolio investment on behalf of third party investors. The proposed regulations reserve with respect to the application of section 1061(b). A third party investor is defined in section 1061(c)(5) as a person who holds an interest in the partnership which does not constitute property held in connection with an applicable ATB; and who does not provide substantial services for such partnership or for any applicable trade or business. Comments have suggested that the exception is intended to apply to family offices, that is, portfolio investments made on behalf of the service providers and persons related to the services providers. The Treasury Department and the IRS generally agree with these comments and believe that the section 1061(b) exception effectively is implemented in the proposed regulations with the exception to section 1061 for Passthrough Interest Direct Investment Allocations. The Treasury Department and the IRS request comments on the application of this provision and whether the proposed regulations' exclusion for Passthrough Interest Direct Investment Allocations properly implements the exception.

E. Bona Fide Unrelated Purchaser Exception

The proposed regulations add an exception for unrelated taxpayers who purchase an API. The proposed regulations provide that an interest in a partnership that would be treated as an API but is purchased by an unrelated buyer for the fair market value of the interest is not an API with respect to the

buyer if (1) the buyer does not currently and has never provided services in the relevant ATB (or to the Passthrough Entity in which the interest is held, if different), (2) does not contemplate providing services in the future, and (3) is not related to a person who provides services currently or has provided services in the past. However, it should be noted that this exception does not apply to an unrelated non-service provider who becomes a partner by making a contribution to a Passthrough Entity that holds an API and in exchange receives an interest in the Passthrough Entity's API. In this case, allocations to the Unrelated Non-Service Partner with respect to the API are API Gains and Losses and retain their character as API Gains and Losses.

III. Section 1.1061-4: Computing the Recharacterization Amount

As noted in section I of this Explanation of Provisions, under the proposed regulations, the amount an Owner Taxpayer must treat as short-term capital gain under section 1061(a) is called the Recharacterization Amount. The Recharacterization Amount is the amount by which the Owner Taxpayer's *One Year Gain Amount* exceeds the Owner Taxpayer's *Three Year Gain Amount*. The Owner Taxpayer's One Year Gain Amount is comprised of two components: (1) The Owner Taxpayer's combined net *API One Year Distributive Share Amount* from all APIs held during the taxable year; and (2) The Owner Taxpayer's *API One Year Disposition Amount*. The Owner Taxpayer's Three Year Gain Amount is comprised of: (1) Its combined net *API Three Year Distributive Share Amount* from all APIs held during the taxable year; and (2) its *API Three Year Disposition Amount*. As noted earlier in this preamble, API Gains and Losses retain their character as they flow through each tier of Passthrough Entities and are netted at the Owner Taxpayer level to determine the Recharacterization Amount.

A. Determination of the API One Year Distributive Share Amount

Each Passthrough Entity must calculate an API One Year Distributive Share Amount for each API Holder that directly holds an interest in the Passthrough Entity for the taxable year. Under the proposed regulations, all long-term capital gain and loss allocated to the API Holder by the Passthrough Entity are API Gains and Losses to the API Holder unless an exception applies.

If the Passthrough Entity is a partnership, the Passthrough Entity determines its API One Year

Distributive Share Amount in a series of steps. First, the partnership determines the long-term capital gains and losses that are allocated to the API Holder under the partnership agreement under sections 702 and 704. This amount includes long-term capital gains and losses from the taxable disposition of Distributed API Property by the partnership that was distributed to it from a lower-tier entity. Second, the partnership reduces this amount by amounts that are not taken into account under these proposed regulations for purposes of calculating the Recharacterization Amount. As discussed in section III.E of this Explanation of Provisions, section 1231 amounts, section 1256 amounts, and qualified dividends are excluded from the calculation of the Recharacterization Amount and are not included in the API One Year Distributive Share amount. The same is true for the API Holder Transition Amount, which is also discussed in section III.E of this Explanation of Provisions, and for long-term capital gain or loss from the disposition of property that was once Distributed API Property but that has ceased to be Distributed API property because it was disposed of when the asset had a holding period that was more than three years. Third, the partnership reduces the amount determined under the second step by any amounts that are treated as Capital Interest Gains and Losses under § 1.1061-3(c). The resulting amount is the API Holder's One Year Distributive Share Amount and the partnership must report this amount to the API Holder as its API One Year Distributive Share Amount under § 1.1061-6. Additionally, under § 1.1061-6, the partnership must report to the API Holder the amount of Capital Interest Gains and Losses and API Holder Transition Amounts that have been allocated to the API Holder for the calendar year.

An API One Year Distributive Share Amount must also be calculated by an S corporation that holds an API for each direct API Holder in the S corporation. In this case, the S corporation must report to each API Holder its pro rata share of the API Gains and Losses allocated to the S corporation with respect to its API. Such amounts also may be calculated and reported by a PFIC with respect to which the shareholder has a QEF election in effect.

B. Determination of the API Three Year Distributive Share Amount

Under the proposed regulations, the API Three Year Distributive Share Amount is equal to an API Holder's One Year Distributive Share Amount less

amounts that would not be treated as long-term capital gain and loss if such amount were computed by applying paragraphs (3) and (4) of section 1222 and substituting three years for one year in those paragraphs. In addition, if the Passthrough Entity sold an API during the taxable year and the Lookthrough Rule applies, the API Holder's One Year Distributive Share Amount is further reduced by the adjustment required by the Lookthrough Rule as described in section III.E of this Explanation of Provisions. These amounts must be calculated by the Passthrough Entity and reported to the API Holder under § 1.1061-6.

C. Determination of the API One Year Disposition Amount and the API Three Year Disposition Amount

The API One Year Disposition Amount includes the long-term capital gains and losses that the Owner Taxpayer recognizes from the direct taxable disposition of an API, including gain or loss under sections 731(a) and 752(b), that has been held for more than one year. The API One Year Disposition Amount also includes long-term capital gain or loss recognized on the disposition of Distributed API Property by an Owner Taxpayer. The API Three Year Disposition Amount includes only the long-term capital gain or loss from the direct taxable disposition of an API held by the Owner Taxpayer for more than three years. However, if the Lookthrough Rule, as described in § 1.1061-4(b)(9) and discussed further in section III.E.7 of this Explanation of Provisions, applies, the API Three year Disposition Amount is further reduced by the adjustment required by the Lookthrough Rule.

Section 751(b) provides that in the case of certain disproportionate distributions, a partner may be treated as engaging in a sale or exchange of property with the partnership. To the extent that such an exchange results in long-term capital gain with respect to an API under section 751(b), it is included in the One Year Disposition Amount and additionally, if appropriate, amounts may be included in the Three Year Disposition Amount. See § 1.751-1(b)(2).

D. Determination of the One Year Gain Amount and Three Year Gain Amount

In determining the One Year Gain Amount and Three Year Gain Amount, all amounts are netted at the Owner Taxpayer level. If an Owner Taxpayer holds more than one API, the Owner Taxpayer combines and nets its API Distributive Share Amounts from each API that it held during the taxable year

to determine its combined net API One Year Distributive Share Amount and net API Three Year Distributive Share Amount. Additionally, the taxpayer must take into account its API One Year Disposition Amount and its API Three Year Disposition Amount. If the One Year Gain Amount is zero or less than zero, section 1061 does not apply because there is no gain to recharacterize. Further, in applying section 1(h) of the Code, the Owner Taxpayer determines its net capital gain for the taxable year taking into account section 1061. Comments are requested regarding the calculation of collectibles gain and loss under section 1(h)(5) and unrecaptured section 1250 gain in section 1(h)(6) in cases where collectibles gain or unrecaptured section 1250 gain is included in the Recharacterization Amount under section 1061(a) and under section 1061(d).

E. General Calculation Rules

This section discusses general rules included in the proposed regulations for calculating the One Year Gain Amount and Three Year Gain Amount.

1. Items Not Taken Into Account for Purposes of Section 1061(a)

Section 1061(a) applies to assets that produce capital gains or losses that are treated as long-term capital gain under paragraphs (3) and (4) of section 1222. Section 1231 gains and losses are treated as long-term based on the operation of section 1231, and not by reference to paragraphs (3) and (4) of section 1222. Similarly, section 1256 provides for specific character treatment and does not calculate gain by reference to section 1222. Accordingly, the proposed regulations provide that long-term capital gains determined under section 1231 or section 1256 are excluded from both the One Year and Three Year Gain Amounts. For similar reasons, amounts treated as qualified dividends under section 1(h)(11) and any capital gain that is characterized as long term or short term without regard to the holding period rules in section 1222, such as capital gains characterized under the identified mixed straddle rules described in section 1092(b) and §§ 1.1092(b)-3T, 1.1092(b)-4T, and 1.1092(b)-6, are also excluded.

2. API Holder Transition Amounts

As described in the discussion of Capital Interest Gains and Losses, section 1061(c)(4) provides an exception with respect to certain capital interests. Prior to the enactment of section 1061, taxpayers had no reason to track what portion of the unrealized appreciation

in partnership assets was attributable to capital interests. Therefore, the Treasury Department and the IRS are aware that partnerships may not have information readily available to enable them to comply with these regulations with respect to property that the partnership held for more than three years as of the effective date of section 1061. Accordingly, the proposed regulations provide a transition rule for partnership property that was held by the partnership for more than three years as of the effective date of section 1061. Under these proposed regulations, a partnership that was in existence as of January 1, 2018 may irrevocably elect to treat all long-term capital gains and losses from the disposition of all assets, regardless of whether they would be API Gains or Losses in prior periods, that were held by the partnership for more than three years as of January 1, 2018 as *Partnership Transition Amounts*. Partnership Transition Amounts that are allocated to the API Holder (*API Holder Transition Amounts*) are not taken into account for purposes of determining the Recharacterization Amount. Rather, they are treated as long-term capital gains and losses and are not subject to recharacterization under section 1061 and these proposed regulations.

For amounts to be treated as Partnership Transition Amounts, the partnership must make a signed and dated election (election statement) by the due date, including extensions, of the Form 1065, "U.S. Return of Partnership Income," for the first partnership taxable year in which it treats amounts as Partnership Transition Amounts. The election statement must be identified as an election under § 1.1061-4(b)(7)(iii) and filed with the IRS as an attachment to the Form 1065 filed for the partnership's taxable year in which it is making the election. By the due date of the election, the partnership must clearly and specifically identify all of the assets held by the partnership for more than three years as of January 1, 2018 in the partnership's books and records. The election applies to the year for which the election is made and all subsequent years. Taxpayers may rely on these proposed regulations to make the election for taxable years beginning in 2020 or in a later year before the final regulations apply.

As noted above, Partnership Transition Amounts that are allocated to the API Holder are called API Holder Transition Amounts under the proposed regulations. The API Holder Transition Amount in any year is the amount of the Partnership Transition Amount for the year that is included in the amount of

long-term capital gains and losses allocated to the API Holder under sections 702 and 704 with respect to its interest in the partnership under the current partnership agreement. However, the amount allocated to the API Holder in any taxable year under the preceding sentence cannot exceed the amount of the Partnership Transition Amount that would have been allocated to the API Holder with respect to its partnership interest under the partnership agreement for the 2017 taxable year to the extent it was amended on or before March 15, 2018. The partnership must retain an executed copy of the partnership agreement in effect for the 2017 taxable year to the extent amended on or before March 15, 2018 as part of its books and records.

A Passthrough Entity that receives an allocation of API Holder Transition Amounts from a lower-tier entity cannot allocate more of the Passthrough Entity's API Holder Transition Amount to the Passthrough Entity's direct API Holders than the amount of Partnership Transition Amounts the API Holders would have been allocated by the Passthrough Entity under the Passthrough Entity's governing documents in effect for the calendar year ending December 31, 2017 to the extent amended on or before March 15, 2018. Further, the amount allocated to the Passthrough Entity's direct API Holders cannot exceed the amount of the Passthrough Entity's API Holder Transition Amounts the Passthrough Entity was allocated by the lower-tier Passthrough Entity.

Unlike other provisions of the proposed regulations, API Holders and Passthrough Entities may elect and treat amounts as Partnership Transition Amounts and API Holder Transition Amounts for taxable years beginning in 2020 or a later taxable year without following all of the provisions of the proposed regulations provided that the partnership consistently treats long-term capital gains and losses from identified assets as Partnership Transition Amounts and API Holder Transition Amounts for the year in which the election is made and all subsequent taxable years beginning before the final regulations are published in the **Federal Register**. The Treasury Department and IRS request comments on whether a transition rule is needed and whether the Partnership Transition Amount Rule is useful or whether another approach would be more helpful in easing transition difficulties.

3. Installment Sale Gain

The proposed regulations provide that the Owner Taxpayer's One Year Gain

Amount and Three Year Gain Amount include gains from installment sales, regardless of whether the installment sale occurred before the effective date of section 1061. The proposed regulations also make clear that the holding period of the asset on the date of its disposition is used for purposes of applying section 1061. Accordingly, if an API was sold on November 30, 2017 and, at the time of its sale, it had a holding period of two years, gain recognized on or after January 1, 2018 is subject to section 1061 even though the disposition occurred before the effective date of section 1061.

This rule is consistent with the manner in which installment sales are treated under existing law. *See, e.g., Snell v. Commissioner*, 97 F.2d 891 (5th Cir. 1938) (the tax laws in effect for the year the installment gain is recognized apply to the gain); *see also Estate of Kearns v. Commissioner*, 73 T.C. 1223 (1980); *Klein v. Commissioner*, 42 T.C. 1000 (1964); Revenue Ruling 79–22 (1979–1 C.B. 275). The holding period of the asset disposed of is the holding period on the date of disposition because section 453 defers gain recognition, not gain realization, and thus section 1061(a) applies to each year in which gain is recognized after 2017, even if the gain is recognized more than three years after the date of sale. *Estate of Henry H Rodgers v. Commissioner*, 143 F.2d 695, 696–697 (1944).

4. Regulated Investment Company (RIC) and Real Estate Investment Trust (REIT) Capital Gain Dividends

Section 852(b)(3)(C)(i) provides generally that a RIC capital gain dividend is any dividend, or part thereof, which is reported by the RIC as a capital gain dividend in written statements furnished to its shareholders. Similarly, section 857(b)(3)(B) provides generally that a REIT capital gain dividend is any dividend, or part thereof, which is designated by the REIT as a capital gain dividend in a written notice mailed to its shareholders. The aggregate amount of capital gain dividends paid by a RIC or REIT for a taxable year, however, may not exceed the net capital gain of the RIC or REIT for that taxable year.

Section 852(b)(3)(B) provides that a RIC capital gain dividend shall be treated by the shareholders as a gain from the sale or exchange of a capital asset held for more than one year. Similarly, section 857(b)(3)(A) provides that a REIT capital gain dividend shall be treated by the shareholders as a gain from the sale or exchange of a capital asset held for more than one year.

The Treasury Department and the IRS are aware that taxpayers are concerned that section 1061(a)(2) might be read to prevent RIC and REIT capital gain dividends received by partnerships from being treated as long-term capital gains by taxpayers that hold APIs in those partnerships. Specifically, taxpayers are concerned that these dividends may not meet the three-year holding period requirement under section 1061(a) because of the specification in sections 852(b)(3)(B) and 857(b)(3)(A) that these dividends are treated as a gain from the sale or exchange of a capital asset held for more than one year. The Treasury Department and the IRS agree that long-term capital gain treatment should be available to the extent that the capital gain dividend is attributable to capital assets held for more than three years or is attributable to assets that are not subject to section 1061.

The proposed regulations address this issue by allowing a RIC or REIT to disclose two additional amounts for purposes of section 1061. The two additional amounts to be disclosed are based on modified computations of the RIC's or REIT's net capital gain. First, the RIC or REIT may disclose the amount of the capital gain dividend that is attributable to the RIC's or REIT's net capital gain excluding any amounts not taken into account for purposes of section 1061 under § 1.1061–4(b)(6) from the computation. Second, the RIC or REIT may disclose the amount of the capital gain dividend that is attributable to the RIC's or REIT's net capital gain both (1) excluding any amounts not taken into account for purposes of section 1061 under § 1.1061–4(b)(6) from the computation, and (2) substituting three years for one year in applying section 1222. The proposed regulations allow a RIC or REIT to disclose these two additional amounts in writing to its shareholders with its section 852(b)(3)(C)(i) capital gain dividend statement or section 857(b)(3)(B) capital gain dividend notice.

The proposed regulations provide that partnerships that receive either or both of these additional capital gain dividend disclosures from a RIC or REIT must use each additional disclosed amount in calculating API distributive share amounts. The first additional disclosed amount is used for the calculation of an API One Year Distributive Share Amount. The second additional disclosed amount is used for the calculation of an API Three Year Distributive Share Amount. However, the proposed regulations provide that the full amount of the RIC's or REIT's capital gain dividend must be used for

the calculation of an API One Year Distributive Share Amount if the first additional amount is not disclosed, and no amount of the RIC's or REIT's capital gain dividend may be used for the calculation of an API Three Year Distributive Share Amount if the second additional amount is not disclosed.

To prevent the avoidance of section 1061, the proposed regulations also provide that each of the two additional disclosed amounts provided to each shareholder of a RIC or REIT must be proportionate to the share of capital gain dividends reported or designated to that shareholder for the taxable year. *Cf.* Section 857(g)(2) and Rev. Rul. 89–81, 1981–1 C.B. 226.

Additionally, in accordance with sections 852(b)(4) and 857(b)(8), the proposed regulations provide that with respect to any shares of RIC or REIT stock with respect to which a partnership receives a capital gain dividend distribution and the second additional disclosed amount that is used to calculate the API Three Year Distributive Share Amount, any loss on the sale or exchange of such shares held for less than six months will be treated as capital loss on assets held for more than three years to the extent of the second additional disclosed amount that is included in the calculation of an API Three Year Distributive Share Amount.

5. Distributed API Property

Generally, the distribution of property with respect to an API does not accelerate the recognition of gain under section 1061 or these proposed regulations. However, if Distributed API Property is disposed of by the distributee-partner when the holding period is three years or less (inclusive of the partnership's holding period), gain or loss with respect to the disposition is API Gain or Loss. Distributed API Property retains its character as it is passed from one tier to the next. However, at the time that Distributed API Property is held for more than three years, it loses its character and is no longer Distributed API Property. If Distributed API Property is distributed from one Passthrough Entity to another and the upper-tier entity disposes of the property, the long-term capital gain or loss is included in the upper-tier entity's long-term capital gain or loss as API Gain or Loss. If the property is distributed to an Owner Taxpayer and the Owner Taxpayer disposes of the property, the capital gain or loss is included in the Owner Taxpayer's API One Year Disposition Gain or Loss. This rule is necessary to prevent the avoidance of section 1061 because,

absent such a rule, section 1061 could be circumvented by the partnership's distribution of an asset to the API Holder prior to the sale of the asset in situations in which the asset has been held by the partnership for three years or less.

6. Holding Periods Used for Applying Section 1061

The Treasury Department and the IRS considered different approaches to the holding period rules. As one commentator pointed out, there are a number of different approaches that can be considered. These approaches include: (1) Using the holding period of the owner of the asset sold (whether the asset disposed of is the API itself or is an underlying capital asset held by the partnership); (2) using the Owner Taxpayer's holding period in its interest; (3) using the partnership's holding period in its assets; or (4) using the lesser of the holding period of the partnership in the assets or the Owner Taxpayer's holding period in the interest. If the holding period of the owner of the asset applies, then the partnership's holding period in the asset or the partner's holding period in the API applies (whichever is disposed of).

The proposed regulations adopt the approach that the holding period of the owner of the asset sold controls. The Treasury Department and the IRS have adopted this approach because it is the approach most consistent with subchapter K of chapter 1 of the Code and the intended application of section 1061. Additionally, this approach is also the most administrable for taxpayers and the government.

To this end, the proposed regulations provide that if a partnership disposes of an asset, it is the partnership's holding period in the asset that controls. This includes the disposition of an API by the partnership. This result is consistent with the application of section 702(b) and Revenue Ruling 68-79 (1968-1 C.B. 310) which ruled that when a partnership sells a capital asset held by the partnership for over 6 months (the then-required holding period for long-term capital gains), a new partner takes into account his distributive share of gain from the sale as long-term capital gain notwithstanding that the partner has not held its interest in the partnership long enough to qualify for long-term capital gain treatment if the partnership interest itself had been sold.

Section 741 provides that gain or loss on the sale of a partnership interest is considered as gain or loss from the sale or exchange of a capital asset except as otherwise provided in section 751. Therefore, the sale of a partnership

interest generally follows an entity approach, as opposed to an aggregate approach. Following this approach, the proposed regulations provide that, except to the extent that the Lookthrough Rule described in § 1.1061-4(b)(9) and section III.E.7 of this Explanation of Provisions, applies, the holding period that an API Holder has in an API is the applicable holding period upon the disposition of an API.

The proposed regulations also provide that for purposes of computing the Three Year Gain Amount, the relevant holding period of either an asset or an API is determined under all provisions of the Code or regulations that are relevant to determining whether an asset or API has been held for the long-term holding period by applying those provisions as if the applicable holding period were three years instead of one year.

These proposed regulations also amend § 1.1223-3 to clarify how to calculate the holding period of an API when the API comprises a portion of the partnership interest and the partnership interest has a divided holding period under § 1.1223-3. This clarification applies to the calculation of all profits interests and all APIs. Section 1.1223-3(a) provides that a partnership has a divided holding period if portions of the interest are acquired at different times or the partner acquired portions of the partnership interest in exchange for property transferred at the same time but resulting in different holding periods. The general rule in § 1.1223-3(b)(1) is that the portion of the interest to which the holding period relates is determined by reference to a fraction, the numerator of which is the fair market value of the portion of the partnership interest received in the transaction to which the holding period relates, and the denominator of which is the fair market value of the entire partnership interest determined immediately after the acquisition transaction. In the case of the portion of a partnership interest that is comprised in part by one or more APIs or profits interests, the proposed regulations clarify the timing of this determination as to that portion to the time immediately before the disposition (as compared to the acquisition) of all or a part of the interest. Accordingly, in the case of a partnership interest that has a divided holding period and the partnership interest includes a profits interest, the relative fair market of the profits interest is determined at the time of the interest's disposition (or partial disposition). The holding period of the portion of the interest that does not include the profits interest continues to

be determined under § 1.1223-3(b)(1). No inference is intended with respect to the valuation of a profits interest that fails to meet the safe harbor under Revenue Procedure 93-27 (as clarified in Revenue Procedure 2001-43).

7. Lookthrough Rule on Sale of APIs

Generally, these proposed regulations do not look through a partnership to its assets on the sale of a partnership interest. However, the proposed regulations include a limited Lookthrough Rule that may apply to the sale of an API with a holding period of more than three years for capital gain. In the case of a disposition of a directly held API with a holding period of more than three years, the Lookthrough Rule applies if the assets of the partnership in which the API is held meet the Substantially All Test. In the case of a tiered structure in which an API Holder holds its API through one or more Passthrough Entities, the Lookthrough Rule applies if the API Holder disposes of a Passthrough Interest held for more than three years for a gain and either the Passthrough Entity through which the API is directly or indirectly held has a holding period in the API that is three years or less, or the Passthrough Entity through which the API is held has a holding period in the API of more than three years and the assets of the partnership in which the API is held meet the Substantially All Test. The Lookthrough Rule does not apply to the disposition of an API if section 1061(d) applies.

The Substantially All Test is met if 80 percent or more of the assets of the partnership in which the API is held, based on fair market value, are assets that would produce capital gain or loss that is not described in § 1.1061-4(b)(6) if disposed of by the partnership and have a holding period of three years or less. The determination of whether the substantially all test is met is made by expressing the value of a fraction as a percentage. The numerator of the fraction is equal to the aggregate fair market value of the partnership's assets that would produce capital gain or loss that is not described in § 1.1061-4(b)(6) if disposed of by the partnership and that have a holding period of three years or less to the partnership as of the date of disposition of the API. The denominator is equal to the aggregate fair market value of the partnership's assets. Cash, cash equivalents, unrealized receivables under section 751(c), and inventory items under section 751(d) are not taken into account for purposes of the Substantially All Test.

In the case of a disposition of an API by an API Holder that is an Owner Taxpayer, all of the long-term capital gain recognized on the disposition is included in the API One Year Disposition Amount. The amount included in the API Three Year Disposition Amount with respect to the disposition is the amount included in the API One Year Disposition Amount reduced by any adjustment amount required by the Lookthrough Rule. In the case of a disposition of an API by an API Holder that is a Passthrough Entity to which the Lookthrough Rule applies, the long-term capital gain recognized on the sale is included in the API One Year Distributive Share Amount calculated for the API Holders of the Passthrough Entity. Section 1.1061-4(a)(3) provides that the API Three Year Distributive Share Amount is reduced by the adjustment amount required by the Lookthrough Rule. The adjustment amount required by the Lookthrough Rule is either the capital gain recognized on the disposition of the API that is attributable to the assets whose fair market value is included in the numerator of the fraction used for the Substantially All Test, or, in the case of an API indirectly held through a Passthrough Entity for three years or less, the gain attributable to the API.

IV. Transfers to Related Parties

A. Recognition and Recharacterization

Under section 1061(d), if a taxpayer transfers an API to a related person described in section 1061(d)(2) in a transfer that would not otherwise be a taxable event, the taxpayer must include certain capital gain in gross income as short-term capital gain. The amount of gain required to be included as short-term capital gain is the excess of the net built-in long-term capital gain in assets held for three years or less attributable to the transferred interest, over the amount of long-term capital gain recognized on the transfer that is treated as short term capital gain under section 1061(a). If the transfer is otherwise taxable, section 1061(d) recharacterizes all or a portion of the capital gain otherwise recognized on the transfer as short-term capital gain. If the amount of capital gain otherwise recognized by the taxpayer on a taxable transfer is less than the amount required to be included under section 1061(d), the taxpayer must include the difference as short-term capital gain under section 1061(d). The proposed regulations refer to a related person described in section 1061(d)(2) as a *Section 1061(d) Related Person*.

One commentator suggested that the Treasury Department and the IRS suspend the application of section 1061(d) until Congress clarifies its application. The Treasury Department and the IRS do not believe a suspension is necessary. Rather, the Treasury Department and the IRS interpret section 1061(d)(1) to require that gain equal to the amount described in that section be recognized and included in income as short-term capital gain on the transfer of an API to a Section 1061(d) Related Person even if the transfer is not a transaction in which gain is otherwise recognized under the Code. The term transfer under the proposed regulations includes, but is not limited to, contributions, distributions, sales and exchanges, and gifts.

B. Section 1061(d) Related Person

Section 1061(d)(2) defines a related person to be a member of the taxpayer's family within the meaning of section 318(a)(1) or a person who performed a service within the current calendar year or the preceding three calendar years in any ATB in which or for which the taxpayer performed a service. The Conference Report describes a Section 1061(d) Related Person as a family member or colleague (or recent former colleague). Conference Report at 422. For these purposes, a taxpayer is the same taxpayer used for computation purposes (as opposed to the taxpayer used for determining whether the elements of an API are met), that is, an Owner Taxpayer. The proposed regulations clarify that for a service provider to be treated as a Section 1061(d) Related Person, the service provider must provide services or have provided services in the same ATB to which the transferred API relates, that is, in the Relevant ATB. The proposed regulations also include within the definition of Section 1061(d) Related Person any Passthrough Entity to the extent that a Section 1061(d) Related Person holds an interest. The Treasury Department and the IRS request comments on how to calculate section 1061(d) gain when a Passthrough Entity is only partially a Related Person.

The proposed regulations provide that a contribution under section 721(a) to a partnership is not treated as a transfer to a Section 1061(d) Related Person because the proposed regulations require that under the principles of section 704(c) and §§ 1.704-1(b)(2)(iv)(f) and 1.704-3(a)(9) all Unrealized API Gains that would be directly or indirectly allocated to the API Holder at the time of contribution must be allocated to the API Holder contributing the interest when they are recognized.

The Treasury Department and the IRS request comments on transfers other than section 721(a) contributions that satisfy the foregoing standard and that therefore should be excluded from section 1061(d).

The proposed regulations use the term "person" as the term is generally used under section 7701(a)(1). Section 7701(a)(1) defines "person" to include an individual, trust, estate, partnership, association, company, or corporation. Under the section 7701(a)(1) definition of person, for example, a management company could qualify as a related person under section 1061(d)(2) because the management company would have performed a service in the same ATB in which the taxpayer had performed a service in the three years preceding the transfer.

C. Gain Recharacterized by Section 1061(d)

Section 1061(d)(1) requires the taxpayer to include as short-term capital gain the excess of the taxpayer's long-term capital gain with respect to such interest for such taxable year attributable to the sale or exchange of any asset held for not more than three years as is allocable to such interest over any amount treated as short-term capital gain with respect to the transfer of the interest under section 1061(a).

The proposed regulations provide that the long-term capital gain with respect to the transferred API attributable to the sale or exchange of any asset held not more than three years is the long-term capital gain that would be allocated to the transferred API if, immediately before the transfer, the partnership that issued the API had sold all of its assets held for three years or less for fair market value in a hypothetical sale. If the result is negative, the result is deemed to be zero and section 1061(d) does not apply.

The proposed regulations provide that if the basis of the transferred API in the transferee's hands is determined in whole or in part by the basis of the API in the transferor's hands before application of section 1061(d), then the basis of the transferred API shall be increased (before the application of section 1015(d), if applicable) by the capital gain included in gross income by the transferor solely by reason of section 1061(d). If an Owner Taxpayer transfers only a portion of an API, section 1061(d) applies only to the portion transferred.

V. Securities Partnerships

The proposed regulations include an amendment to § 1.704-3(e)(3). Section 1.704-3(e)(3)(i) provides that for purposes of making reverse section

704(c) allocations, a securities partnership may aggregate gains and losses from financial assets using any reasonable approach that is consistent with the purpose of section 704(c). The proposed regulations amend § 1.704-3(e)(3) to provide that an approach will not be considered reasonable if it fails to take into account the application of section 1061. Additionally, the proposed regulations provide that if the partnership aggregates gains and losses with respect to capital assets held for more than one year, for the partial netting approach in § 1.704-3(e)(3)(iv) and the full netting approach in § 1.704-3(e)(3)(v) to be considered reasonable, the partnership must establish separate accounts (1) for taking into account each API Holder's share of book API Gains and Losses and book Capital Interest Gains and Losses and (2) for determining each API Holder's share of tax API Gains and Losses and tax Capital Interest Gains and Losses. The proposed regulations do not include rules for dividing existing accounts to determine API Gains and Losses and Capital Interest Gains and Losses. However, the proposed regulations provide that the manner in which such accounts are apportioned must be reasonable. One method that the Treasury Department and the IRS have concluded is reasonable is to apportion existing accounts based on the relative API Gain or Loss amounts and Capital Interest Gain or Loss amounts that would be allocated to the API Holder as a result of a deemed liquidation of the partnership. The Treasury Department and the IRS request comments on whether further guidance on this issue is necessary for securities partnerships using the aggregation rules in § 1.704-3(e)(3).

VI. Reporting Requirements

These proposed regulations provide that an Owner Taxpayer must report any information the Commissioner may require in forms, instructions or other guidance to evidence the taxpayer's compliance with section 1061. Under the proposed regulations, a Passthrough Entity in which an Owner Taxpayer holds its interest is required to provide the information needed by the Owner Taxpayer to comply with section 1061 and to determine its Recharacterization Amount. The Passthrough Entity is required to provide the Owner Taxpayer with the API One Year Distributive Share Amount and the API Three Year Distributive Share Amount. Additionally, the Passthrough Entity must provide the Owner Taxpayer with the adjustments that must be made to the Owner Taxpayer's distributive share

of long-term capital gain or loss that would allow the Owner Taxpayer to independently calculate its API One Year Distributive Share Amount and its API Three Year Distributive Share amount. Consistent with § 1.6001-1(a) and (e), if an Owner Taxpayer is not furnished its API One Year Distributive Share Amount, the IRS will treat the amount of the adjustments necessary to independently calculate the API One Year Distributive Share as zero and will also treat the API Three Year Distributive Share as zero to the extent information is not provided to the Owner Taxpayer and the Owner Taxpayer is not able to otherwise substantiate all or a part of those amounts to the satisfaction of the Secretary. For example, if the Owner Taxpayer is not furnished its API One Year Distributive Share Amount, the IRS will not take into account amounts that are excluded from section 1061 under § 1.1061-1(b)(6) unless the Owner Taxpayer is furnished information regarding this amount or the Owner Taxpayer is otherwise able to substantiate this amount. Similarly, if the Owner Taxpayer is not furnished its API Three Year Distributive Share Amount, to the extent that the Owner Taxpayer is also not furnished information regarding items that are not treated as long term capital gain or loss if paragraphs (3) and (4) of section 1222 required a three year holding period for long-term capital gain treatment, the IRS will treat the API Three Year Distributive Share Amount as zero if the taxpayer cannot otherwise substantiate this amount. An Owner Taxpayer that takes a position that is inconsistent with the information provided to it by a Passthrough Entity may have to attach Form 8082, "Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR)," to its federal income tax return.

A Passthrough Entity that has an API Holder must report information to the API Holder to enable the API Holder to comply with the regulations under section 1061 as the Commissioner may require in forms, instructions, or other guidance. It is contemplated that the Passthrough Entity generally will be required to provide this information as an attachment to the Schedule K-1 furnished to the API Holder for the taxable year. The proposed regulations provide that this information includes (i) the API One Year Distributive Share Amount and the API Three Year Distributive Share Amount; (ii) long-term capital gains and losses allocated to the API Holder that are excluded from section 1061 under § 1.1061-

4(b)(6); (iii) Capital Interest Gains and Losses allocated to the API Holder; (iv) API Holder Transition Amounts; and (v) in the case of a disposition by an API Holder of an interest in the Passthrough Entity during the taxable year, any information required by the API Holder to properly take the disposition into account under section 1061, including information regarding the application of Lookthrough Rule and information necessary to determine its Capital Interest Disposition Amount. Penalties will apply to a Passthrough Entity that fails to comply with the reporting rules in these proposed regulations and as further required in forms, instructions or other guidance. *See e.g.*, section 6698 (Failure to File Partnership Returns), section 6699 (Failure to File S Corporation Return), section 6722 (Failure to Furnish Correct Payee Statements).

A Passthrough Entity that holds an interest in a lower-tier entity may need information from the lower-tier entity to meet its reporting obligations under the proposed regulations. In this case, the Passthrough Entity must request information from any lower-tier entities in which it owns an interest by the later of the 30th day of the close of the calendar year or within 14 days after having received a request for information from an API Holder. The lower-tier entity must respond by the due date (including extensions) of the Schedule K-1 for the taxable year. The proposed regulations provide guidance regarding an upper-tier Passthrough Entity's reporting requirements if the lower-tier Passthrough Entity fails to report the required information to the upper-tier Passthrough Entity.

VII. Applicability Date

The proposed regulations generally provide that the final regulations apply to taxable years of Owner Taxpayers and Passthrough Entities beginning on or after the date final regulations are published in the **Federal Register**. However, except for the rules in the proposed regulations regarding Partnership Transition Amounts and API Holder Transition Amounts, Owner Taxpayers and Passthrough Entities may rely on the proposed regulations for taxable years beginning before the date final regulations are published in the **Federal Register** provided they follow the proposed regulations in their entirety) and in a consistent manner. In contrast, taxpayers may rely on the rules in the proposed regulations regarding Partnership Transition Amounts and API Holder Transition Amounts for taxable years beginning in 2020 and subsequent taxable years beginning

before the date final regulations are published in the **Federal Register**, and may do so without consistently following all of the rules provided in §§ 1.1061–1 through 1.1061–6 of these proposed regulations if the partnership treats capital gains and losses from the identified assets as Partnership Transition Amounts and API Holder Transition Amounts for the year in which the election is made and all subsequent taxable years beginning before the date final regulations are published in the **Federal Register**.

As indicated in section 4 of Notice 2018–18, proposed § 1.1061–3(b)(2)(i), which provides that the term corporation does not include an S corporation, is proposed to apply to taxable years beginning after December 31, 2017. See section 7805(b)(3). Additionally, proposed § 1.1061–3(b)(2)(ii), which provides that the term corporation does not include a PFIC with respect to which the shareholder has a QEF election under section 1295 in effect, is proposed to apply for taxable years beginning after August 14, 2020.

With respect to an API in a partnership with a fiscal year ending after December 31, 2017, section 706 determines the capital gains and losses the Owner Taxpayer includes in income with respect to an API after December 31, 2017. Section 706 provides that the taxable income of a partner for a taxable year includes amounts required by sections 702 and section 707(c) with respect to a partnership based on the income, gain, loss, deduction, or credit of a partnership for any taxable year ending within or with the taxable year of the partner. Accordingly, if a calendar year Owner Taxpayer has an API in a fiscal year partnership that has a year end after December 31, 2017, section 1061 applies to the Owner Taxpayer's distributive share of long-term capital gain or loss with respect to the API in calendar year 2018 regardless of whether the partnership disposed of the property giving rise to the gains and losses in the period prior to January 1, 2018. See § 1.706–1(a)(1).

VIII. Request for Comments for Smaller Partnerships

Comments are requested on whether a simplified method for determining and calculating the API gain or loss should be provided for smaller partnerships and if so, the criteria that should be used to determine which partnerships should be eligible to use the simplified method. These comments should include comments and suggestions for a simplified method.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 13771, 13563, and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Executive Order 13771 designation for any final rule resulting from these proposed regulations will be informed by comments received. The preliminary Executive Order 13771 designation for this proposed rule is regulatory.

The proposed regulations have been designated by the Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (MOA, April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations. It has been determined that the proposed rulemaking is significant under section 1(b) of the Memorandum of Agreement and thereby subject to review. Accordingly, the proposed regulations have been reviewed by OMB.

A. Background

Section 1061 of the Internal Revenue Code, enacted by the TCJA, recharacterizes certain long-term capital gains recognized with respect to an API as short-term capital gains. Short-term capital gains are taxed at the ordinary income rate whereas long-term capital gains are generally taxed at a lower rate.

Section 1061 defines an API as an interest in a partnership transferred to or held by the taxpayer in connection with the performance of substantial services by the taxpayer, or any other related person, in any ATB. Under section 1061 the term ATB encompasses a range of financial service activities. Specifically, an ATB is any activity conducted on a regular, continuous, and substantial basis which consists, in whole or in part, of raising or returning capital, and either (i) investing in (or disposing of) “specified assets” (or identifying specified assets for such investing or disposition), or (ii) developing specified assets. “Specified assets” are certain securities, certain commodities, real estate held for rental or investment, cash or cash equivalents,

options or derivative contracts with respect to any of the foregoing, and an interest in a partnership to the extent of the partnership's proportionate interest in any of the foregoing.

Prior to the TCJA, the Internal Revenue Code made no distinction between capital gains allocated to APIs versus other partnership interests and partnership assets. Generally, the required holding period to obtain the lower long-term capital gains tax rate was one year for all partnership interests and partnership assets. Under the new provision, the required holding period for an API must be greater than three years to obtain long-term capital gains treatment.

B. Overview of the Proposed Regulations

The proposed regulations provide taxpayers with definitional and computational guidance regarding the application of section 1061. In particular, the proposed regulations provide a number of important definitions, including the term “taxpayer” for the purpose of determining the existence of an API. Additionally, the regulations clarify the rules for certain exceptions to section 1061, including the exception for capital interests, and provide for an additional exception for bona fide purchases of APIs by an unrelated party who is not a service provider. The proposed regulations also provide rules for calculating the recharacterized gain amount and provide for a lookthrough rule with respect to the sale of APIs.

C. Economic Analysis

1. Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the proposed regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these proposed regulations.

2. Summary of Economic Effects

The proposed regulations provide certainty and consistency in the application of section 1061 by providing definitions and clarifications regarding the statute's terms and rules. An economically efficient tax system generally aims to treat income and expense derived from similar economic decisions consistently across taxpayers and activities in order to reduce incentives for individuals and businesses to make choices based on tax rather than market incentives. In the absence of the guidance provided in these proposed regulations, taxpayers would bear the burden of interpreting

the statute and the chances that different taxpayers might interpret the statute differently would be exacerbated. For example, two similarly situated taxpayers might interpret the statutory provisions pertaining to the definition of taxpayer or the capital interest exception differently, causing one to enter into a partnership that another comparable taxpayer might decline because of a different interpretation of how the income will be treated under section 1061. Thus, lack of certainty may dissuade economically beneficial actions. An economic loss may also arise if all taxpayers have identical interpretations of the tax treatment of particular income streams under the statute but are more conservative (or less conservative) regarding the interpretation than Congress intended for these income streams. In this case, guidance provides value by bringing economic decisions closer in line with the intents and purposes of the statute.

The Treasury Department and the IRS solicit comments on the economic analysis of the proposed regulations. The Treasury Department and the IRS particularly solicit comments that provide data, other evidence, or models that could enhance the rigor of the analysis.

3. Economic Analysis of Specific Provisions

a. Definition of Taxpayer

The statute requires taxpayers to make a number of determinations, including the determination of the existence of an API, and the calculation of the section 1061 amount, or amount of long-term gain recharacterized under section 1061. However, the term “taxpayer” is not defined in either section 1061 or in the Conference Report. Comments received by the Treasury Department and IRS highlight the importance of the definition of the term taxpayer for purposes of section 1061.¹ Without guidance, taxpayers could use different approaches to define “taxpayer,” leading otherwise similar taxpayers to experience different degrees of complexity, and to report different recharacterized amounts.

The proposed regulations include two definitions of taxpayer to address the level at which the determination of the existence of an API is made and the level at which the calculation of the section 1061 amount is made. The

proposed regulations define the Owner Taxpayer as the person generally required to pay tax on the gain or loss with respect to the API. Under the proposed regulations, the section 1061 calculation is only performed by the person (the Owner Taxpayer) who must pay tax on the gains and losses recognized with respect to the API. The Treasury Department and the IRS estimate that approximately 22,750 Owner Taxpayers will be required to adjust Schedule D filings. There may be others who meet the definition of Owner Taxpayer but face no burden because they receive no capital gains allocations in relation to their API holdings. The proposed regulations also introduce the term Passthrough Taxpayer. A Passthrough Taxpayer is an entity that does not itself generally pay tax on capital gains but must determine when an API exists and allocate income, gain, deduction and loss to its owners. The Treasury Department and the IRS estimate there are approximately 30,000 Passthrough Taxpayers required to provide information to owner taxpayers who hold an API. Both the Owner Taxpayer and the Passthrough Taxpayer are treated as taxpayers for the purpose of determining whether an API exists.

The Treasury Department and the IRS considered and rejected two alternative approaches to the definition of taxpayer outlined in received comments, the “aggregate approach” and the “full entity approach.” Under the aggregate approach, a partnership is not treated as a taxpayer for purposes of section 1061. Instead, section 1061 is applied solely to the partners that are ultimately subject to tax on the partnership’s items of capital gain and loss. A concern with using this approach for the purpose of determining whether an API exists is that it could incentivize partners to use tiered ownership structures to avoid section 1061 recharacterization. For example, an upper tier partnership may receive an interest in a lower-tier fund in connection with the upper-tier partnership’s performance of services in an ATB. Partners of the upper-tier partnership may contend that they did not receive their interest in the upper-tier partnership in connection with the services performed by the upper-tier partnership. Stopping such avoidance strategies would require complex rules and potentially burdensome reporting requirements when tiered ownership structures are involved.

Under the “full entity approach”, the partnership is treated as a taxpayer for purposes of both determining the existence of an API and calculating the section 1061 recharacterization amount. Treating the partnership as a taxpayer

for purposes of calculating the section 1061 recharacterization amount was found to be more burdensome than the approach taken in the proposed regulations for three reasons. First, using the full entity approach for determining the section 1061 recharacterization amount may lead to increased recharacterization of gains under section 1061 because individuals would not be able to net gains and losses across multiple APIs. Second, the administrative burden on both the taxpayer and the IRS would be increased in cases of tiered ownership. Under the full entity approach, a separate section 1061 calculation would be required at each level at which an API is held in a tiered partnership structure. Finally, the full entity approach may add complexity and burden in cases in which an exception to section 1061 applies, such as if a corporation is a direct or indirect partner. Because corporations are excluded from section 1061, any amount recharacterized at the partnership level would need to be tracked as it is allocated to partners to ensure that corporate or other excepted partners are not subject to the three year holding period under section 1061.

The Treasury and the IRS have concluded that the chosen alternative, incorporating the concepts of Owner Taxpayer and Passthrough Taxpayer, is less burdensome than other alternatives and provides helpful certainty to taxpayers.

b. Clarification of the Treatment of an API Purchased by an Unrelated Party

The statute states that capital gain or loss recognized by a taxpayer on the sale of an API held for more than one year is subject to section 1061. The statute also provides guidance for ongoing treatment under section 1061 when the API is purchased by, or transferred to, a related party or another service provider. However, the statute does not provide guidance for the taxpayer who purchases an API and is neither a service provider to the relevant ATB, nor related to the seller of the API. The proposed regulations add an exception to section 1061 and provide that the term API does not include an interest in a partnership that would be treated as an API but is held by a bona fide purchaser of the interest who does not currently and has never provided services in the relevant ATB and who is not related to a person who provides services currently or has provided services in the past. By clarifying the treatment of an API that is sold at arm’s length, the proposed regulations reduce uncertainty and compliance burdens for

¹ See comments from the American Bar Association available at: <https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/032219comments.pdf>.

taxpayers entering into these transactions. The Treasury Department and the IRS have determined this exception is consistent with the purpose of section 1061, which applies to service providers and persons related to service providers and is not meant to apply to bona fide purchasers of a partnership interest who do not provide services.

The Treasury Department and the IRS considered not providing this exception. However, it was determined that failure to provide this exception would treat unrelated purchasers of an API in an inequitable fashion, and that continued treatment of the partnership interest as an API is inconsistent with the purpose of section 1061 as unrelated purchasers did not receive their interest in connection with the performance of substantial services. Relative to the no-action baseline, the proposed guidance also provides clarity for taxpayers, improving economic efficiency as discussed in the Summary of Economic Effects.

c. Capital Interest Exception

Section 1061(c)(4)(B) provides that the definition of an API does not include “any capital interest in the partnership which provides the taxpayer with a right to share in partnership capital commensurate with—(i) the amount of capital contributed (determined at the time of receipt of such partnership interest) or (ii) the value of the interest included in income under section 83 upon the receipt or vesting of such interest.” Comments received by the Treasury Department and the IRS identify two sources of ambiguity with regard to this capital interest exception (see footnote 1).

First, there is uncertainty among taxpayers whether unrealized capital gains with respect to an API (unrealized API gains) can be converted to gains that would qualify for the capital interest exception. The proposed regulations clarify that unrealized API gains cannot be converted to gains that qualify for the capital interest exception. In the absence of this regulation, a significant share of taxpayers could potentially avoid section 1061 recharacterization when capital gains with respect to an API are realized if the partnership revalues assets prior to realization, and unrealized API gains are converted to gains that would qualify for the capital interest exception. A majority of owner taxpayers could use this avoidance strategy if it were available. The availability of this avoidance strategy would distort taxpayer behavior, incentivizing complex tiered ownership strategies, and distorting decisions to

revalue assets. Furthermore, allowing this avoidance strategy would be contrary to the purposes of section 1061. The statute requires that the Secretary issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of section 1061. Both the Conference Report and the Joint Committee on Taxation’s background on 1061, Joint Committee on Taxation, General Explanation of Public Law 115–97 (JCS–1–18) at 125 FN 542 (Dec. 20, 2018), specifically state that the statute requires that the Secretary issue regulations or other guidance to address the prevention of abuse of the purpose of the provision.

Second, the statute does not provide guidance on what it means for a right to share in partnership capital to be “commensurate” with the amount of capital contributed. Comments received by the Treasury Department and the IRS identify this as a source of confusion among taxpayers with respect to section 1061 (see footnote 1). The proposed regulations clarify that allocations are deemed commensurate with capital contributed if they are made with respect to the taxpayer’s capital account. The taxpayer’s capital account includes realized but undistributed gains on contributed capital, and any contributions to capital made after the interest was received. In the absence of these regulations, taxpayers who have made capital contributions after the interest was initially received, or taxpayers who made a capital contribution that appreciated in value, might face confusion regarding their ability to include the additional contribution when determining the value of their capital interest. Further, partners with realized gains would be incentivized to engage in a series of inefficient transactions, first receiving a distribution reflecting those gains and then contributing the distributed amount back into the partnership in order to minimize tax.

The Treasury Department and the IRS considered alternative interpretations of “commensurate with capital contributed,” including a narrow interpretation of the statute to mean only the value of capital contributed on the date the interest was initially received. However, it was determined that the interpretation presented in the proposed regulations is the only viable interpretation that accurately reflects the value of capital. Therefore, the proposed regulations provide helpful guidance and certainty for taxpayers but are not expected to result in any other economic effects.

d. Lookthrough Rule on Sale of APIs

Section 1061(a) provides that if one or more APIs are held by a taxpayer at any time during the taxable year, the excess (if any) of (1) the taxpayer’s net long-term capital gain with respect to such interests for such taxable year, over (2) the taxpayer’s net long-term capital gain with respect to such interests for that taxable year computed by applying paragraphs (3) and (4) of sections 1222 by substituting “3 years” for “1 year,” must be treated as short-term capital gain, notwithstanding section 83 or any election in effect under section 83(b). The House Report explains that section 1061 “imposes a three-year holding period (not the generally applicable one-year holding period) in the case of long-term capital gain from applicable partnership interests.” Neither section 1061 nor the Reports, however, explicitly provides what the relevant holding period is for purposes of section 1061(a) for the sale of an API with assets of different holding periods. Comments received by the Treasury Department and the IRS highlight significant ambiguity, outlining multiple interpretations that would result in different amounts of gain recharacterized by taxpayers (see footnote 1).

Pursuant to its regulatory authority to prevent inappropriate avoidance of section 1061, the proposed regulations include a limited lookthrough rule that is applied to the sale of an API that has been held for more than three years at the time of the disposition. The Lookthrough Rule only applies if 80 percent or more of the value of the assets held by the partnership at the time of the API disposition are assets held for three years or less that would produce capital gain or loss subject to section 1061 if disposed of by the partnership. If the Lookthrough Rule applies, a percentage of the gain or loss on the disposition of the API that is included in the one year disposition amount is not included in the three year disposition amount.

The calculations required by the Lookthrough Rule will impose some additional compliance burden on individual taxpayers selling an API. The rules requiring partnerships to furnish taxpayers with the relevant information to perform the calculations will also impose additional burden on the relevant partnerships. The Treasury Department and the IRS believe only a small fraction of API holders will be affected by these requirements in any year. This rule has limited applicability because it only applies to taxpayers that sell their interest during the taxable year

and that at the time of the sale have held their API more than three years. Additionally, 80 percent of the value of the assets of the partnership in which the API being sold is held must have a holding period to the partnership that is three years or less. The Treasury Department and the IRS have determined that the Lookthrough Rule is necessary to prevent inappropriate avoidance of section 1061.

The Treasury Department and the IRS considered and rejected alternative approaches outlined in received comments, including applying an interest approach with no Lookthrough Rule, and an underlying assets approach. The interest approach with no Lookthrough Rule looks solely to the holding period in the API, regardless of the holding period of the assets held by the partnership that would produce capital gain or loss on disposition. This approach would allow taxpayers to avoid section 1061 characterization for long-term capital gains on assets that are not held for the more than three years by the partnership. This result would encourage distortive behavior in investment funds, which might look to create partnerships for different investors solely for tax purposes. That is, the partners of that investment partnership would not be subject to section 1061 if they had owned their APIs for more than three years, irrespective of how long the investment partnership had held an asset that it sold.

Alternatively, the underlying asset, or full Lookthrough, approach looks solely to the holding period in the underlying asset (or assets) of the partnership, regardless of whether the underlying asset is sold by the partnership or the API is sold by its owner. The proposed regulations only apply the Lookthrough Rule if substantially all of the partnership's assets by value are assets held for three years or less and that would produce on disposition capital gain or loss not described in § 1.1061-4(b)(6). The underlying asset approach would be more difficult (and burdensome) for taxpayers to apply as it would require a determination of the unrealized gain for each asset held by the partnership, even in cases in which a relatively small share of assets by value have a holding period of three years or less. We anticipate many taxpayers would be able to avoid burdensome valuation of assets and identification of holding periods under the limited Lookthrough rule but would be required to value each asset under the full Lookthrough rule.

II. Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking is in § 1.1061-4(b)(7) and § 1.1061-6.

A. Collection of Information Regarding Election To Exclude Partnership Transition Amounts in § 1.1061-4(b)(7)

The collection of information in proposed § 1.1061-4(b)(7) requires a partnership that chooses to elect to exclude Partnership Transition Amounts from section 1061 to complete a statement making the election and to file the election with its federal tax return for the first taxable year that it treats amounts as Partnership Transition Amounts. It also requires the partnership, by the due date of the election, to clearly and specifically identify in its books and records the assets held by the partnership for more than three years as of the effective date of section 1061. This information is necessary for the IRS to determine whether the partnership has made the election and whether the partnership is correctly reporting capital gains and losses from all of the assets subject to the election.

1. Collection of Information on an Existing Form

The partnership is required to attach the election statement to the Form 1065 filed for the partnership for the first taxable year that the partnership treats amounts as partnership transition amounts. For purposes of the Paperwork Reduction Act, the reporting burden associated with filing the election will be reflected in the Paperwork Reduction Act Submissions associated with Form 1065 (OMB 1545-0123).

2. Collection of Information Not on an Existing Form

A partnership that elects to exclude Partnership Transition Amounts must maintain adequate books and records to verify that (i) the partnership's list of identified assets properly includes all assets that it has held for more than three years as of December 31, 2017; (ii) the partnership has treated all capital gains and losses from the sale of the identified assets consistent with proposed § 1.1061-4(b)(7); and, (iii) amounts allocated to API Holders have been determined consistent with § 1.1061-4(b)(7). This collection of information in § 1.1061-4(b)(7) is mandatory for taxpayers seeking to treat certain long-term capital gains as Partnership Transition Amounts. Partnerships seeking to rely on the exception from section 1061 for Partnership Transition Amounts are

generally hedge funds and private equity funds that would have held one or more capital assets more than three years as of December 31, 2017. The making a list of assets subject to the election is a one-time requirement. Annually, the partnership must maintain sufficient records to demonstrate that long-term capital gains and losses from the disposition of the identified assets have been treated consistent with the requirements of § 1.1061-4(b)(7) and that API Holder Transition Amounts have been determined as provided in § 1.1061-4(b)(7). The information required to be maintained will be used by the IRS for tax compliance purposes. Estimates with respect to this recordkeeping burden are —

Estimated total annual reporting burden: 34,375 hours.

Estimated average annual burden hours per respondent: 2.75.

Estimated average cost per respondent (in 2017 dollars): \$261.31.

Estimated number of respondents: 12,500.

Estimated annual frequency of responses: Once.

Based on these estimates, the annual three-year reporting burden for those electing to exclude Partnership Transition Amounts from section 1061 is \$261.31 (in 2017 dollars).

These estimates are based on the assumption that only a small number of hedge funds would have held assets more than three years as of December 31, 2017. We anticipate that the majority of private equity funds that were in existence for three years as of December 31, 2017 will make the election. Private equity funds that were not in existence as of December 31, 2017 will not need to make the election. Once the election is made, electing funds will have to retain records to evidence compliance with § 1.1061-4(b)(7).

Comments on the collection of information that results from the recordkeeping requirement in § 1.1061-4(b)(7) should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by October 5, 2020.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the performance of duties of the IRS,

including whether the information will have practical utility;

The accuracy of the burden estimate associated with the proposed collection of information (including underlying assumptions and methodology);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

B. Collection of Information in § 1.1061-6(a) on the Owner Taxpayer Is on Existing Forms

The collection of information in proposed § 1.1061-6(a) requires an Owner Taxpayer to file such information with the IRS as the Commissioner may require in forms, instructions and other published guidance as is necessary for the IRS to determine that the taxpayer has properly complied with section 1061 and §§ 1.1061-1 through 1.1061-5 of the proposed regulations. This information is necessary for the IRS to determine

that the Owner Taxpayer has properly complied with section 1061. In general, the Owner Taxpayer is an individual and the Owner Taxpayer's Recharacterization Amount will be required to be reported to the IRS as short term capital gain on Schedule D, "Capital Gains and Losses," of the Form 1040, "U.S. Individual Income Tax Return." Less frequently, the Owner Taxpayer is a trust and the Owner Taxpayer's Recharacterization Amount will be required to be reported to the IRS as short term capital gain on Schedule D, "Capital Gains and Losses," of the Form 1041, "U.S. Income Tax Return for Estates and Trusts."

The current status of the Paperwork Reduction Action submission related to § 1.1061-6(a) is provided in the following table. The burdens associated with the collection of information from the Owner Taxpayer to comply with section 1061 will be included in the aggregate burden estimates for Form 1040 under OMB control number 1545-0074 and Form 1041 under OMB control number 1545-0092. The overall burden estimates provided in OMB Control Number 1545-0074 represents a total estimated burden time, including all other related forms and schedules for individuals, of 1.784 billion hours and total estimated monetized costs of \$31.74 billion (in 2017 dollars). The

overall burden estimates provided in OMB Control Number 1545-0092 represents a total estimated burden time, including all other forms and schedules for trusts and estates of 307.8 million hours and total estimated monetized costs of \$9.95 billion (in 2016 dollars). These amounts are aggregate amounts that relate to all information collections associated with the applicable OMB control numbers, and will in the future include, but not isolate, the estimated burden of Owner Taxpayers as a result of the information collections in the proposed regulations. No burden estimates specific to the proposed regulations are currently available. The Treasury Department and IRS have not estimated the burden, including that of any new information collections, related to the requirements under the proposed regulations. Those estimates would capture both changes made by the TCJA and those that arise out of discretionary authority exercised in the proposed regulations. The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the collection of information applicable to the Owner Taxpayer in the proposed regulations. In addition, when available, drafts of IRS forms are posted for comment at www.irs.gov/draftforms.

Form	Type of filer	OMB No(s).	Status
Form 1040 (Including Schedule D).	Individual (NEW Model)	1545-0074	Published in the Federal Register on 9/30/19. Comment period closed on 11/29/19. 84 FR 51712. Thirty-day notice published on 12/18/19. 84 FR 69458. Approved by OIRA on 1/30/20.
Form 1041 (Including Schedule D).	Trusts and Estates (Legacy Model).	1545-0092	Published in the Federal Register on 4/4/2018. 83 FR 14552. Public comment period closed 6/4/2018. Thirty-day notice published on 9/27/18. 83 FR 48894. Approved by OIRA on 5/8/19.

C. Collection of Information on Passthrough Entities in § 1.1061-6(b) and (c) on Existing forms

1. Passthrough Entities

The collection of information in proposed § 1.1061-6(b) requires a Passthrough Entity that has issued an API to furnish to the API Holder, including the Owner Taxpayer, such information at such time and in such manner as the Commissioner may require in forms, instructions, and other published guidance as is necessary to determine the One Year Gain amount and the Three Year Gain Amount with respect to an Owner Taxpayer. This includes: (i) The API One Year Distributive Share Amount and the API Three Year Distributive Share Amount (as determined under § 1.1061-4); (ii)

Capital gains and losses allocated to the API Holder that are excluded from section 1061 under § 1.1061-4(b)(6); (iii) Capital Interest Gains and Losses allocated to the API Holder (as determined under § 1.1061-3(c)); (iv) In the case of a disposition by the API Holder of an interest in the Passthrough Entity during the taxable year, any information required by the API Holder to properly take the disposition into account under section 1061, including information to apply the Lookthrough Rule and to determine its Capital Interest Disposition Amount. The proposed regulations seek to minimize the information that a Passthrough Entity is required to automatically furnish annually. In some cases, an upper tier Passthrough Entity may be an API Holder in a lower tier Passthrough

Entity, and the information furnished by the lower tier Passthrough Entity to the upper tier Passthrough Entity may not be sufficient for the upper tier Passthrough Entity to meet its reporting obligations under the regulations. In this case, the proposed regulations require the lower tier Passthrough Entity to furnish information to the upper tier Passthrough Entity if requested. Thus, if an upper tier Passthrough Entity in a tiered entity structure holds an interest in a lower tier Passthrough Entity and it needs information from the lower tier Passthrough Entity to comply with its obligation to furnish information under the proposed regulations, it must request information from the lower tier entity and the lower tier entity must furnish the requested information. This passing of information upon request

between the tiers of entities is necessary to minimize the quantity of information required to be annually furnished by a Passthrough Entity and because each Passthrough Entity in a tiered entity arrangement is the only entity that has access to the information that is required to be furnished. The collection of information in the proposed regulations is necessary to ensure that the Owner Taxpayer receives information sufficient to correctly calculate its Recharacterization Amount under section 1061.

2. RICs and REITs

Section 1.1061-6(c) permits a RIC or a REIT that reports or designates all or a part of a dividend as a capital gain dividend, to disclose additional information to their shareholders for purposes of section 1061. The furnishing of this information may allow a Passthrough Entity to include a portion of the capital gain dividend in the API Three Year Distributive Share amount furnished to API Holders and may ultimately enable an Owner Taxpayer to reduce its Recharacterization Amount under the proposed regulations.

3. Table for Collections of Information in § 1.1061-6(b) and (c)

The collection of information with respect to § 1.1061-6(b) and (c) is provided in the following table. In the case of a Passthrough Entity that is a partnership, the information will be required to be furnished as an attachment to the Schedule K-1,

“Partner’s Share of Income, Deduction, Credit, Etc.” of Form 1065, “U.S. Return of Partnership Income.” In the case of a Passthrough Entity that is an S corporation, the information will be required to be furnished as an attachment to the Schedule K-1, “Shareholder’s Share of Income, Deductions, Credit, Etc.,” of Form 1120-S, “U.S. Income Tax Return for an S Corporation.” The burdens associated with the collection of information from the Passthrough Entities will be included in the aggregate burden estimates for the Form 1065 and the Form 1120S under OMB control number 1545-0123. The overall burden estimates provided in OMB Control Number 1545-0123 represents a total estimated burden time, including all others related forms and schedules, of 3.157 billion hours and total estimated monetized costs of \$58.148 billion (in 2017 dollars). The burden estimates provided in OMB Control Number 1545-0123 are aggregate amounts that relate to all information collections associated with the applicable OMB control number, and will in the future include, but not isolate, the Passthrough Entities’ estimated burden as a result of the information collections in the proposed regulations.

In the case of RICs and REITs the information will be furnished in connection with the Form 1099-DIV, “Dividends and Distributions.” The burden estimates associated with the collection of information from RICs and REITs will be included in the aggregate burden estimated for the Form 1099-

DIV under OMB Control Number 1545-0110. The overall burden estimates provided in OMB Control Number 1545-0110 represents a total estimated burden time of 32,119,195 hours and total estimated monetized costs of \$1.64 billion (in 2016 dollars). The burden estimates provided in OMB Control Number 1545-0110 relate to all information collections associated with the applicable OMB Control Number, and will in the future include, but not isolate, the RIC and REIT estimated burden as a result of the information collections in the proposed regulations.

With the exception of the burden estimate provided with respect to the recordkeeping requirement related to the Partnership Transition amount election in § 1.1061-4(b)(7), no burden estimates specific to the proposed regulations are currently available. The Treasury Department and IRS have not estimated the burden, including that of any new information collections, related to the requirements under the proposed regulations. Those estimates would capture both changes made by the TCJA and those that arise out of the discretionary authority exercised in the proposed regulations. The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the collection of information applicable to the Passthrough Entities in the proposed regulations. In addition, when available, drafts of IRS Forms and the applicable instructions are posted for comment at <https://www.irs.gov/pub/irs-dft/>.

Form	Type of filer	OMB No(s).	Status
Form 1065 (including Schedule K-1).	Business (NEW Model)	1545-0123	Sixty-day notice published in the Federal Register on 9/30/19. Public Comment period closed on 11/29/19. 84 FR 51718. Thirty-day notice published in the Federal Register on 12/19/19. Public Comment period closed on 1/21/20. 84 FR 69825. Approved by OIRA on 1/30/20.
Form 1120S (Including Schedule K-1).	Business (New Model)	1545-0123	Sixty-day notice published in the Federal Register on 9/30/19. Public Comment period closed on 11/29/19. 84 FR 51718. Thirty-day notice published in the Federal Register on 12/19/19. Public Comment period closed on 1/21/20. 84 FR 69825. Approved by OIRA on 1/30/20.
Form 1099-DIV	(Legacy Model)	1545-0110	Sixty-day notice published in the Federal Register on 9/19/19. Public comment period closed 11/18/19. 84 FR 49379. Thirty-day notice published in the Federal Register on 12/20/19. 84 FR 70269.
Link: https://www.FederalRegister.gov/documents/2018/05/23/2018-10981/proposed-collection-comment-request-for-form-1099-div .			

D. Chart Showing Number of Respondents Regarding Existing Forms

The following chart shows the estimated number of returns that are expected to have attachments providing additional information with respect to section 1061. As noted above, Owner

Taxpayers will be required to provide section 1061 information on an attachment to Schedules D for Forms 1040 and 1041. Passthrough Taxpayers will be required to report section 1061 on Forms 1065 and 1120S to the IRS and to furnish information to their API

Holders on attachments to the respective K-1s. RICs and REITs may voluntarily report additional information at an attachment to Form 1099-DIV.

Schedule D Form 1040 20,475

Schedule D Form 1041	2,275
Schedule K Form 1065	28,500
Schedule K-1s Form 1065	57,000
Schedule K Form 1120S	1,500
Schedule K-1s Form 1120	1,000
Form 1099-DIV filed by REITs	836
Form 1099-DIV filed by RICs	3,880

E. Voluntary Collection of Information in § 1.1061-6(d) on PFIC Shareholder Will Be Added to Existing OMB Control Number for PFIC Information Retention

Section 1.1061-6(d) permits a PFIC with respect to which the shareholder is an API Holder who has a QEF election is in effect for the taxable year to provide additional information to the shareholder to determine the amount of the shareholder's inclusion that would be included in the API One Year Distributive Share Amount and the API Three Year Distributive Share Amount. If the PFIC furnishes this information to the shareholder, the shareholder must retain a copy of this information along with the other information required to be retained under § 1.1295-1(f)(2)(ii). The burden associated with retaining this additional information will be included in the aggregate burden estimates for § 1.1295-1(f) under OMB Control Number 1545-1555. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books and records related to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

III. Regulatory Flexibility Act

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). These regulations generally only impact investment funds that have capital gains and losses that derive from the disposition of assets that have a holding period of more than one year but not more than three years.

Investment funds are considered small business if they have annual average receipts of \$41.5 million or less (13 CFR 121). The rule may affect a substantial number of small entities, but data are not readily available to assess how many entities will be affected.

Even if a substantial number of small entities are affected, the economic impact of these regulations on small

entities is not likely to be significant. The proposed regulations provide taxpayers with definitional and computational guidance regarding the application of section 1061. The impact of the regulations is to impose an additional reporting obligation that applies only with respect to the sale of assets held for more than one year but not more than three years. The Treasury Department and the IRS recognize that this reporting obligation may increase, at least to some extent, the tax preparation burden for affected taxpayers beyond that imposed by the statute. This reporting obligation generally will only apply to a minority of the asset dispositions by an entity. The entity will also have a reporting obligation in certain circumstances regarding the disposition of an API, but the extent of the reporting obligation depends on the number of assets held by the entity and their holding periods. The information reported is readily available to taxpayers and reported on forms already in use beginning with the 2019 tax year. Finally, some taxpayers may find they need an initial investment of time to read and understand these regulations at an approximate cost of \$95/hour and an estimated time of ten hours.

Notwithstanding this certification, the Treasury Department and the IRS invite comments on any impact this rule would have on small entities.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose

substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Statement of Availability of IRS Documents

Notice 2018-18, 2018-2 I.R.B. 443 (in addition to any other revenue procedures or revenue rulings, etc. cited in this preamble) is published in the Internal Revenue Bulletin (or Cumulative Bulletin) and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

Comments and Requests for a Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the ADDRESSES section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at www.regulations.gov or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020-4, 2020-17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these proposed regulations is Kara Altman of the Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Sections 1.1061-0 through 1.1061-6 are added under 26 U.S.C. 1061(f). * * *

■ **Par. 2.** Section 1.702-1 is amended by adding a sentence at the end of paragraph (a)(2) and adding paragraph (g) to read as follows.

§ 1.702-1 Income and credits of partner.

(a) * * *

(2) * * * Each partner subject to section 1061 shall take into account gains and losses from sales of capital assets held for more than one year as provided in that section and §§ 1.1061-0 through 1.1061-6.

* * * * *

(g) *Applicability date.* The last sentence of paragraph (a)(2) of this section applies for the taxable years beginning on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

■ **Par. 3.** Section 1.704-3 is amended by:

■ 1. Redesignating paragraphs (e)(3)(vii), (viii), and (ix) as paragraphs (e)(3)(viii), (ix), and (x), respectively;

■ 2. Adding new paragraph (e)(3)(vii);

■ 3. Revising the subject heading and first sentence of paragraph (f) and adding a sentence to the end of paragraph (f).

The additions and revisions read as follows:

§ 1.704-3 Contributed property.

* * * * *

(e) * * *

(3) * * *

(vii) *Application of section 1061—(A)*

In general. A partnership that is combining gains and losses from qualified financial assets under this paragraph (e)(3) will not be considered to be using a reasonable method if that method fails to take into account the application of section 1061 in an appropriate manner. If a partnership uses the partial netting approach described in paragraph (e)(3)(iv) of this section or the full netting approach described in paragraph (e)(3)(v) of this section (or another otherwise reasonable approach), the approach will not be considered reasonable if it does not appropriately take into account the application of section 1061 to any person who directly or indirectly holds an applicable partnership interest (API) (as defined in § 1.1061-1(a)). To this end, if a partnership uses the partial or

full netting approach, the partnership must establish appropriate accounts for the purpose of taking into account its book Unrealized API Gains and Losses and API Gains and Losses (as defined in § 1.1061-1(a)) separate from the book Capital Interest Gains and Losses (as defined in § 1.1061-1(a)) of an API Holder (as defined in § 1.1061-1(a)) and determining the API Holder's share of taxable gains and losses that are API Gains and Losses and Capital Interest Gains and Losses.

(B) *Transition rule.* If an API Holder holds an interest in a partnership as of January 1, 2018, the partnership may use any reasonable method to apportion existing accounts for the purpose of determining an API Holder's share of book Unrealized API Gains and Losses, API Gains and Losses, and book Capital Interest Gains and Losses and for determining an API Holder's share of tax API Gains and Losses and tax Capital Interest Gains and Losses.

* * * * *

(f) *Applicability dates.* With the exception of paragraphs (a)(1), (a)(8)(ii) and (iii), (a)(10) and (11), and (e)(3)(vii) of this section, and of the last sentence of paragraph (d)(2) of this section, this section applies to properties contributed to a partnership and to restatements pursuant to § 1.704-1(b)(2)(iv)(f) on or after December 21, 1993. * * * Paragraph (e)(3)(vii) of this section applies to taxable years beginning on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

■ **Par. 4.** Sections 1.1061-0 through 1.1061-6 are added before the undesignated center heading “Changes to Effectuate F.C.C. Policy” to read as follows:

Sec.

* * * * *

1.1061-0	Table of contents.
1.1061-1	Section 1061 Definitions.
1.1061-2	Applicable partnership interests and applicable trades or businesses.
1.1061-3	Exceptions to the definition of an API.
1.1061-4	Section 1061 computations.
1.1061-5	Section 1061(d) transfers to related persons.
1.1061-6	Reporting rules.

* * * * *

§ 1.1061-0 Table of contents.

This section lists the captions that appear in §§ 1.1061-1 through 1.1061-6.

§ 1.1061-1 Section 1061 Definitions.

(a) Definitions.

(b) Applicability date.

§ 1.1061-2 Applicable partnership interests and applicable trades or businesses.

(a) API rules and examples.

(1) Rules.

(i) An API remains as an API.

(ii) Unrealized API Gains and Losses.

(A) Long-term Unrealized API Gains and Losses become API Gains and Losses.

(B) Requirement to determine Unrealized API Gains and Losses.

(iii) API Gains and Losses retain their character.

(iv) Substantial services by the Owner Taxpayer, Passthrough Taxpayer or any Related Person.

(v) Grantor trusts and entities disregarded as separate from their owners.

(2) Examples.

(b) Application of the ATB Activity Test.

(1) In general.

(i) Rules for applying the ATB Activity Test.

(A) Aggregate Specified Actions taken into account.

(B) Raising or Returning Capital Actions and Investing or Developing Actions are not both required to be taken each year.

(C) Combined conduct by multiple related entities taken into account.

(ii) Developing Specified Assets.

(iii) Partnerships.

(2) Examples.

(c) Applicability date.

§ 1.1061-3 Exceptions to the definition of an API.

(a) A partnership interest held by an employee of another entity not conducting an ATB.

(b) Partnership interest held by a corporation.

(1) In general.

(2) Treatment of interests held by an S corporation or a qualified electing fund.

(c) Capital Interest Gains and Losses.

(1) In general.

(2) Capital Interest Gains and Losses

Defined.

(3) General rules for determining Capital Interest Allocations and Passthrough Interest Capital Allocations.

(i) Allocations made in the same manner.

(ii) Capital accounts.

(A) In general.

(B) Tiers.

(C) Proceeds of partnership or partner loans not included in capital account.

(iii) Items that are not included in Capital Interest Allocations or Passthrough Interest Capital Allocations.

(4) Capital Interest Allocations.

(5) Passthrough Interest Capital

Allocations.

(i) In general.

(ii) Passthrough Capital Allocations.

(iii) Passthrough Interest Direct Investment Allocations.

(6) Capital Interest Disposition Amounts.

(i) In general.

(ii) Determination of the Capital Interest Disposition Amount.

(7) Examples.

(d) Partnership interest acquired by purchase by an unrelated taxpayer.

(1) Taxpayer is not a Related Person.

(2) Section 1061(d) not applicable.

(3) Taxpayer not a service provider.

(e) [Reserved]

(f) Applicability date.

(1) General rule.
 (2) Section 1.1061-3(b)(2)(i) exception.
 (3) Section 1.1061-3(b)(2)(ii) exception.

§ 1.1061-4 Section 1061 computations.

(a) Computations.
 (1) Recharacterization Amount.
 (2) One Year Gain Amount and Three Year Gain Amount.
 (i) One Year Gain Amount.
 (ii) Three Year Gain Amount.
 (3) API One Year Distributive Share Amount and Three Year Distributive Share Amount.
 (i) API One Year Distributive Share Amount.
 (ii) API Three Year Distributive Share Amount.
 (4) API One Year Disposition Amount and Three Year Disposition Amount.
 (i) API One Year Disposition Amount.
 (ii) API Three Year Disposition Amount.
 (b) Special rules for calculating the One Year Gain Amount and the Three Year Gain Amount.
 (1) One Year Gain Amount equals zero or less.
 (2) Three Year Gain Amount equals zero or less.
 (3) Installment sale gain.
 (4) Special rules for capital gain dividends from regulated investment companies (RICs) and real estate investment trusts (REITs).
 (i) API One Year Distributive Share Amount.
 (ii) API Three Year Distributive Share Amount.
 (iii) Loss on sale or exchange of stock.
 (5) Pro rata share of qualified electing fund (QEF) net capital gain.
 (i) One year QEF net capital gain.
 (ii) Three year QEF net capital gain.
 (6) Items not taken into account for purposes of section 1061.
 (7) API Holder Transition Amounts not taken into account.
 (i) In general.
 (ii) API Holder Transition Amount.
 (iii) Partnership Transition Amounts and Partnership Transition Amount Election.
 (8) Holding period determination.
 (i) Determination of holding period for purposes of Three Year Gain Amount.
 (ii) Relevant holding period.
 (9) Lookthrough Rule for certain API dispositions.
 (i) Determination that the Lookthrough Rule Applies.
 (ii) Application of the Lookthrough Rule.
 (10) Section 83.
 (c) Examples.
 (1) Computation examples.
 (2) Special rules examples.
 (d) Applicability date.

§ 1.1061-5 Section 1061(d) transfers to related persons.

(a) In general.
 (b) Transfer.
 (c) Application of paragraph (a) of this section.
 (1) Determination of amounts included in paragraph (a)(1) of this section.
 (2) Application to an otherwise taxable transfer.
 (d) Basis of interest increased by additional gain recognized.

(e) Section 1061(d) Related Person.
 (1) In general.
 (2) Exception.
 (f) Examples.
 (g) Applicability date.

§ 1.1061-6 Reporting rules.

(a) Owner Taxpayer Filing Requirements.
 (b) Passthrough Entity Filing Requirements and Reporting.
 (1) Requirement to file information with the IRS and to furnish information to API Holder.
 (2) Requirement to request, furnish, and file information in tiered structures.
 (i) Requirement to request information.
 (ii) Requirement to furnish and file information.
 (iii) Timing of requesting and furnishing information.
 (iv) Manner of requesting information.
 (v) Recordkeeping requirement.
 (vi) Passthrough Entity is not Furnished Information to meet its Reporting Obligations under paragraph (b)(1) of this section.
 (vii) Penalties.
 (c) Regulated investment company (RIC) and real estate investment trust (REIT) reporting.
 (1) Section 1061 disclosures.
 (i) One Year Amounts Disclosure.
 (ii) Three Year Amounts Disclosure.
 (2) Pro rata disclosures.
 (3) Report to shareholders.
 (d) Qualified electing fund (QEF) reporting.
 (e) Applicability date.

§ 1.1061-1 Section 1061 Definitions.

(a) *Definitions.* The following definitions apply solely for purposes of this section and §§ 1.1061-2 through 1.1061-6.

Applicable Partnership Interest (API) means any interest in a partnership which, directly or indirectly, is transferred to (or is held by) an Owner Taxpayer or Passthrough Taxpayer in connection with the performance of substantial services by the Owner Taxpayer or by a Passthrough Taxpayer, or by any Related Person, including services performed as an employee, in any ATB unless an exception in § 1.1061-3 applies. For purposes of defining an API under this section and section 1061 of the Internal Revenue Code, an interest in a partnership also includes any financial instrument or contract, the value of which is determined in whole or in part by reference to the partnership (including the amount of partnership distributions, the value of partnership assets, or the results of partnership operations). An Owner Taxpayer and a Passthrough Taxpayer can hold an API directly or indirectly through one or more Passthrough Entities.

API Gains and Losses are any long-term capital gains and capital losses with respect to an API and include:

(i) The *API One Year Distributive Share Amount* as defined in § 1.1061-4(a)(3)(i);
 (ii) The *API Three Year Distributive Share Amount* as defined in § 1.1061-4(a)(3)(ii);
 (iii) The *API One Year Disposition Amount* as defined in § 1.1061-4(a)(4)(i);
 (iv) The *API Three Year Disposition Amount* as defined in § 1.1061-4(a)(4)(ii); and
 (v) Capital gains or losses from the disposition of Distributed API Property.
API Holder is a person who holds an API.

API Holder Transition Amount has the meaning provided in § 1.1061-4(b)(7)(ii).

Applicable Trade or Business (ATB) means any activity for which the ATB Activity Test with respect to Specified Actions is met, and includes all Specified Actions taken by Related Persons, including combining activities occurring in separate partnership tiers or entities as one ATB.

ATB Activity Test has the meaning provided in § 1.1061-2(b)(1).

Capital Interest Allocations has the meaning provided in § 1.1061-3(c)(4).

Capital Interest Disposition Amount has the meaning provided in § 1.1061-3(c)(6).

Capital Interest Gains and Losses has the meaning provided in § 1.1061-3(c)(2).

Distributed API Property means property distributed by a Passthrough Entity to an API Holder with respect to an API if the holding period, as determined under sections 735 and 1223, in the API Holder's hands is three years or less at the time of disposition of the property by the API Holder.

Indirect API means an API that is held through one or more Passthrough Entities.

Investing or Developing Actions means actions involving either—

(i) Investing in (or disposing of) Specified Assets (or identifying Specified Assets for such investing or disposition), or

(ii) Developing Specified Assets (see § 1.1061-2(b)(1)(ii)).

Lookthrough Rule has the meaning provided in § 1.1061-4(b)(9).

One Year Gain Amount has the meaning provided in § 1.1061-4(a)(2)(i).

Owner Taxpayer means the person subject to Federal income tax on net gain with respect to an API or an Indirect API during the taxable year, including an owner of a Passthrough Taxpayer unless the owner of the Passthrough Taxpayer is a Passthrough Entity itself or is excepted under § 1.1061-3(a), (b), or (d).

Partnership Transition Amount has the meaning provided in § 1.1061–4(b)(7)(iii).

Passthrough Capital Allocations has the meaning provided in § 1.1061–3(c)(5)(ii).

Passthrough Entity means a partnership, an S corporation described in § 1.1061–3(b)(2)(i), or passive foreign investment company described in § 1.1061–3(b)(2)(ii).

Passthrough Interest means an interest in a Passthrough Entity that represents in whole or in part an API.

Passthrough Interest Capital Allocations has the meaning provided in § 1.1061–3(c)(5)(i).

Passthrough Interest Direct Investment Allocations has the meaning provided in § 1.1061–3(c)(5)(iii).

Passthrough Taxpayer means a Passthrough Entity that is treated as a taxpayer for the purpose of determining the existence of an API.

Raising or Returning Capital Actions means actions involving raising or returning capital but does not include Investing or Developing Actions.

Recharacterization Amount has the meaning provided in § 1.1061–4(a)(1).

Related Person means a person or entity who is treated as related to another person or entity under sections 707(b) or 267(b).

Relevant ATB means the ATB in which services were provided and in connection with which an API is held or was transferred.

Section 1061(d) Related Person has the meaning provided in § 1.1061–5(e).

Specified Actions means Raising or Returning Capital Actions and Investing or Developing Actions.

Specified Assets means—

(i) Securities, including interests in partnerships qualifying as securities (as defined in section 475(c)(2) without regard to the last sentence thereof);

(ii) Commodities (as defined in section 475(e)(2));

(iii) Real estate held for rental or investment;

(iv) Cash or cash equivalents; and

(v) An interest in a partnership to the extent that the partnership holds Specified Assets. See § 1.1061–2(b)(1)(iii).

(vi) Specified Assets include options or derivative contracts with respect to any of the foregoing.

Substantially All Test has the meaning provided in § 1.1061–4(b)(9)(i)(C).

Three Year Gain Amount has the meaning provided in § 1.1061–4(a)(2)(ii).

Unrealized API Gains and Losses means all unrealized capital gains and losses, (including both short-term and

long-term), that would be allocated to an API Holder with respect to its API, if all relevant assets were disposed of for fair market value in a taxable transaction on the relevant date. Unrealized API Gains and Losses include—

(i) Unrealized capital gains and losses that are allocated to the API Holder with respect to the API pursuant to a capital account revaluation under § 1.704–1(b)(2)(iv)(f) or § 1.704–1(b)(2)(iv)(s);

(ii) In the case of a Passthrough Entity that contributes property to another Passthrough Entity, unrealized capital gains and losses that would be allocated to the API Holder with respect to the API if the property contributed by the upper-tier Passthrough Entity to the lower-tier Passthrough Entity were sold immediately before the contribution for the amount that is included in the lower-tier partnership's capital account or, in the case of another type of lower-tier Passthrough Entity, a similar account maintained under § 1.1061–3(c)(3)(ii) with respect to the contributed property; and

(iii) In the case of a revaluation of the property of a partnership that is the owner of a tiered structure of partnerships or in the case of the contribution of an API to another Passthrough Entity, an API Holder's Unrealized API Gains or Losses at the time of the revaluation or contribution include those capital gains or losses that would be allocated directly or indirectly to the API Holder by the lower-tier partnerships as if a taxable disposition of the property of each of the lower-tier partnerships also occurred on the date of the revaluation or contribution under the principles of § 1.704–1(b)(2)(iv)(f). See § 1.1061–2(a)(1)(ii)(B).

Unrelated Non-Service Partners mean partners who do not (and did not) provide services in the Relevant ATB and who are not (and were not) related to any API Holder in the partnership or any person who provides or has provided services in the Relevant ATB.

(b) *Applicability date.* The provisions of this section apply to taxable years of Owner Taxpayers and Passthrough Entities beginning on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

§ 1.1061–2 Applicable partnership interests and applicable trades or businesses.

(a) *API rules and examples*—(1) *Rules*—(i) *An API remains as an API.* Once a partnership interest qualifies as an API, the partnership interest remains an API unless and until the requirements of one of the exceptions to qualification of a partnership interest as

an API, set forth in § 1.1061–3, are satisfied.

(ii) *Unrealized API Gains and Losses*—(A) *Long-term Unrealized API Gains and Losses become API Gains and Losses.* Long-term Unrealized API Gains and Losses are API Gains and Losses subject to section 1061 when the gains and losses are realized and recognized. Unrealized API Gains and Losses do not lose their character as such until they are recognized.

(B) *Requirement to determine Unrealized API Gains and Losses.* In the case of a revaluation of the property of a partnership that owns a tiered structure of partnerships, or in the case of the contribution of an API to another Passthrough Entity, Unrealized API Gains and Losses included in the fair market value of the property held by all relevant partnerships in the tiered structure as of the date of the revaluation or contribution that are directly or indirectly allocable to the API Holder must be determined under principles similar to § 1.704–1(b)(2)(iv)(f). If a partnership is required to revalue its assets for purposes of section 1061 under this paragraph, such partnership is permitted to revalue its property for purposes of section 704 as though an event in § 1.704–1(b)(2)(iv)(f)(5) had occurred. Unrealized API Gains and Losses of a partnership that become API Gains and Losses under paragraph (a)(1)(ii)(A) of this section must be allocated to the API Holder under principles similar to § 1.704–3(a)(9).

(iii) *API Gains and Losses retain their character.* API Gains and Losses retain their character as API Gains and Losses as they are allocated from one Passthrough Entity to another Passthrough Entity and then to the Owner Taxpayer.

(iv) *Substantial services by an Owner Taxpayer, Passthrough Taxpayer, or any Related Person.* If an interest in a partnership is transferred to or held by an Owner Taxpayer, Passthrough Taxpayer, or any Related Person in connection with the performance of services, the Owner Taxpayer, the Passthrough Taxpayer, or the Related Person is presumed to have provided substantial services.

(v) *Grantor trusts and entities disregarded as separate from their owners.* A trust wholly described in subpart E, part I, subchapter J, chapter 1 of the Code (that is, a grantor trust), a qualified subchapter S subsidiary described in section 1361(b)(3), and an entity with a single owner that is treated as disregarded as an entity separate from its owner under any provision of the Code or any part of 26 CFR (including

§ 301.7701–3 of this chapter) are disregarded for purposes of §§ 1.1061–1 through 1.1061–6.

(2) *Examples.* The following examples illustrate the provisions of this paragraph (a).

(i) *Example 1. API.* (A) A is the general partner of PRS, a partnership, and provides services to PRS. A is engaged in an ATB as defined in § 1.1061–1(a). PRS transfers an interest in the net profits of PRS to A in connection with A's performance of services in A's ATB and with respect to PRS. A's interest in PRS is an API.

(B) After 6 years, A retires and is no longer engaged in an ATB and does not perform any services with respect to its ATB and with respect to PRS. However, A retains the API in PRS. PRS continues to acquire new capital assets and to allocate gain to A from the disposition of those assets. A's interest in PRS remains an API after A retires.

(ii) *Example 2. Contribution of an API to a partnership.* Individuals A, B, and C each directly hold APIs in PRS, a partnership. A and B form a new partnership, GP, and contribute their APIs in PRS to GP. Following the contribution, A and B each hold an Indirect API because A and B now indirectly hold their APIs in PRS through GP, a Passthrough Entity. Each of A's and B's interests in GP is a Passthrough Interest because each of A's and B's interests in GP represents an indirect interest in an API. See § 1.1061–5 regarding the potential application of section 1061(d) to this example.

(iii) *Example 3. Passthrough Interest, Indirect API, Passthrough Taxpayer.* A, B, and C each provide services to and are equal partners of GP. GP is the general partner of PRS. GP is engaged in an ATB, as defined in § 1.1061–1(a), and provides management services to PRS. In connection with GP's performance of services in an ATB, an interest in the net profits of PRS is transferred to GP. Because its interest in PRS's net profits was transferred to GP in connection with GP's services in an ATB, GP is a Passthrough Taxpayer. Therefore, GP's interest in PRS is an API. Because A, B, and C are partners in GP, they each hold a Passthrough Interest in GP and an Indirect API in PRS as a result of GP's API in PRS. A, B, and C are treated as the Owner Taxpayers because they are partners in GP, a Passthrough Taxpayer, and also because they indirectly hold an API in PRS in connection with the performance of their services to GP's ATB.

(iv) *Example 4. S corporation, Passthrough Interest, Indirect API, and Passthrough Taxpayer.* A owns all of the

stock of S Corp, an S corporation. S Corp is engaged in an ATB, as defined in § 1.1061–1(a). S Corp provides substantial management services to PRS, a partnership. Additionally, S Corp is the general partner of PRS. A provides substantial services in S Corp's ATB. In connection with S Corp's performance of services to PRS, an interest in the net profits of PRS is transferred to S Corp. S Corp's interest in PRS is its only asset. Because its interest in PRS's net profits was transferred to S Corp in connection with substantial services in an ATB, S Corp is a Passthrough Taxpayer and its interest in PRS is an API. Because A is a shareholder in S Corp, A holds a Passthrough Interest in S Corp and an Indirect API in PRS as a result of S Corp's API in PRS. A is treated as an Owner Taxpayer because A holds an interest in S Corp, a Passthrough Taxpayer, and also indirectly holds an API in PRS in connection with A's services in S Corp's ATB.

(v) *Example 5. Indirect API, Related Party and Passthrough Taxpayer.* A, B, and C are equal partners of GP, a partnership. GP is the general partner of PRS. GP's Specified Actions by themselves do not satisfy the ATB Activity Test under § 1.1061–1(a) and as a result, GP's actions do not establish an ATB. GP is required under PRS's partnership agreement to provide management services to PRS, either by itself or through a delegate. GP enters into an agreement with Management Company, a partnership, to provide services to PRS, and Management Company is paid reasonable compensation for such services. Management Company is related to GP within the meaning of sections 267(b) and 707(b). Management Company provides management services on behalf of GP to PRS and is engaged in an ATB. GP also is in an ATB because Management Company's actions are attributed to GP as GP's delegate. An interest in the net profits of PRS is transferred to GP in connection with Management Company's services to PRS. Because its interest in the net profits of PRS is transferred to GP in connection with services provided by Management Company, a Related Person, GP is a Passthrough Taxpayer and its interest in PRS is an API. Unless an exception described in § 1.1061–3 applies, because A, B, and C are partners in GP, they each hold a Passthrough Interest in GP and an Indirect API in PRS. A, B, and C are treated as Owner Taxpayers because they hold an interest in GP, a Passthrough Taxpayer. See also

§§ 1.1061–2(b)(1)(i)(C)(2) and 1.1061–2(b)(2)(v), Example 5.

(b) *Application of the ATB Activity Test—(1) In general.* The ATB Activity Test is satisfied if Specified Actions are conducted by one or more Related Persons and the total level of activity, including the combined activities of all Related Persons, satisfies the level of activity that would be required to establish a trade or business under section 162.

(i) *Rules for applying the ATB Activity Test—(A) Aggregate Specified Actions taken into account.* The determination of whether the ATB Activity Test is satisfied is based on the combined activities conducted that qualify as either Raising or Returning Capital Actions and Investing or Developing Actions. The fact that either Raising or Returning Capital Actions or Investing or Developing Actions are only infrequently taken does not preclude the test from being satisfied if the combined Specified Actions meet the test.

(B) *Raising or Returning Capital Actions and Investing or Developing Actions are not both required to be taken in each taxable year.* Raising or Returning Capital Actions and Investing or Developing Actions are not both required to be taken in each taxable year in order to satisfy the ATB Activity Test. For example, the ATB Activity Test will be satisfied if Investing or Developing Actions are not taken in the current taxable year, but sufficient Raising or Returning Capital Actions are taken in anticipation of future Investing or Developing Actions. Additionally, the ATB Activity Test will be satisfied if no Raising or Returning Capital Actions are taken in the current taxable year, but have been taken in a prior taxable year (regardless of whether the ATB Activity Test was met in the prior year), and sufficient Investing or Developing Actions are undertaken by the taxpayer in the current taxable year.

(C) *Combined conduct by multiple related entities taken into account—(1) Related Entities.* If a Related Person(s) (within the meaning of § 1.1061–1(a)) solely or primarily performs Raising or Returning Capital Actions and one or more other Related Person(s) solely or primarily performs Investing or Developing Actions, the combination of the activities performed by these Related Persons will be taken into account in determining whether the ATB Activity Test is satisfied.

(2) *Actions taken by an agent or delegate.* Specified Actions taken by an agent or a delegate in its capacity as an agent or a delegate of a principal will be taken into account by the principal in determining whether the ATB Activity

Test is satisfied with respect to the principal. These Specified Actions are also taken into account in determining whether the ATB Activity test is satisfied by the agent or the delegate.

(ii) *Developing Specified Assets.*

Developing Specified Assets takes place if it is represented to investors, lenders, regulators, or other interested parties that the value, price, or yield of a portfolio business may be enhanced or increased in connection with choices or actions of a service provider. Merely exercising voting rights with respect to shares owned or similar activities do not amount to developing Specified Assets.

(iii) *Partnerships.* Investing or Developing Actions directly conducted with respect to Specified Assets held by a partnership are counted towards the ATB Activity Test. Additionally, a portion of the Investing or Developing Actions conducted with respect to the interests in a partnership that holds Specified Assets is counted towards the ATB Activity Test. This portion is the value of the partnership's Specified Assets over the value of all of the partnership's assets. Actions taken to manage a partnership's working capital will not be taken into account in determining the portion of Investing or Developing Actions conducted with respect to the interests in the partnership.

(2) *Examples.* The following examples illustrate the application of the ATB Activity Test described in paragraph (b)(1) of this section.

(i) *Example 1. Combined activities of Raising or Returning Capital Actions and Investing or Developing Actions.* During the taxable year, B takes a small number of actions to raise capital for new investments. B takes numerous actions to develop Specified Assets. B's actions with respect to raising capital and B's actions with respect to developing Specified Assets are combined for the purpose of determining whether the ATB Activity Test is satisfied.

(ii) *Example 2. Combining Specified Actions in multiple entities.* GP, a partnership, conducts Raising or Returning Capital Actions. Management Company, a partnership that is a Related Party to GP, conducts Investing or Developing Actions. When GP's and Management Company's activities are combined, the ATB Activity Test is satisfied. Accordingly, both GP and Management Company are engaged in an ATB, and services performed by either GP or Management Company are performed in an ATB.

(iii) *Example 3. Investing or Developing Actions taken after Raising or Returning Capital Actions that do not*

meet the ATB Activity Test. In year 1, PRS engaged in Raising or Returning Capital Actions to fund PRS's investment in Specified Assets.

However, PRS' Specified Actions during year 1 did not satisfy the ATB Activity Test because they did not satisfy the level of activity required to establish a trade or business under section 162. Therefore, PRS was not engaged in an ATB in year 1. In year 2, PRS engaged in significant Investing or Developing Actions but did not engage in any Raising or Returning Capital Actions. In year 2, PRS's Investing or Developing Actions alone satisfy the ATB Activity Test. Therefore, PRS is engaged in an ATB in year 2.

(iv) *Example 4. Raising or Returning Capital Actions taken in anticipation of Investing or Developing Actions.* In year 1, A spent all of A's time on Raising or Returning Capital Actions. A's Raising or Returning Capital Actions were undertaken to raise capital to invest in Specified Assets with the goal of increasing their value through Investing or Developing Actions. A did not take Investing or Developing actions during the taxable year. A's Raising or Returning Capital Actions alone satisfy the ATB Activity Test. Therefore, the ATB Activity Test is satisfied, and A is engaged in an ATB in year 1.

(v) *Example 5. Attribution of delegate's actions.* GP is the general partner of PRS. GP is responsible for providing management services to PRS. GP contracts with Management Company to provide management services on GP's behalf to PRS. GP and Management Company are not Related Persons. The Specified Actions taken by Management Company on behalf of GP are attributed to GP for purposes of the ATB Activity Test because the Management Company is operating as a delegate of the GP. Additionally, those Specified Actions are taken into account by Management Company for purposes of the ATB Activity Test and whether it is engaged in an ATB.

(vi) *Example 6. ATB Activity Test not satisfied.* A is the manager of a hardware store. Partnership owns the hardware store, including the building in which the hardware business is conducted. In connection with A's services as the manager of the hardware store, a profits interest in Partnership is transferred to A. Partnership's business involves buying hardware from wholesale suppliers and selling it to customers. The hardware is not a Specified Asset. Although real estate is a Specified Asset if it is held for rental or investment purposes, Partnership holds the building for the purpose of conducting its hardware business and not for rental

or investment purposes. Therefore, the building is not a Specified Asset as to Partnership. Partnership also maintains and manages a certain amount of working capital for its business, but actions with respect to working capital are not taken into account for the purpose of determining whether the ATB Activity Test is met. Partnership is not a Related Person with respect to any person who takes Specified Actions. Partnership is not engaged in an ATB because the ATB Activity Test is not satisfied. Although Partnership raises capital, its Raising or Returning Capital Actions alone do not satisfy the ATB Activity Test. Further, Partnership takes no Investing or Developing Actions because it holds no Specified Assets other than working capital. Partnership is not in an ATB and the profits interest transferred to A is not an API.

(c) *Applicability date.* The provisions of this section apply to taxable years of Owner Taxpayers and Passthrough Entities beginning on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

§ 1.1061-3 Exceptions to the definition of an API.

(a) *A partnership interest held by an employee of another entity not conducting an ATB.* An API does not include any interest transferred to a person in connection with the performance of substantial services by that person as an employee of another entity that is conducting a trade or business (other than an ATB) and the person provides services only to such other entity.

(b) *Partnership interest held by a corporation—(1) In general.* Except as provided in paragraph (b)(2) of this section, an API does not include any interest directly or indirectly held by a corporation.

(2) *Treatment of interests held by an S corporation or a qualified electing fund.* For purposes of this section, a corporation does not include an entity for which an election was made to treat the entity as a Passthrough Entity. Thus, the following entities are not treated as corporations for purposes of section 1061—

(i) An S corporation for which an election under section 1362(a) is in effect; and

(ii) A passive foreign investment company (PFIC) with respect to which the shareholder has a qualified electing fund (QEF) election under section 1295 in effect.

(c) *Capital Interest Gains and Losses—(1) In general.* Capital Interest Gains and Losses are not subject to section 1061 and, therefore, are not

included in calculating an Owner Taxpayer's Recharacterization Amount.

(2) *Capital Interest Gains and Losses Defined.* For purposes of paragraph (c)(1) of this section, Capital Interest Gains and Losses are Capital Interest Allocations that meet the requirements of paragraph (c)(4) of this section, Passthrough Interest Capital Allocations that meet the requirements of paragraph (c)(5) of this section, and Capital Interest Disposition Amounts that meet the requirements of paragraph (c)(6) of this section.

(3) *General rules for determining Capital Interest Allocations and Passthrough Interest Capital Allocations—(i) Allocations made in the same manner.* Only allocations that are made in the same manner to all partners can be Capital Interest Allocations or Passthrough Interest Capital Allocations. In general, allocations will be considered to be made in the same manner if, under the partnership agreement, the allocations are based on the relative capital accounts of the partners (or owners in the case of a Passthrough Entity that is not a partnership) receiving the allocation and the terms, priority, type and level of risk, rate of return, and rights to cash or property distributions during the partnership's operations and on liquidation are the same. An allocation to an API Holder will not fail to qualify solely because the allocation is subordinated to allocations made to Unrelated Non-Service Partners. Further, an allocation to an API Holder will not fail to qualify because it is not reduced by the cost of services provided by the API Holder or a Related Person to the partnership.

(ii) *Capital accounts—(A) In general.* Capital Interest Allocations and Passthrough Interest Capital Allocations must be based on an API Holder's relative capital account balance in a Passthrough Entity. In the case of a partnership that maintains capital accounts under § 1.704-1(b)(2)(iv), the allocation must be tested under paragraph (c)(3)(i) of this section based on that capital account. In the case of a Passthrough Entity that is not a partnership (or a partnership that does not maintain capital accounts under § 1.704-1(b)(2)(iv)), if the Passthrough Entity maintains and determines accounts for its owners using principles similar to those provided under § 1.704-1(b)(2)(iv), the account will be treated as a capital account for purposes of this paragraph (c) and an allocation must be tested under paragraph (c)(3)(i) of this section based on those accounts.

(B) *Tiers—(1) Passthrough Capital Allocations.* Generally, Passthrough

Capital Allocations must be based on each owner's share of the Passthrough Entity's capital account in the entity making the Capital Interest Allocations described under paragraph (c)(4) of this section to the Passthrough Entity unless the exception in paragraph (c)(3)(ii)(B)(3) of this section applies.

(2) *Passthrough Interest Direct Investment Allocations.* Generally, Passthrough Interest Direct Investment Allocations must be based on each Owner Taxpayer's or Passthrough Taxpayer's relative capital account balance in the Passthrough Entity holding the investments, reduced by that owner's share of a capital account held directly or indirectly by the Passthrough Entity in a lower-tier entity unless the exception in paragraph (c)(3)(ii)(B)(3) of this section applies.

(3) *Aggregate Allocation of Passthrough Interest Capital Allocations.* A Passthrough Entity that allocates all Passthrough Interest Capital Allocations for the taxable year in the aggregate regardless of whether they are Passthrough Capital Allocations or Passthrough Interest Direct Investment Allocations may make those allocations based on each Owner Taxpayer's or Passthrough Taxpayer's relative capital account balance in the Passthrough Entity rather than under paragraph (c)(3)(ii)(B)(1) and (2) of this section.

(C) *Proceeds of partnership or partner loans not included in capital account.* For purposes of §§ 1.1061-1 through 1.1061-6, a capital account does not include the contribution of amounts directly or indirectly attributable to any loan or other advance made or guaranteed, directly or indirectly, by any other partner or the partnership (or any Related Person with respect to any such other partner or the partnership). However, the repayments on the loan are included in capital accounts as those amounts are paid by the partner, provided that the loan is not repaid with the proceeds of another loan described in this paragraph.

(iii) *Items that are not included in Capital Interest Allocations or Passthrough Interest Capital Allocations.* Capital Interest Allocations and Passthrough Interest Capital Allocations do not include—

(A) Amounts that are treated as API Gains and Losses and Unrealized API Gains and Losses;

(B) Partnership Transition Amounts described in § 1.1061-4(b)(7)(iii); or

(C) Items that are not taken into account for purposes of section 1061 under § 1.1061-4(b)(6).

(4) *Capital Interest Allocations.* Capital Interest Allocations are allocations of long-term capital gain or

loss made under the partnership agreement to an API Holder and to Unrelated Non-Service Partners based on their respective capital account balances that meet the requirements in paragraphs (c)(4)(i), (ii), and (iii) of this section.

(i) Allocations are made in the same manner to API Holders and Unrelated Non-Service Partners;

(ii) The allocations are made to Unrelated Non-Service Partners with a significant aggregate capital account balance. An aggregate capital account balance equal to 5 percent or more of the aggregate capital account balance of the partnership at the time the allocations are made will be treated as significant. Allocations to more than one Unrelated Non-Service Partner may be aggregated for determining significance if such allocations are made in the same manner to each of the Unrelated Non-Service Partners; and

(iii) The allocations to the API Holder and the Unrelated Non-Service Partners are clearly identified both under the partnership agreement and on the partnership's books and records as separate and apart from allocations made to the API Holder with respect to its API, and both the partnership agreement and the partnership's books and records clearly demonstrate that the requirements of paragraphs (c)(3) and (4) of this section have been met.

(5) *Passthrough Interest Capital Allocations—(i) In general.* Passthrough Interest Capital Allocations are made by Passthrough Entities that hold an API in a lower-tier Passthrough Entity. Passthrough Interest Capital Allocations can be either Passthrough Capital Allocations as determined under paragraph (c)(5)(ii) of this section or Passthrough Interest Direct Investment Allocations as determined under paragraph (c)(5)(iii) of this section.

(ii) *Passthrough Capital Allocations.* Passthrough Capital Allocations are Capital Interest Allocations that are made directly or indirectly to the Passthrough Entity by a lower-tier entity and that are allocated by the Passthrough Entity among its direct owners in the same manner (as provided in paragraph (c)(3)(i) of this section) with respect to each owner's capital account as determined under paragraph (c)(3)(ii) of this section.

(iii) *Passthrough Interest Direct Investment Allocations.* Allocations are treated as Passthrough Interest Direct Investment Allocations if—

(A) The allocations solely are comprised of long-term capital gain and loss derived from assets (other than an API) directly held by the Passthrough Entity; and

(B) Allocations are made in the same manner (as provided in paragraph (c)(3)(i) of this section) based on each direct owner's capital account as determined under paragraph (c)(3)(ii) of this section.

(6) *Capital Interest Disposition Amounts*—(i) *In general*. The term *Capital Interest Disposition Amount* means the amount of long-term capital gain and loss recognized on the sale or disposition of all or a portion of a Passthrough Interest that may be treated as Capital Interest Gain or Loss. The amount of long-term capital gain or loss that is recognized on the sale or disposition is determined under federal tax law (see, for example, sections 741 and 751, and § 1.61–6) and the holding period of the Passthrough Interest is determined as provided in § 1.1061–4(b)(8). In general, long-term capital gain or loss recognized on the sale or disposition of a Passthrough Interest is deemed to be API Gain or Loss unless it is determined under these rules to be a Capital Interest Disposition Amount.

(ii) *Determination of the Capital Interest Disposition Amount*. If a Passthrough Interest that includes a right to allocations of Capital Interest Gains and Losses is disposed of, the amount of long-term capital gain or loss that is treated as a Capital Interest Disposition Amount is determined under the rules provided in this paragraph.

(A) First, determine the amount of long-term capital gain or loss that would be allocated to the Passthrough Interest (or the portion of the Passthrough Interest sold) if all the assets of the Passthrough Entity were sold for their fair market value in a fully taxable transaction (deemed liquidation) immediately before the disposition of the Passthrough Interest. To calculate this in tiered entities, determine the long-term capital gain or loss from a lower-tier Passthrough Entity.

(B) Second, determine the sum of the amount of Capital Interest Gain or Loss from the deemed liquidation that is allocated to the Passthrough Interest (or the portion of the Passthrough Interest sold) as Capital Interest Allocations under paragraph (c)(4) of this section and Passthrough Interest Capital Allocations under paragraph (c)(5) of this section. To calculate this in tiered entities, determine the capital gain or loss from a lower-tier Passthrough Entity.

(C) If the transferor recognized long-term capital gain upon disposition of the Passthrough Interest and only capital losses are allocated to the Passthrough Interest under paragraph (c)(6)(ii)(B) of this section from the

deemed liquidation, then all of the long-term capital gain is API Gain. If the transferor recognized long-term capital loss on the disposition of the Passthrough Interest and only capital gain is allocated to the Passthrough Interest under paragraph (c)(6)(ii)(B) of this section, then all the long-term capital loss is API Loss.

(D) If paragraph (c)(6)(ii)(C) of this section does not apply, the amount of long-term capital gain that the transferor of the Passthrough Interest recognizes that is treated as a Capital Interest Disposition Amount is determined by multiplying long-term capital gain recognized on the disposition of the Passthrough Interest by a fraction, the numerator of which is the amount of long-term capital gain determined under paragraph (c)(6)(ii)(B) of this section, and the denominator of which is the amount of long-term capital gain determined under paragraph (c)(6)(ii)(A) of this section. Alternatively, if long-term capital loss is recognized on the disposition of the Passthrough Interest, the amount of long-term capital loss treated as a Capital Interest Disposition Amount is determined by multiplying the transferor's capital loss by a fraction, the numerator of which is the amount of long-term capital loss determined under paragraph (c)(6)(ii)(B) of this section, and the denominator of which is the amount of long-term capital loss determined under paragraph (c)(6)(ii)(A) of this section.

(E) In applying these rules, allocations of amounts that are not included in determining the amount of long-term capital gain or loss recognized on the sale or disposition of the Passthrough Interest are not included. See, for example, section 751(a).

(7) *Examples*. The rules of this paragraph (c) are illustrated by the following examples. For purposes of these examples, unless stated otherwise, A, B, and C are equal partners of GP, a partnership. GP is the general partner of PRS, a partnership. The other partners of PRS are Unrelated Non-Service Partners. GP's and PRS's partnership agreements both require that the partnership determine and maintain capital accounts under § 1.704–1(b)(2)(iv). GP holds an API in PRS that entitles GP to 20 percent of PRS's net profits. GP's API in PRS is an Indirect API as to each of A, B, and C. In addition, A, B, and C contributed \$100 each to GP in exchange for their interests in GP.

(i) *Example 1. Capital Interest Allocations*—(A) *Facts*. GP contributed the \$300 of capital contributed by A, B and C to PRS. GP's \$300 contribution equals 2% of the contributed capital

made by all of PRS's partners. PRS's partnership agreement allocates 20% of its net profits to GP with respect to its API (20% API allocation). The partnership agreement allocates the 80% of net profits remaining after the 20% API allocation to the partners pro rata (including GP) based on their relative capital account balances (Investment Allocations). Under PRS's partnership agreement, Investment Allocations to the partners, both to GP and to the Unrelated Non-service Partners, have the same priority, type and level of risk, and rate of return. Additionally, all of the partners have the same rights to cash or property distributions with respect to the Investment Allocations during the partnership's operations and on liquidation. GP's capital account balance comprises 2% of PRS's total capital account balance and the capital accounts of the Unrelated Non-service Partners receiving the Investment Allocations comprise the other 98% of PRS's total capital account balance. During the taxable year, PRS has \$10,000 of net capital gain. It allocates \$2,000 of net capital gain to GP based on its API allocation providing for a 20% interest in net profits ($\$10,000 \times 20\%$). Additionally, GP receives a 2% Investment Allocation from PRS, or \$160 of net capital gain ($\$8,000 (\$10,000 - \$2,000) \times 2\%$). In total, PRS allocates \$2,160 of net capital gain to GP for the taxable year. GP allocates \$720 ($\$2,160 / 3$) of this net capital gain to each of A, B, and C. The allocation received by GP from PRS is allocated among the partners of GP pro rata based on their share of the capital account that GP has in PRS.

(B) *Capital Interest Allocations Analysis*. GP's 2% Investment Allocation of \$160 of net capital gain is a Capital Interest Allocation. Other than GP, PRS's partners are Unrelated Non-Service Providers. GP is an API Holder. Under PRS's partnership agreement, the Investment Allocation is made pro rata to GP (an API Holder) and each of the Unrelated Non-Service Partners based on their relative capital account balances and the allocations are made in the same manner. Further, because allocations are made in the same manner with respect to each Unrelated Non-Service Partner's capital account, the capital account balances of the Unrelated Non-service Partners can be aggregated to determine if the allocations to the Unrelated Non-Service Partners are significant. The capital accounts of the Unrelated Non-Service Partners are significant because they equal 98% of the aggregate capital

account balance of PRS at the time the allocations are made. Accordingly, the Investment Allocation to GP, the API Holder, is treated as a Capital Interest Allocation. GP's API allocation of \$2,000 of net capital gain is not a Capital Interest Allocation because it is made irrespective of the balance of GP's capital account. Therefore, the API allocation is not made in the same manner as any allocation to an Unrelated Non-Service Partner.

(C) *Passthrough Interest Capital Allocation Analysis.* GP is allocated \$160 of Capital Interest Allocations by PRS. This amount is allocated to A, B, and C pro rata and in the same manner based on their shares of GP's capital account in PRS. As such, they qualify as Passthrough Capital Allocations by GP. In addition, GP holds an API in PRS and is allocated \$2,000 gain from PRS with respect to its API. This gain is API Gain when allocated by GP to its partners and cannot be treated as a Passthrough Capital Allocation by GP. In summary, A, B, and C are each allocated \$720 of long-term capital gain from PRS (\$2,160/3). Of this amount, \$667 is API Gain (\$2,000/3) and \$53 is a Passthrough Interest Capital Allocation (\$160/3).

(ii) *Example 2. Passthrough Interest Direct Investment Allocation—(A) Facts.* The facts are the same as in *Example 1*, except that GP does not contribute any of the \$300 contributed to GP by A, B, and C to PRS. Thus, GP's capital account in PRS is \$0. Each of A, B, and C have a \$100 capital account balance in GP. GP invests the contributed \$300 in assets held directly by GP. Under the terms of GP's partnership agreement, long-term capital gains and losses from assets (other than an API) held directly by GP are allocated in the same manner to the partners of GP based on their relative capital accounts in GP less amounts that are included in the capital account of a lower-tier Passthrough Entity in which GP holds an interest. For the taxable year, GP receives an allocation of \$2,000 of net capital gain with respect to the API GP holds in PRS. Additionally, GP earns \$30 on the assets it holds directly. GP allocates \$677 to each of A, B, and C for the taxable year.

(B) *Analysis.* Of the \$677 allocated to each of A, B, and C, \$667 is an allocation of API Gain because it is an allocation of gain received with respect to GP's API in PRS. The remaining \$10 allocated to A, B, and C was earned from assets which GP, a Passthrough Entity, holds directly. The \$30 was allocated in the same manner, based on the respective capital account balances of A, B, and C in GP, as determined under paragraph (c)(3)(ii) of this section.

Thus, the \$10 allocated to each of A, B, and C is treated as a Passthrough Interest Direct Investment Allocation.

(iii) *Example 3. Aggregate Allocation of Passthrough Interest Capital Allocations—(A) Facts.* The facts are the same as in *Example 2*, except that C is not a partner. A and B each contribute \$100 to GP. GP contributes the \$200 contributed by A and B to PRS, which entitles GP to a 1.5% Investment Allocation in PRS. One month later, C contributes \$100 to GP for a one-third interest in GP. GP does not contribute the \$100 contributed by C to PRS but instead invests the \$100 directly. GP's partnership agreement allocates all items to the partners pro rata, based on their percentage interests, as represented by their capital account balances in GP. For the taxable year, GP receives an allocation of \$2,000 of net capital gain with respect to the API GP holds in PRS. Additionally, GP receives an Investment Allocation from PRS of \$120 of net capital gain. In sum, GP is allocated \$2,120 of net capital gain from PRS. GP earns \$30 on the assets it holds directly.

(B) *Analysis.* GP allocates \$667 of the API Gain to each of A, B, and C, which remains an allocation of API Gain. GP allocates \$150 (\$120 Capital Interest Allocation which GP received from PRS, plus the \$30 GP earned on its investment made with C's capital contribution) to each of A, B, and C, based on their percentage interests as represented by their capital accounts in GP. Thus, of the \$150 of net capital gain that did not arise from GP's API in PRS, GP allocates to each of A, B, and C \$50. Because GP allocates all Passthrough Interest Capital Allocations in the aggregate pro rata based on its partners' capital accounts in GP, the \$50 allocated to each of A, B, and C is a Passthrough Interest Capital Allocation.

(iv) *Example 4. Sale of a Passthrough Interest.* A, B, and C form GP in Year 1 and contribute \$100 each. GP invests the \$300 in Asset X in Year 1. In Year 3, A sells A's interest in GP to an unrelated third party for \$800 and recognizes \$700 of capital gain on the sale. GP does not have a capital account in PRS and is not entitled to Capital Interest Allocations from PRS. GP is entitled to allocations of API Gain and Loss in PRS. If PRS had sold its assets in a taxable transaction for their fair market value and liquidated immediately before A transferred its interest in GP, GP would have been allocated \$1,800 of long-term capital gain with respect to GP's API in PRS. Of this \$1,800, GP would have allocated \$600 to A. If GP sold all of its assets for fair market value immediately before

A's sale of the interest in GP and liquidated, A would have received a Passthrough Interest Direct Investment Allocation of \$100. Accordingly, total gain allocable to A as a result of the hypothetical liquidation would be \$700. The percentage of the total gain of \$700 that is comprised of a Passthrough Interest Direct Investment Allocation is \$100/\$700 or approximately 14.286%. Accordingly, 14.286% of A's \$700 gain, or \$100, is A's Capital Interest Disposition Amount, and not subject to section 1061.

(v) *Example 5. Sale of a portion of a Passthrough Interest—(A) Facts.* A, B, and C each hold a one-third interest in GP's profits and capital. PRS's ownership interests are divided into two classes, Class A and Class B. The PRS partnership agreement provides for 10 Class A units which each represent a 2% interest in the net profits of PRS, for a total of 20% of the total net profits. Additionally, the PRS partnership agreement provides for 100 Class B units. Each Class B unit represents a 1% interest in the capital and a 0.8% interest in the profits of PRS, for a total of 80% of the total net profits. PRS does not have any outstanding indebtedness. In Year 1, PRS transferred the 10 Class A units to GP in connection with GP's performance of substantial services to PRS. GP is engaged in an ATB. Additionally, on the same date, PRS transferred 2 Class B units in exchange for GP's capital contribution of \$2,000 to PRS. The balance of the Class B units were issued to Unrelated Non-Service Partners for contributions of \$1,000 per unit. In Year 3, when the fair market value of the Class A units is \$7,000, GP sells its Class B units to an Unrelated Non-Service Partner for \$3,000. At the time of the sale, GP's basis in its partnership interest in PRS is \$2,000. Additionally, if all of the assets of PRS were sold in a taxable transaction immediately before the Class B units were sold, GP would be allocated \$1,000 of capital gain with respect to GP's Class B units.

(B) *Treatment of the Class A and Class B Units under Section 1061.* GP's class A units represent an API as to GP because they were transferred to GP in connection with the performance of substantial services in an ATB. Class A units do not provide for allocations that meet the requirements to be treated as either Capital Interest Allocations or Passthrough Interest Capital Allocations. GP's Class B units entitle GP to Capital Interest Allocations. Allocations of gain made by PRS with respect to the Class B units are treated as Capital Interest Allocations because the allocations are made to GP as a

holder of an API with respect to GP's capital account in the same manner as allocations are made to Unrelated Non-Service Partners with respect to their capital accounts. Additionally, 98% of the Class B units representing 98% of the capital account balance in PRS are held by Unrelated Non-Service Partners. Thus, their interest in PRS is significant.

(C) *Calculation of GP's gain on the sale of the Class B Units.* Although GP's interest in PRS is represented by units of different classes and some of those units may constitute a right to API Gains and Losses and other units may constitute a right to Capital Interest Allocations, under the provisions of subchapter K, chapter 1 of the Code, GP has a single partnership interest in PRS and a single tax basis and section 704(b) book capital account in that partnership interest. GP's basis in its partnership interest is \$2,000. To determine GP's gain on the disposition of the Class B units, GP's tax basis in its partnership interest must be equitably apportioned between GP's Class A and Class B units. See § 1.61-6(a). At the time of the sale, the fair market value of the Class A Units is \$7,000 and the fair market value of the Class B Units is \$3,000. GP's overall fair market value in its interest in PRS is equal to \$10,000. Of this amount, the value of the Class B Units is \$3,000, or 30%, of the fair market value of the entire interest. Accordingly, GP apportions 30% of its tax basis to the Class B units. This amount is \$600 (30% × \$2,000). Accordingly, GP's long-term capital gain on the sale of the Class B units is \$2,400 (\$3,000 less \$600).

(D) *Determination of Capital Interest Disposition Amount.* To determine the percentage of the long-term capital gain that is treated as a Capital Interest Disposition Amount, GP determines the amount of long-term capital gain that would be allocated to the portion of GP's interest sold if PRS sold all of its assets for fair market value and liquidated immediately before the disposition. Because Class B units are only entitled to allocations that are Capital Interest Allocations and are not entitled to allocations of API Gain or Loss, all of the \$2,400 long-term capital gain is Capital Interest Disposition Gain.

(vi) *Example 6. Contribution of an API to a Passthrough Entity with an Unrelated Non-Service Partner.* A and B form partnership GP and are equal partners in GP. A contributes an API in PRS with a fair market value of \$200 and a tax basis of \$0 to GP. B, an Unrelated Non-Service Partner, contributes \$200 cash to GP. GP invests the \$200 cash contributed by B in assets held for investment by GP. Because A contributes an API in PRS to GP, PRS

revalues its assets to determine the Unrealized API Gains and Losses that are allocable to A's interest in PRS at the time A contributes its interest in A to GP. See § 1.1061-2(a)(1)(ii)(B). At the time of the contribution of the API to GP, PRS holds two assets each with \$100 of Unrealized API Gains that are allocable to the API. PRS sells one of its assets and allocates long-term capital gain of \$100 to GP with respect to the API contributed to GP by A. This gain is API Gain and is first allocated to GP and then solely to A as required under § 1.1061-2(a)(1)(ii)(B). The Unrealized API Gain included in A's capital account in GP retains its character as Unrealized API Gain and is not converted to Capital Interest Gain or Loss because it is included A's capital account in GP. Thus, this gain is API Gain as to A when recognized.

(d) *Partnership interest acquired by purchase by an unrelated taxpayer.* If a taxpayer acquires an interest in a partnership (target partnership) by taxable purchase for fair market value that, but for the exception set forth in this paragraph (d), would be an API, the taxpayer will not be treated as acquiring an API if, immediately before the purchase—

(1) *Taxpayer not a Related Person.* The taxpayer is not a Related Person (within the meaning of § 1.1061-1(a)) with respect to—

(i) Any person who provides services in the Relevant ATB, or

(ii) Any service providers who provide services to or for the benefit of the target partnership or a lower-tier partnership in which the target partnership holds an interest, directly or indirectly.

(2) *Section 1061(d) not applicable.* Section 1061(d) does not apply to the transaction (as provided in § 1.1061-5); and

(3) *Taxpayer not a service provider.* The taxpayer did not and does not now provide services, and does not anticipate providing services in the future, to or for the benefit of the target partnership, directly or indirectly, or any lower-tier partnership in which the target partnership directly or indirectly holds an interest.

(e) [Reserved]

(f) *Applicability date—(1) General rule.* Except as provided in paragraphs (f)(2) and (f)(3) of this section, the provisions of this section apply to taxable years of Owner Taxpayers and Passthrough Entities beginning on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

(2) *Section 1.1061-3(b)(2)(i) exception.* Section 1.1061-3(b)(2)(i),

which provides that the exception under section 1061(c)(1) to the definition of an API does not apply to a partnership interest held by an S corporation with an election under section 1362(a) in effect, is applicable for taxable years beginning after December 31, 2017.

(3) *Section 1.1061-3(b)(2)(ii) exception.* Section 1.1061-3(b)(2)(ii) which provides that the exception under section 1061(c)(1) to the definition of an API does not apply to a partnership interest held by a PFIC with respect to which the shareholder has a QEF election in effect under section 1295 is applicable to taxable years of an Owner Taxpayer and Passthrough Entity beginning after August 14, 2020.

§ 1.1061-4 Section 1061 computations.

(a) *Computations—(1) Recharacterization Amount.* The Recharacterization Amount is the amount that an Owner Taxpayer must treat as short-term capital gain and not as long-term capital gain under section 1061(a). The Recharacterization Amount equals—

(i) The Owner Taxpayer's One Year Gain Amount, less

(ii) The Owner Taxpayer's Three Year Gain Amount.

(2) *One Year Gain Amount and Three Year Gain Amount—(i) One Year Gain Amount.* The Owner Taxpayer's One Year Gain Amount is the sum of—

(A) The Owner Taxpayer's combined net API One Year Distributive Share Amount from all APIs held during the taxable year; and

(B) The Owner Taxpayer's API One Year Disposition Amount.

(ii) *Three Year Gain Amount.* An Owner Taxpayer's Three Year Gain Amount is equal to—

(A) The Owner Taxpayer's combined net API Three Year Distributive Share Amount from all APIs held during the taxable year; and

(B) The Owner Taxpayer's API Three Year Disposition Amount.

(3) *API One Year Distributive Share Amount and Three Year Distributive Share Amount—(i) API One Year Distributive Share Amount.* The API One Year Distributive Share Amount equals—

(A) The API Holder's distributive share of net long-term capital gain from the partnership for the taxable year, including capital gain or loss on the disposition of all or a part of an API, with respect to the partnership interest held by the API Holder calculated without the application of section 1061, less

(B) To the extent included in the amount determined under paragraph

(a)(3)(i)(A) of this section, the aggregate of—

(1) Amounts that are excluded from section 1061 under paragraph (b)(6) of this section;

(2) The API Holder's Transition Amount for the taxable year; and

(3) Capital Interest Gains and Losses as determined under § 1.1061-3(c)(2).

(ii) *API Three Year Distributive Share Amount.* The API Three Year Distributive Share Amount equals—

(A) The API One Year Distributive Share Amount; less

(B) Items included in paragraph (a)(3)(ii)(A) of this section that would not be treated as a long-term gain or loss if three years is substituted for one year in paragraphs (3) and (4) of section 1222, and, if the Lookthrough Rule applies to the disposition of all or a part of an API, the adjustment required under paragraphs (b)(9)(ii)(B) and (C) of this section.

(4) *API One Year Disposition Amount and API Three Year Disposition Amount—(i) API One Year Disposition Amount.* The API One Year Disposition Amount is the combined net amount of—

(A) Long-term capital gains and losses recognized during the taxable year by an Owner Taxpayer, including long-term capital gain computed under the installment method that is taken into account for the taxable year, on the disposition of all or a portion of an API that had been held for more than one year, including a disposition to which the Lookthrough Rule applies;

(B) Long-term capital gain and loss recognized on a distribution with respect to an API during the taxable year that is treated under sections 731(a) (and 752(b) if applicable) as gain or loss from the sale or exchange of a partnership interest held for more than one year;

(C) Long-term capital gains and losses recognized on the disposition of Distributed API Property during the taxable year that has a holding period of more than one year but not more than three years to the distributee Owner Taxpayer on the date of disposition; and

(D) Long-term capital gain or losses recognized as a result of the application of section 751(b).

(ii) *API Three Year Disposition Amount.* The API Three Year Disposition Amount is the combined net amount of—

(A) Long-term capital gains and losses recognized during the taxable year by an Owner Taxpayer, including long-term capital gain computed under the installment method that is taken into account for the taxable year, on the disposition of all or a portion of an API

that had been held for more than three years and to which the Lookthrough Rule does not apply;

(B) Long-term capital gains and losses recognized by an Owner Taxpayer on the disposition during the taxable year of all or a portion of an API that has been held for more than three years less any adjustments required under the Lookthrough Rule in paragraphs (b)(9)(ii)(B) and (C) of this section.

(C) Long-term capital gains and losses recognized on a distribution with respect to an API during the taxable year that is treated under sections 731(a) (and section 752(b) if applicable) as gain or loss from the sale or exchange of a partnership interest held for more than three years; and

(D) Long-term capital gains and losses recognized as a result of the application of section 751(b) that is treated as derived from an asset held for more than three years.

(b) *Special rules for calculating the One Year Gain Amount and the Three Year Gain Amount—(1) One Year Gain Amount equals zero or less.* If an Owner Taxpayer's One Year Gain Amount is zero or results in a loss, the Recharacterization Amount for the taxable year is zero and section 1061(a) does not apply.

(2) *Three Year Gain Amount equals zero or less.* If an Owner Taxpayer's Three Year Gain Amount is zero or results in a loss, the Three Year Gain Amount shall be zero for purposes of calculating the Recharacterization Amount.

(3) *Installment sale gain.* The One Year Gain Amount under paragraph (a)(2)(i) of this section, and the Three Year Gain Amount, as determined under paragraph (a)(2)(ii) of this section, include long-term capital gains from installment sales. This includes long-term capital gain or loss recognized with respect to an API after December 31, 2017, with respect to an installment sale that occurred on or before December 31, 2017. The holding period of the asset upon the date of disposition is used for purposes of determining whether capital gain is included in the taxpayer's One Year Gain Amount or the Three Year Gain Amount. See paragraph (b)(8) of this section for rules governing the holding period of APIs.

(4) *Special rules for capital gain dividends from regulated investment companies (RICs) and real estate investment trusts (REITs)—(i) API One Year Distributive Share Amount.* If a RIC or REIT reports or designates a dividend as a capital gain dividend and provides the One Year Amounts Disclosure as defined in § 1.1061-6(c)(1)(i), the amount provided in the

One Year Amounts Disclosure is included in the calculation of an API One Year Distributive Share Amount. If the RIC or REIT does not provide the One Year Amounts Disclosure, the full amount of the RIC's or REIT's capital gain dividend must be included in the calculation of an API One Year Distributive Share Amount.

(ii) *API Three Year Distributive Share Amount.* If a RIC or REIT reports or designates a dividend as a capital gain dividend and provides the Three Year Amounts Disclosure as defined in § 1.1061-6(c)(1)(ii), the amount provided in the Three Year Amounts Disclosure is used for the calculation of an API Three Year Distributive Share amount. If the RIC or REIT does not provide the Three Year Amounts Disclosure, no amount of the RIC's or REIT's capital gain dividend may be used for the calculation of an API Three Year Distributive Share Amount.

(iii) *Loss on sale or exchange of stock.* If a RIC or REIT provides the Three Year Amounts Disclosure as provided in paragraph (b)(4)(ii) of this section, any loss on the sale or exchange of shares of a RIC or REIT held for six months or less is treated as a capital loss on an asset held for more than three years, to the extent of the amount of the Three Year Amounts Disclosure from that RIC or REIT.

(5) *Pro rata share of qualified electing fund (QEF) net capital gain—(i) One-year QEF net capital gain.* The calculation of an API One Year Distributive Share Amount includes an Owner Taxpayer's share of an inclusion under section 1293(a)(1) of a pro rata share of the net capital gain (as defined in § 1.1293-1(a)(2)) of a passive foreign investment company (as defined in section 1297(a)) for which a QEF election (as described in section 1295(a)) is in effect for the taxable year. The amount of the inclusion may be reduced by the amount of long-term capital gain that is not taken into account for purposes of section 1061 as provided in paragraph (b)(6) of this section. See § 1.1061-6 for reporting rules.

(ii) *Three year QEF net capital gain.* The calculation of an API Three Year Distributive Share Amount includes an Owner Taxpayer's share of an inclusion under section 1293(a)(1) of a pro rata share of the net long-term capital gain (as defined in § 1.1293-1(a)(2)) of a QEF determined for purposes of paragraph (b)(5)(i) of this section if the QEF provides information to determine the amount of the inclusion that would constitute net long-term capital gain (as defined in § 1.1293-1(a)(2)) if the QEF's net capital gain for the taxable year were

calculated under section 1222(11) applying paragraphs (3) and (4) of section 1222 by substituting three years for one year. See § 1.1061-6 for reporting rules.

(6) *Items not taken into account for purposes of section 1061.* The following items of long-term capital gain and loss are excluded from the calculation of the API One Year Distributive Share Amount in paragraph (a)(3)(i) of this section and the API Three Year Distributive Share Amount in paragraph (a)(3)(ii) of this section:

(i) Long-term capital gain and long-term capital loss determined under section 1231;

(ii) Long-term capital gain and long-term capital loss determined under section 1256;

(iii) Qualified dividends included in net capital gain for purposes of section 1(h)(1)(B); and

(iv) Capital gains and losses that are characterized as long-term or short-term without regard to the holding period rules in section 1222, such as certain capital gains and losses characterized under the mixed straddle rules described in section 1092(b) and §§ 1.1092(b)-3T, 1.1092(b)-4T, and 1.1092(b)-6.

(7) *API Holder Transition Amounts not taken into account—(i) In General.* An API Holder Transition Amount is not taken into account for purposes of determining the Recharacterization Amount.

(ii) *API Holder Transition Amount.* An API Holder Transition Amount is the amount of long-term gain or loss that is treated as a Partnership Transition Amount and that is included in the allocation of long-term capital gains and losses under sections 702 and 704 to the API Holder for the taxable year with respect to the API Holder's interest in the Passthrough Entity. The API Holder Transition Amount for any taxable year cannot exceed the amount of Partnership Transition Amount that would have been allocated to the API Holder with respect to its interest in the partnership under the partnership agreement in effect on March 15, 2018, with respect to the calendar year ending December 31, 2017.

(iii) *Partnership Transition Amounts and Partnership Transition Amount Election.* A partnership that was in existence as of January 1, 2018, may irrevocably elect to treat all long-term capital gains and losses recognized from the disposition of all assets held by the partnership for more than three years as of January 1, 2018, as Partnership Transition Amounts. To treat amounts as Partnership Transition Amounts—

(A) The partnership must attach a signed and dated copy of a statement that the partnership is making an election in accordance with this paragraph (b)(7)(iii)(A) to the timely filed return (including extensions) filed by the partnership with the IRS under section 6031(a) for the first taxable year the partnership treats amounts as Partnership Transition Amounts;

(B) The partnership must maintain a copy of the election made under paragraph (b)(7)(iii)(A) of this section and by the due date of the election must clearly and specifically identify the assets held for more than three years as of January 1, 2018, in the partnership's books and records;

(C) The partnership must keep sufficient books and records to demonstrate to the satisfaction of the Secretary of the Treasury or his delegate that the identified assets had been held by the partnership for more than three years as of January 1, 2018, and that long-term capital gain or loss on the disposition of each asset has been treated as a Partnership Transition Amount; and

(D) The partnership must keep an executed copy of its partnership agreement in effect as of March 15, 2018, and must have sufficient books and records to demonstrate that the API Holder Transition Amounts allocated to an API Holder in any taxable year do not exceed the amounts that would have been allocated to the API Holder with respect to its API under the partnership agreement in effect as of March 15, 2018, for the year ending December 31, 2017.

(8) *Holding period determination—(i) Determination of holding period for purposes of the Three Year Gain Amount.* For purposes of computing the Three Year Gain Amount, the relevant holding period of either an asset or an API is determined under all provisions of the Code or regulations that are relevant to determining whether the asset or the API has been held for the long-term capital gain holding period by applying those provisions as if the holding period were three years instead of one year.

(ii) *Relevant Holding Period.* The relevant holding period is the direct owner's holding period in the asset sold. Accordingly, for purposes of determining an API Holder's Taxpayer's API One Year Distributive Share Amount and API Three Year Distributive Share Amount for the taxable year under paragraph (a)(3) of this section, the partnership's holding period in the asset being sold or disposed of (whether a directly held asset or a partnership interest) is the

relevant holding period for purposes of section 1061.

(9) *Lookthrough Rule for certain API dispositions—(i) Determination that the Lookthrough Rule applies—(A) Directly held API.* The Lookthrough Rule applies if an API Holder disposes of a directly held API in a taxable transaction to which section 1061(d) does not apply and recognizes capital gain, the API Holder's holding period in the API is more than three years, and the assets of the partnership meet the Substantially All Test described in paragraph (b)(9)(i)(C) of this section.

(B) *Indirectly held API.* In the case of a tiered structure in which the API Holder holds its API through one or more Passthrough Entities, the Lookthrough Rule applies if an API Holder disposes of a Passthrough Interest held for more than three years in a taxable transaction to which section 1061(d) does not apply and recognizes capital gain, and either—

(1) The Passthrough Entity, through which the API is directly or indirectly held, has a holding period in the API of three years or less; or

(2) The Passthrough Entity, through which the API is directly or indirectly held, has a holding period in the API of more than three years and the assets of the partnership in which the API is held meet the Substantially All Test described paragraph (b)(9)(i)(C) of this section.

(C) *Substantially All Test—(1) In general.* The Substantially All Test is met if 80 percent or more of the assets of the partnership in which the API is held are assets that would produce capital gain or loss that is not described in paragraph (b)(6) of this section if disposed of by the partnership and have a holding period of three years or less to the partnership. The determination of whether this test is met is based on fair market value and is made by dividing the amount determined under paragraph (b)(9)(i)(C)(1)(i) of this section (the numerator) by the amount determined under paragraph (b)(9)(i)(C)(1)(ii) of this section (the denominator) and expressing the result as a percentage. Cash, cash equivalents, unrealized receivables under section 751(c), and inventory items under section 751(d) are not taken into account for purposes of determining the numerator or the denominator.

(i) *Numerator.* For purposes of determining the fraction described in paragraph (b)(9)(i)(C)(1) of this section, the numerator is equal to the aggregate fair market value of the partnership's assets that would produce capital gain or loss that is not described in paragraph (b)(6) of this section if

disposed of by the partnership as of the date of disposition of the API and that have a holding period of three years or less.

(ii) *Denominator.* For purposes of determining the fraction described in paragraph (b)(9)(i)(C)(1) of this section, the denominator is equal to the aggregate fair market value of all of the partnership's assets as of the date of disposition of the API.

(2) *Applying the Substantially All Test in tiered arrangements.* In applying the Substantially All Test, if a partnership has held an interest in a lower-tier Passthrough Entity for more than three years, the partnership must increase the amount calculated for the numerator under paragraph (b)(9)(i)(C)(1)(i) of this section by the partnership's share of the value of the assets held by the lower-tier Passthrough Entity that would be included in the numerator under paragraph (b)(9)(i)(C)(1)(i) of this section by the lower-tier Passthrough Entity, if the lower-tier Passthrough Entity was calculating the numerator under paragraph (b)(9)(i)(C)(1)(i) of this section.

(ii) *Application of the Lookthrough Rule.* If the Lookthrough Rule applies—

(A) The Owner Taxpayer must include the entire amount of capital gain recognized on the sale of the API in the API One Year Disposition Amount (see paragraph (a)(4)(i)(A) of this section) and in the case of an API Holder that is a Passthrough Entity and not an Owner Taxpayer, the entire amount of the capital gain recognized on the sale is included in the One Year Distributive Share Amount determined with respect to the API Holders of the Passthrough Entity (see paragraph (a)(3)(i)(A) of this section); and

(B) The Owner Taxpayer must include the amount of gain included in the API One Year Disposition Amount with respect to the disposition of the API reduced by the adjustment determined under paragraph (b)(9)(ii)(C) of this section (see paragraph (a)(4)(ii)(B) of this section) in the API Three Year Disposition Amount, and in the case of an API Holder that is a Passthrough Entity and not an Owner Taxpayer, the API Three Year Distributive Share Amount is reduced by the adjustment determined under paragraph (b)(9)(ii)(C) of this section as provided in paragraph (a)(3)(ii)(B) of this section.

(C) *Adjustment required by the Lookthrough Rule.* The adjustment required by the Lookthrough Rule equals—

(1) If the Lookthrough Rule applies under paragraph (b)(9)(i)(A) or paragraph (b)(9)(i)(B)(2) of this section,

the adjustment is equal to the capital gain recognized on the disposition of the API that is attributable to assets included in the numerator under paragraph (b)(9)(i)(C)(1)(i) of this section. This amount is calculated by multiplying the capital gain recognized on the sale of the API by a fraction, expressed as a percentage. The numerator of the fraction is equal to the total net capital gain the partnership would recognize if the partnership disposed of the assets the value of which was included in the numerator under paragraph (b)(9)(i)(C)(1)(i) of this section for fair market value immediately before the disposition of the API. The denominator is equal to the total net capital gain the partnership would recognize if the partnership disposed of the assets the value of which was included in the denominator under paragraph (b)(9)(i)(C)(1)(ii) of this section for fair market value immediately prior to the disposition of the API. If the numerator is zero or less, the adjustment in this paragraph (b)(9)(ii)(C) is zero. If the numerator is greater than zero and the denominator is zero or less, the adjustment is the entire amount of gain recognized on the sale of the API.

(2) If the Lookthrough Rule applies under paragraph (b)(9)(i)(B)(1) of this section, the adjustment is equal to the gain attributable to the API directly or indirectly held by the Passthrough Entity.

(10) *Section 83.* Except with respect to any portion of the interest that is a capital interest under § 1.1061-3(c), this section applies regardless of whether an Owner Taxpayer has made an election under section 83(b) or included amounts in gross income under section 83.

(c) *Examples—(1) Computation examples.* The rules of paragraph (a) of this section are illustrated by the following examples. Unless otherwise stated, none of the long-term capital gain or loss in this section is capital gain or loss not taken into account for purposes of section 1061, as provided in paragraph (b)(6) of this section.

(i) *Example 1. Calculation of the API One Year Distributive Share Amount and the API Three Year Distributive Share Amount—(A) Facts.* A holds an API in PRS. A does not have a capital account in PRS for purposes of § 1.1061-3(c)(3)(ii). During the taxable year, A is allocated \$20 of long-term capital gain recognized by PRS on the sale of capital asset X held by PRS for two years. A is allocated \$40 of long-term capital gain from the sale of capital asset Y held by PRS for five years. Assume A has no other items of long-

term capital gain or loss with respect to its interest in PRS during the taxable year. Accordingly, A is allocated \$60 of long-term capital gain from PRS under § 1.702-1(a)(2) for the taxable year. A has no other long-term capital gains or losses with respect to an API during the taxable year.

(B) *Calculation of A's API One Year Distributive Share Amount.* A has an API One Year Distributive Share Amount for PRS of \$60 of long-term capital gain. This amount is equal to A's \$60 distributive share from PRS under § 1.702-1(a)(2) because no items that are described in paragraph (b)(6) or (7) of this section reduce that amount.

(C) *Calculation of A's API Three Year Distributive Share Amount.* A has an API Three Year Distributive Share Amount of \$40 of long-term capital gain. A calculates this amount by subtracting the \$20 allocated to A from the sale of capital asset X from the API One Year Distributive Share Amount of \$60 calculated in paragraph (B) of this *Example 1*. A subtracts the gain allocated to A as a result of the sale of capital asset X because PRS had only held capital asset X for two years prior to its disposition and this gain would not be treated as long-term capital gain if three years were substituted for one year in paragraphs (3) and (4) of section 1222. Only the \$40 gain allocated to A on the sale of capital asset Y which was held by PRS for five years prior to its disposition is included in A's API Three Year Distributive Share Amount.

(D) *Calculation of A's Recharacterization Amount.* A's One Year Gain amount equals \$60 (A's API One Year Distributive Share Amount, plus an API One Year Disposition Amount of \$0). A's Three Year Gain Amount equals \$40 (A's API Three Year Distributive Share Amount, plus an API Three Year Disposition Amount of \$0). A's Recharacterization Amount is \$20, the difference between A's One Year Gain Amount of \$60, and A's Three Year Gain Amount of \$40.

(ii) *Example 2. Calculation of the API One Year Distributive Share amount when Capital Interest Allocations are present—(A) Facts.* A holds a Passthrough Interest in PRS. A holds an API in PRS and, under the terms of the partnership agreement, is entitled to Capital Interest Allocations from PRS. During the taxable year, A receives a \$130 allocation of long-term capital gain under § 1.702-1(a)(2) with respect to its interest in PRS as a result of the sale of asset X that PRS had held for 5 years. Of this amount, \$50 is treated as a Capital Interest Allocation described in § 1.1061-3(c)(4). A has no other long-term capital gains and losses with

respect to an API during the taxable year.

(B) *Calculation.* A's distributive share of long-term capital gain from PRS is \$130. A's API One Year Distributive Share Amount is \$80. This is calculated by subtracting A's \$50 Capital Interest Allocation from A's distributive share of long-term capital gain determined for purposes of § 1.702-1(a)(2). A's API Three Year Distributive Share Amount is also \$80 because the \$80 would be treated as long-term capital gain if three years were substituted for one year in paragraphs (3) and (4) of section 1222.

(C) *Recharacterization Amount.* A has a One Year Gain Amount of \$80 (A's \$80 API One Year Distributive Share Amount, plus a One Year Disposition Amount of \$0). A has a Three Year Gain Amount of \$80 (A's \$80 API Three Year Distributive Share Amount, plus a Three Year Disposition Amount of \$0). Accordingly, A's Recharacterization Amount is \$0, the difference between A's One Year Gain Amount and Three Year Gain Amount.

(iii) *Example 3. API One Year Disposition Amount—(A) Facts.* During the taxable year, A disposes of an API that A has held for four years as of the date of disposition for a \$100 gain. The Lookthrough Rule is not applicable to the sale. Additionally, A sells Distributed API Property at a \$300 gain when such property had a two year holding period in A's hands. A has no other items of long-term capital gain or loss with respect to an API in that year.

(B) *Calculation of A's API One Year Disposition Amount.* A's API One Year Disposition Amount is \$400. This amount equals A's \$300 long-term capital gain on A's disposition of its Distributed API Property and \$100 long-term capital gain on the disposition of A's API. A's Three Year Disposition Amount is \$100, the amount of long-term capital gain A recognized upon disposition of A's API held for more than three years.

(C) *Calculation of A's Recharacterization Amount.* A's One Year Gain Amount is \$400. A's Three Year Gain Amount is \$100. A's Recharacterization Amount is \$300, the difference between A's One Year Gain Amount and Three Year Gain Amount.

(iv) *Example 4. Calculation of One Year Gain Amount, Three Year Gain Amount, and Recharacterization Amount—(A) Facts.* During the taxable year, A held an API in PRS1 and an API in PRS2 for the entire year. With respect to PRS1, A's API One Year Distributive Share Amount is \$100 of long-term capital gain and A's API Three Year Distributive Share Amount is (\$200) of long-term capital loss. With respect to

PRS2, A's API One Year Distributive Share Amount is \$600 of long-term capital gain and A's API Three Year Distributive Share Amount is \$300 of long-term capital gain. For the taxable year, A also has an API One Year Disposition Amount of \$200 of gain. A has no other items of long-term capital gain or loss with respect to an API for the taxable year.

(B) *Calculation of A's One Year Gain Amount.* A's One Year Gain Amount is \$900. This amount is calculated by combining A's \$100 API One Year Distributive Share Gain from PRS1, the \$600 API One Year Distributive Share from PRS2 (for a combined net API One Year Distributive Share Amount of \$700 of long-term capital gain), and the \$200 API One Year Disposition Amount.

(C) *Calculation of A's Three Year Gain Amount.* A's Three Year Gain Amount is \$100. This amount is calculated by first determining A's combined net API Three Year Distributive Share Amount for the taxable year. This amount is arrived at by combining and netting A's \$200 API Three Year Distributive Share Amount loss from PRS1 with A's API Three Year Distributive Share Amount Gain of \$300 from PRS2. A's combined net Three Year Distributive Share Amount is \$100 of long-term capital gain. Because A does not have an API Three Year Disposition Amount, the Three Year Gain Amount is equal to A's API Three Year Distributive Share Amount of \$100 of gain.

(D) *Calculation of A's Recharacterization Amount.* A's Recharacterization Amount is \$800, which is the amount by which A's One Year Gain Amount of \$900 exceeds A's Three Year Gain Amount of \$100.

(2) *Special rules examples.* The principles of paragraph (b) of this section are illustrated by the following examples.

(i) *Example 1. Lookthrough rule—(A) Facts.* A is a partner in GP. GP is a partnership and holds an API in PRS, which GP has held for 2 years. A's interest in GP includes both an indirect interest in GP's API in PRS and a capital account in GP that entitles A to Capital Interest Gains and Losses from GP. A has held its interest in GP for 4 years. During the taxable year, A sold its interest in GP for a \$200 gain in a transaction to which section 1061(d) did not apply. After the application of § 1.1061-3(c)(6), A determined that \$100 of A's capital gain on the disposition of its interest in GP is a Capital Interest Disposition Amount and \$100 of A's capital gain is API Gain.

(B) *Determination of Whether the Lookthrough Rule Applies.* A's

disposition of an interest in GP is a disposition of a Passthrough Interest held for more than three years with respect to which A recognized capital gain. GP is the Passthrough Entity in which A holds its Passthrough Interest and GP has a two year holding period in its API in PRS. Thus, under paragraph (b)(9)(i)(B)(1) of this section, the Lookthrough Rule applies to A's disposition of A's Indirect API.

(C) *Effect of the Application of the Lookthrough Rule.* A is an Owner Taxpayer. Under paragraph (b)(9)(ii)(A) of this section, A must include the \$100 of API Gain in A's One Year Disposition Amount. Under paragraph (b)(9)(ii)(B) of this section, the amount A includes in the Three Year Disposition Amount is the amount A included in the One Year Disposition Amount, reduced by the adjustment required under paragraph (b)(9)(ii)(C)(2) of this section. This amount is A's gain attributable to the sale of its Indirect API, or \$100. Therefore, A includes none of the \$100 of API Gain from the sale of A's Indirect API in A's Three Year Disposition Amount.

(ii) *Example 2. Lookthrough Rule—(A) Facts.* Assume the same facts as Example 1 except that GP has held its API in PRS for 4 years and all of the assets of PRS are securities that are subject to an election under section 475.

(B) *Determination of whether the Lookthrough Rule applies.* A's disposition of an interest in GP is a disposition of a Passthrough Interest held for more than three years with respect to which A recognized capital gain. GP is the Passthrough Entity in which A holds its Passthrough Interest and GP has a four year holding period in its API. Thus, under paragraph (b)(9)(i)(B)(2) of this section, the Lookthrough Rule will apply if the assets of PRS meet the Substantially All Test in paragraph (b)(9)(i)(C) of this section. The determination of whether the test is met is made by dividing the aggregate fair market value of the assets of PRS that would produce capital gain or loss not described in paragraph (b)(6) of this section if disposed of by PRS as of the date of disposition of the API and that have a holding period of three years or less (the numerator as determined under paragraph (b)(9)(i)(C)(1)(i) of this section); by, the aggregate fair market value of all of the partnerships assets as of the date of disposition (the denominator as determined under paragraph (b)(9)(i)(C)(1)(ii) of this section). Because all of the assets of the partnership are assets subject to an election under section 475 and thus would produce ordinary income or loss on disposition, the numerator as

determined under paragraph (b)(9)(i)(C)(1)(i) of this section is 0. As a result, the Substantially All Test is not met, and the Lookthrough Rule does not apply.

(iii) *Example 3.*—(A) *Facts.* Assume that same facts in *Example 2*, except that GP disposed of its API in PRS for a capital gain of \$480. GP's API entitles it to 20% of PRS' net profits. A is allocated \$120 of gain from the sale. At the time of GP's disposition of its interest in PRS, PRS held the following assets—

(1) \$1,000 cash;

(2) Asset X, an asset that would produce capital gain or loss that is not described in paragraph (b)(6) of this section if disposed of by PRS, which has a fair market value of \$100, a basis of \$100, and a holding period of 4 years;

(3) Asset Y, an asset that would produce capital gain or loss that is not described in paragraph (b)(6) of this section if disposed of by PRS, which has a fair market value of \$1,600, a basis of \$1,000, and a holding period of 2 years;

(4) Asset Z, an asset that would produce capital gain or loss that is described in paragraph (b)(6) of this section if disposed of by PRS, which has a value of \$300, a basis of \$100, and a holding period of 2 years; and

(5) A 20% interest in the profits and capital of partnership PRS2. The total fair market value of PRS2 is \$10,000. The interest PRS holds in PRS 2 has a fair market value of \$2,000, a basis of \$400, and a holding period of 4 years.

(6) PRS2 holds two assets that would produce capital gain or loss that is not described in paragraph (b)(6) of this section if disposed of by PRS2, Asset S and Asset T. Asset S has a fair market value of \$8,000, a basis of \$1,000, and a holding period of 2 years. Asset T has a fair market value of \$2,000, a basis of \$1,000, and a holding period of 4 years.

(B) *Determination of Whether the Lookthrough Rule Applies*—(1) *In general.* Because GP recognized capital gain on the disposition of an API that GP held directly that had a holding period of more than three years, paragraph (b)(9)(i)(A) of this section governs whether the Lookthrough Rule applies. To determine whether the Lookthrough Rule applies under paragraph (b)(9)(i)(A) of this section, it must be determined whether the assets of PRS meet the Substantially All Test in paragraph (b)(9)(i)(C) of this section. To make this determination, the numerator under paragraph (b)(9)(i)(C)(1)(i) of this section and the denominator under paragraph (b)(9)(i)(C)(1)(ii) of this section of the fraction described in paragraph (b)(9)(i)(C)(1) of this section must be

determined. The value of cash, cash equivalents, unrealized receivables described in section 751(c), and inventory items described in section 751(d) is excluded from this determination.

(2) *Calculation of the denominator under paragraph (b)(9)(i)(C)(1)(ii) of this section.* The denominator under paragraph (b)(9)(i)(C)(1)(ii) of this section is equal to the aggregate fair market value of the assets of PRS on the date of disposition of the API and is \$4,000 (\$100 (Asset X) + \$1,600 (Asset Y) + \$300 (Asset Z) + \$2,000 (PRS2)).

(3) *Calculation of the numerator under paragraph (b)(9)(i)(C)(1)(i) of this section.* The numerator in paragraph (b)(9)(i)(C)(1)(i) of this section equals the aggregate fair market value of assets of PRS that would produce capital gain or loss that is not described in paragraph (b)(6) of this section if disposed of by PRS as of the date GP disposes of its API in PRS and that have a holding period of three years or less to PRS. Based on the following, this amount is equal to \$3,200 (the value of Asset Y (\$1,600) and PRS's share of the value of Asset S (\$1,600) held by PRS2).

(i) The \$1000 of cash is not taken into account for purposes of the Substantially All Test.

(ii) The fair market value of Asset X is excluded from the calculation of the numerator under paragraph (b)(9)(i)(C)(1)(i) of this section because it has a 4 year holding period to PRS.

(iii) Asset Y would produce capital gain or loss that is not described in paragraph (b)(6) of this section if disposed of by PRS and Asset Y has a holding period of 2 years. Accordingly, the \$1,600 fair market value of asset Y is included in calculating the numerator under the paragraph (b)(9)(i)(C)(1)(i) of this section.

(iv) Although Asset Z has a holding period of 2 years to GP, capital gain or loss on the disposition of Asset Z is described paragraph (b)(6) of this section so its value is not included in calculating the numerator under paragraph (b)(9)(i)(C)(1)(i) of this section.

(v) PRS holds a 20% capital and profits interest in PRS2 and has a holding period of 4 years in its interest. Under paragraph (b)(9)(i)(C)(2) of this section, PRS's share of the fair market value of the assets held by PRS2 for three years or less is included in the GP's calculation of the amount under paragraph (b)(9)(i)(C)(1)(i) of this section. Asset S has a holding period of 2 years and a value of \$8,000. PRS's share of the \$8,000 is \$1,600 ($\$8,000 \times 20\% = \$1,600$). Asset T has a holding period of more than 3 years and is not

included in the amount determined under paragraph (b)(9)(i)(C)(1)(i) of this section. The amount included in the calculation under paragraph (b)(9)(i)(C)(2) of this section with respect to the interest PRS holds in PRS2 is \$1,600, PRS' share of the fair market value of Asset S.

(4) *Fraction.* Because \$3,200 (the amount calculated under paragraph (b)(9)(i)(C)(1)(i) of this section) divided by \$4,000, expressed as a percentage, is equal to 80%, the Lookthrough Rule applies.

(C) *Effect of application of the Lookthrough Rule*—(1) *In general.* The API Holder is GP, which is a Passthrough Entity and not an Owner Taxpayer. Thus, the application of the Lookthrough Rule affects the calculation of the API One Year Distributive Share Amount and API Three Year Distributive Share Amounts of GP's API Holders.

(2) *Calculation of the API One Year Distributive Share Amount.* All of GP's gain is API Gain and GP must include the entire \$480 of GP's long-term capital gain in the API One Year Distributive Share Amount of its API Holders. For A, this amount is \$120.

(3) *Calculation of the adjustment to the API Three Year Distributive Share Amount*—(i) *Adjustment calculation.* To determine the amount by which the API Three Year Distributive Share Amount calculated under paragraph (a)(3)(ii)(B) of this section is reduced as a result of the application of the Lookthrough Rule, the adjustment described in paragraph (b)(9)(ii)(C) of this section must be determined. The adjustment is equal to the capital gain recognized on the disposition of the API in PRS by GP that is attributable to assets included in the numerator under paragraph (b)(9)(i)(C)(1)(i) of this section. This amount is calculated by multiplying the capital gain recognized on the sale by a fraction, expressed as a percentage. The numerator of the fraction is equal to total net capital gain that would be generated by the assets included in calculating the numerator under paragraph (b)(9)(i)(C)(1)(i) of this section if PRS disposed of the assets for fair market immediately before the disposition of the API. The denominator of the fraction is equal to the total net capital gain that would be attributable to the assets included in the denominator under paragraph (b)(9)(i)(C)(1)(ii) of this section if PRS disposed of all of its assets for fair market value immediately before the disposition of the API.

(ii) *Total net gain that would be recognized on a hypothetical sale of the assets included in the denominator under paragraph (b)(9)(i)(C)(1)(ii) of this*

section. The total amount of capital gain that would be recognized on a hypothetical disposition of the assets that were included in the denominator under paragraph (b)(9)(i)(C)(1)(ii) of this section is \$2,400 (\$0 gain on Asset X + \$600 gain on Asset Y + \$200 gain on Asset Z and \$1,600 gain on the interest in PRS2).

(iii) *Total net gain that would be recognized on a hypothetical sale of the assets included in the numerator under paragraph (b)(9)(i)(C)(1)(i) of this section.* The full fair market value of Asset Y and PRS's 20% share of the fair market value Asset S held by PRS2 were included in the amount determined under paragraph (b)(9)(C)(1)(i) of this section. Asset Y has been held for 2 years and would produce \$600 of gain if sold immediately before GP's disposition of its API in PRS. If Asset S were disposed of immediately before GP disposed of its interest in PRS, GP would be allocated gain of \$1,400 (\$8,000 fair market value less \$1,000 basis equals gain of \$7,000 and 20% of \$7,000 equals \$1,400). Accordingly, the amount of gain that would be recognized on the disposition of the assets included in paragraph (b)(9)(i)(C)(1)(i) of this section is \$2,000.

(iv) *Adjustment.* The amount of the adjustment is calculated by multiplying \$480, the amount of gain recognized on the disposition of the API by a fraction, expressed as a percentage. The numerator of the fraction is \$2,000, the amount of gain attributable to assets included in the computation under paragraph (b)(9)(i)(C)(1)(i) of this section. The denominator of the fraction is equal to \$2,400, the amount of gain that would be recognized on the hypothetical sale of PRS's assets included in the denominator under paragraph (b)(9)(ii)(C)(1)(ii) of this section. The fraction is equal to \$2000 divided by \$2,400, expressed as a percentage, or 83.3 percent. The capital gain recognized by GP on the sale, \$480 is multiplied by 83.3 percent to arrive at the gain attributable to the assets included in paragraph (b)(9)(i)(C)(1)(i) of this section or \$399.84. A's share of the gain is \$99.96. To compute A's API Three Year Distributive Share Amount, A's API Three Year Distributive Share amount calculated under paragraph (a)(3)(ii) of this section is reduced by \$99.96 as a result of the application of the Lookthrough Rule.

(iv) *Example 4. Installment sale gain.* On December 22, 2017, A disposed of A's API in an installment sale. At the time of the disposition, A had held its API for two years. A received a payment with respect to the installment sale during A's 2018 taxable year causing A

to recognize \$200 of long-term capital gain. The \$200 long-term capital gain recognized in 2018 is subject to section 1061 because it is recognized after December 31, 2017. Accordingly, the \$200 of long-term capital gain recognized by A in 2018 is included in A's API One Year Disposition Amount. The \$200 of long-term capital gain is not in A's API Three Year Disposition Amount because the API was not held for more than three years at the time of its disposition.

(v) *Example 5. Partnership Transition Amounts and API Holder Transition Amounts—(A) Facts.* A and B formed GP on January 1, 2012, by contributing \$150 each. GP contributed the \$300 to PRS. GP has a calendar taxable year. GP's capital contribution to PRS is equal to 10% of the aggregate capital account balance of GP which is \$3,000. In 2012, PRS also issued GP an API in PRS. Under the terms of the partnership agreement, GP is allocated 20% of all net capital gain or loss earned by PRS with respect to its API. GP also earns a pro rata allocation of the remaining 80% of net capital gain or loss. In 2012, PRS acquired Asset X and Asset Y for \$1,500 each. Following a revaluation event, PRS increased the capital accounts of A and B to reflect a revaluation of the partnership property as of that date under § 1.704-1(b)(2)(iv)(f). As of January 1, 2018, PRS continued to hold Asset X and Asset Y. PRS also purchases Asset U for \$1,000 on December 31, 2019. GP's capital account balance continues to equal 10% of the aggregate capital account balance of PRS. As of the due date of PRS's federal income tax return for the 2021 taxable year, the first year PRS treats amounts as Partnership Transition Amounts, PRS elected to treat the long-term capital gain or loss recognized on the disposition of all of PRS's assets held for more than three years as of January 1, 2018, as Partnership Transition Amounts. PRS identified Asset X and Asset Y as assets held for more than three years as of January 1, 2018, and subject to the election. PRS retained sufficient records to demonstrate that Asset X and Asset Y had been held for more than three years as of January 1, 2018.

(B) *Calculation of Partnership Transition Amounts.* On December 31, 2021, when its holding period in Asset U was two years, PRS disposed of Asset U for a gain of \$2,000. PRS also disposed of Asset X for a gain of \$2,000 and Asset Y for a gain of \$3,000 on the same date. PRS did not dispose of any other assets during the calendar year. Thus, PRS recognized a total of \$7,000 of net long-term capital gain from the

sale of Asset U, Asset X, and Asset Y (\$2,000 + \$2,000 + \$3,000). Because Asset X and Asset Y are assets identified by PRS as having been held for three years as of January 1, 2018, the long-term gain from the disposition of these assets is treated as a Partnership Transition Amount by PRS pursuant to its election. Based on its API, GP is entitled to 20% of the total net long-term capital gain of \$7,000, or \$1,400. The remainder of the gain, \$5,600, is split between the partners according to their partnership interests. GP is entitled to 10% of the \$5,600. GP's distributive share of long-term capital gain for 2019 from PRS is \$1,960 ((20% × \$7,000) + (10% × \$5,600)). Of this amount, \$1,400 is attributable to gain from Asset X ((20% × \$2,000) + (10% × \$1,600)) and Asset Y ((20% × \$3,000) + (10% × \$2,400)), and is treated as an API Holder Transition Amount as to GP. After the \$1,960 allocated to GP is reduced by the \$1,400, \$560 of the original distributive share of long-term capital gain to GP remains. Of this amount, \$160 is a Capital Interest Allocation from PRS to GP with respect to the capital account GP holds in PRS. This amount is also subtracted from the amount of the original distributive share, leaving a \$400 API One Year Distributive Share Amount for the taxable year. Because PRS has only held Asset U for two years, the API Three Year Distributive Share Amount for the taxable year is 0. GP, in allocating the API Holder Transition Amounts allocated to GP by PRS to A and B, must allocate those amounts to A and B consistently with the partnership agreement in effect for GP as of March 15, 2018, for the year ending December 31, 2017. Because A and B have always been 50% partners, 50% of the API Holder Transition Amount allocated to GP by PRS can be allocated by GP to each A and B.

(vi) *Example 6. REIT capital gain dividend.* During the taxable year, A holds an API in PRS. PRS holds an interest in REIT. During the taxable year, REIT designates a \$1,000 capital gain dividend to PRS of which 50% is allocable to A's API. Part of the capital gain dividend for the year results from section 1231 gain. In accordance with § 1.1061-6(c)(1)(i), REIT discloses to PRS the One Year Amounts Disclosure of \$400 which is the \$1000 capital gain dividend reduced by the \$600 of section 1231 capital gain dividend included in that amount. Part of the One Year Amounts Disclosure for the year results from gain from property held for less than three years. In accordance with § 1.1061-6(c)(1)(ii), REIT also discloses

the Three Year Amounts Disclosure of \$150, which is the \$400 One Year Amounts Disclosure reduced by the \$250 of gain attributable to property held for less than three years. PRS includes a \$200 gain in determining A's API One Year Distributive Share Amount and a \$75 gain in determining A's API Three Year Distributive Share Amount. See paragraph (b)(4)(i) and (ii) of this section.

(d) *Applicability date.* The provisions of this section apply to taxable years of Owner Taxpayers and Passthrough Entities beginning on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

§ 1.1061-5 Section 1061(d) transfers to related persons.

(a) *In general.* If an Owner Taxpayer transfers any API, or any Distributed API Property, directly or indirectly, or if a Passthrough Entity in which an Owner Taxpayer holds an interest, directly or indirectly, transfers an API to a Section 1061(d) Related Person, as defined in paragraph (e) of this section, regardless of whether gain is otherwise recognized on the transfer under the Internal Revenue Code, the Owner Taxpayer shall include in gross income as short-term capital gain, the excess (if any) of—

(1) The Owner Taxpayer's net long-term capital gain with respect to such interest for such taxable year determined as provided in paragraph (c) of this section, over

(2) Any amount treated as short-term capital gain under § 1.1061-4 with respect to the transfer of such interest (that is, any amount included in the Owner Taxpayer's API One Year Disposition Gain Amount and not in the Owner Taxpayer's Three Year Disposition Gain Amount with respect to the transferred interest).

(b) *Transfer.* For purposes of section 1061(d), the term transfer includes, but is not limited to, contributions, distributions, sales and exchanges, and gifts.

(c) *Application of paragraph (a) of this section—(1) Determination of amounts included in paragraph (a)(1) of this section.—(A) In general.* An Owner Taxpayer's net long-term capital gain with respect to a transferred API for the taxable year for the purpose of paragraph (a)(1) of this section is the amount of net long-term capital gain from assets held for three years or less (including any remedial allocations under § 1.704-3(d)) that would have been allocated to the partner (to the extent attributable to the transferred API) if the partnership had sold all of its property in a fully taxable transaction

for cash in an amount equal to the fair market value of such property (taking into account section 7701(g)) immediately prior to the partner's transfer of the API. If the amount calculated pursuant to this paragraph (c) is negative or zero, then the amount calculated under paragraph (a) of this section shall be zero, and section 1061(d) shall not apply. If only a portion of a partnership interest is so transferred, then only the portion of gain attributable to the transferred interest shall be included in gross income.

(B) *Tiered entities.* If the Owner Taxpayer transfers an Indirect API and is subject to this section, the computation described in paragraph (c)(1) of this section must be applied at the level of any lower-tier Passthrough Entities.

(2) *Application to an otherwise taxable transfer.* In the case of a transfer that is otherwise a taxable event, paragraph (a) of this section characterizes the capital gain recognized on the transfer as short-term capital gain to the extent that the gain is required to be included in gross income as short-term capital gain under paragraph (a) of this section. If the amount of capital gain otherwise recognized on the transfer is less than the amount that is required to be included under paragraph (a) of this section, the Owner Taxpayer must include in gross income the difference between the amount of gain otherwise recognized and the gain required to be included under paragraph (a) of this section as short term capital gain.

(d) *Basis of transferred interest increased by additional gain recognized.* If the basis of a transferred API or, in the case of a transfer of an Indirect API, the basis of a transferred Passthrough Interest in the transferee's hands is determined, in whole or in part, by reference to the basis of the transferred API or Passthrough Interest in the transferor's hands before application of this section, and capital gain is required to be recognized because of the application of this section, then, immediately before the transfer, the basis of the API or Passthrough Interest shall (before any increase permitted under section 1015(d), if applicable) be increased by the capital gain the transferor included in gross income solely by reason of this section.

(e) *Section 1061(d) Related Person—(1) In general.* For purposes of this section, the term Section 1061(d) Related Person means—

(i) A person that is a member of the taxpayer's family within the meaning of section 318(a)(1);

(ii) A person that performed a service within the current calendar year or the preceding three calendar years in a Relevant ATB to the API transferred by taxpayer; or

(iii) A Passthrough Entity to the extent that a person described in paragraph (e)(1)(i) or (ii) of this section owns an interest, directly or indirectly.

(2) *Exception.* A contribution under section 721(a) to a partnership is not a transfer to a Section 1061(d) Related Person under this paragraph (e) because, as provided in § 1.1061-2(a)(1)(ii)(B), for purposes of section 1061 the principles of section 704(c) and §§ 1.704-1(b)(2)(iv)(f) and 1.704-3(a)(9) apply to allocate all applicable Unrealized API Gains and Losses subject to section 1061(a) at the time of transfer to the API Holder contributing the interest.

(f) *Examples.* The following examples illustrate the rules of this section.

(1) *Example 1. Transfer to child by gift.* A, an individual, performs services in an ATB and has held an API in connection with those services for 10 years. The API has a fair market value of \$1,000 and a tax basis of \$0. A transfers all of the API to A's daughter as a gift. A's daughter is a Section 1061(d) Related Person. Immediately before the gift, if the partnership that issued the API had sold all of its assets for fair market value, A would have been allocated \$700 of net long-term capital gain from assets held by the partnership for three years or less. Therefore, the amount described in (a)(1) of this section is \$700. A did not recognize any gain on the transfer for federal income tax purposes before application of this section, which means that the amount described in (a)(2) of this section is \$0. A includes the difference between the amounts described in (a)(1) and (a)(2) of this section, or \$700 and \$0, in gross income as short-term capital gain. A includes \$700 in gross income as short-term capital gain. A's daughter increases her basis in the API by the \$700 of gain recognized by A on the transfer under paragraph (d) of this section.

(2) *Example 2. Taxable transfer to child for fair market value.* The facts are the same as in *Example 1*, except that A sells the API to A's daughter for \$1,000, the API's fair market value and recognizes \$1,000 of capital gain. A's API One Year Disposition Amount and API Three Year Disposition Amount are both \$1,000. Therefore, the amount described in (a)(2) of this section is \$0. The amount described in (a)(1) is \$700. The difference between the amount described in (a)(1) of this section (\$700) and the amount described in (a)(2) of this section (\$0) is \$700. Because A

recognized gain greater than the amount required under paragraph (a) of this section, there is no gain to accelerate and up to \$700 of A's long-term capital gain will be recharacterized as short-term gain. Three hundred dollars of A's gain is not recharacterized under section 1061(d). The balance of \$700 of long-term capital gain is entirely recharacterized as short-term capital gain. Accordingly, A includes \$300 of gain in gross income as long-term capital gain and \$700 as short-term capital gain. Because A's daughter does not determine her basis in the API by reference to A's basis, paragraph (d) of this section does not apply.

(3) *Example 3. Contribution of an API to a Passthrough Entity owned by Section 1061(d) Related Persons*—(i) *Facts.* A, B, and C are equal partners in GP. GP holds only one asset, an API in PRS1 which is an indirect API as to each A, B, and C. A, B, and C each provide services in the ATB in connection with which GP was transferred its API in PRS1. A and B contribute their interests in GP to PRS2 in exchange for interests in PRS2. Under the terms of the partnership agreement of PRS2, all Unrealized API Gain or Loss allocable to A and B in the property held by GP and PRS1 as of the date of the contribution by A and B when recognized will continue to be allocated to each A and B by PRS2. As provided in § 1.1061-2(a)(1)(ii)(B), as a result of the contribution by A and B of their interests in GP to PRS2, PRS1 and GP must revalue their assets under the principles of § 1.704-1(b)(2)(iv)(f).

(ii) *Application of section 1061(d).* The contribution by A and B of their interest in GP to PRS2 is a potential transfer to a Section 1061(d) Related Person as to both A and B under paragraph (e)(1)(iii) of this section to the extent that the other is an owner of PRS2. However, because paragraph (e)(2) of this section provides that a contribution under section 721(a) to a partnership is not a transfer to a Section 1061(d) Related Person for purposes of this section, section 1061(d) does not apply to A and B's contribution.

(g) *Applicability date.* The provisions of this section apply to taxable years of Owner Taxpayers and Passthrough Entities beginning on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

§ 1.1061-6 Reporting rules.

(a) *Owner Taxpayer Filing Requirements*—(1) *In general.* An Owner Taxpayer must file such information with the IRS as the Commissioner may require in forms, instructions, or other guidance as is necessary for the

Commissioner to determine that the Owner Taxpayer has properly complied with section 1061 and §§ 1.1061-1 through 1.1061-6.

(2) *Failure to obtain information.* Paragraph (b)(1) of this section requires Passthrough Entities to furnish an Owner Taxpayer with certain amounts necessary to determine its Recharacterization Amount and meet its reporting requirements under paragraph (a)(1) of this section. To the extent that an Owner Taxpayer is not furnished the information required to be furnished under paragraph (b)(1) of this section in such time and in such manner as required by the Commissioner and the Owner Taxpayer is not otherwise able to substantiate all or a part of these amounts to the satisfaction of the Secretary of the Treasury or his delegate (Secretary), then—

(i) With respect to the determination of the API One Year Distributive Share Amount under § 1.1061-4(a)(3)(i) if not furnished, the amount calculated under § 1.1061-4(a)(3)(i)(B) does not include—

(A) Amounts excluded from section 1061 under § 1.1061-4(b)(6);

(B) API Holder Transition Amounts; and

(C) Capital Interest Gains and Losses as determined under § 1.1061-3(c)(2).

(ii) With respect to the determination of the API Three Year Distributive Share Amount determined under § 1.1061-4(a)(3)(ii) if not furnished, items included in the API One Year Distributive Share amount are treated as items that would not be treated as long-term capital gain or loss, if three years is substituted for one year in paragraphs (3) and (4) of section 1222.

(b) *Passthrough Entity Filing Requirements and Reporting*—(1) *Requirement to file information with the IRS and to furnish information to API Holder.* A Passthrough Entity must file such information with the IRS as the Commissioner may require in forms, instructions, or other guidance as is necessary for the Commissioner to determine that it and its partners have complied with the section 1061 and §§ 1.1061-1 through 1.1061-6. A Passthrough Entity that has issued an API must furnish to the API Holder, including an Owner Taxpayer, such information at such time and in such manner as the Commissioner may require in forms, instructions or other guidance as is necessary to determine the One Year Gain Amount and the Three Year Gain Amount with respect to an Owner Taxpayer that directly or indirectly holds the API. A Passthrough Entity that has furnished information to the API Holder must file such information with the IRS, at such time

and in such manner as the Commissioner may require in forms, instructions or other guidance. This information includes:

(i) The API One Year Distributive Share Amount and the API Three Year Distributive Share Amount (as determined under § 1.1061-4);

(ii) Capital gains and losses allocated to the API Holder that are excluded from section 1061 under § 1.1061-4(b)(6);

(iii) Capital Interest Gains and Losses allocated to the API Holder (as determined under § 1.1061-3(c));

(iv) API Holder Transition Amounts (as determined under § 1.1061-4(b)(7)); and

(v) In the case of a disposition by an API Holder of an interest in the Passthrough Entity during the taxable year, any information required by the API Holder to properly take the disposition into account under section 1061, including information to apply the Lookthrough Rule and to determine its Capital Interest Disposition Amount.

(2) *Requirement to request, furnish, and file information in tiered structures*—(i) *Requirement to request information.* If Passthrough Entity requires information to meet its reporting and filing requirements under this § 1.1061-6 (in addition to any information required to be furnished to the Passthrough Entity under paragraph (b)(1) of this section) from a lower tier entity in which it holds an interest, the Passthrough Entity must request such information from that entity.

(ii) *Requirement to furnish and file information.* If information is requested of a Passthrough Entity under paragraph (b)(2)(i) of this section, the Passthrough Entity must furnish the requested information to the person making the request. If the person requesting the information is an API Holder in the Passthrough Entity, the information is furnished under paragraph (b)(1) of this section. If the Passthrough Entity requesting the information is not an API Holder, the Passthrough Entity must furnish the information to the requesting Passthrough Entity as required by the Commissioner in forms, instructions, or other guidance. Additionally, the Passthrough Entity must file the requested information with the IRS as the Commissioner may require in forms, instructions, or other guidance.

(iii) *Timing of requesting and furnishing information*—(A) *Requesting information.* A Passthrough Entity described in paragraph (b)(2)(i) of this section must request information under paragraph (b)(2)(i) of this section by the later of the 30th day after the close of

the taxable year to which the information request relates or 14 days after the date of a request for information from an upper tier Passthrough Entity.

(B) *Furnishing information*—(1) *In general.* Except as provided in paragraph (b)(2)(iii)(B)(2) of this section, requested information must be furnished by the date on which the entity is required to furnish information under section 6031(b) or under section 6037(b), as applicable.

(2) *Late requests.* Information with respect to a taxable year that is requested by an upper tier Passthrough Entity after the date that is 14 days prior to the due date for a lower tier Passthrough Entity to furnish and file information under section 6031(b) or section 6037(b), as applicable, must be furnished and filed in the time and manner prescribed by forms, instructions and other guidance.

(iv) *Manner of requesting information.* Information may be requested electronically or in any manner that is agreed to by the parties.

(v) *Recordkeeping Requirement.* Any Passthrough Entity receiving a request for information must retain a copy of the request and the date received in its books and records.

(vi) *Passthrough Entity is not Furnished Information to meet its Reporting Obligations under paragraph (b)(1) of this section.* If an upper-tier Passthrough Entity holds an interest in a lower-tier Passthrough Entity and it is not furnished the information described in paragraph (b)(1) of this section, or, alternatively, if it has not been furnished information after having properly requested the information under this paragraph (b)(2), the upper-tier Passthrough Entity must take actions to otherwise determine and substantiate the missing information. To the extent that the upper-tier Passthrough Entity is not able to otherwise substantiate and determine the missing information to the satisfaction of the Secretary, the upper-tier Passthrough Entity must treat these amounts as provided under paragraph (a)(2) of this section. The upper-tier Passthrough Entity must provide notice to the API Holder and the IRS regarding the application of this paragraph (b)(2) to the information being reported as required in forms, instructions, and other guidance.

(vii) *Penalties.* In addition to the requirement to section 1061(e), the information required to be furnished under this paragraph (b) is also required to be furnished under sections 6031(b) and 6037(b), and failure to report as required under this paragraph (b) will

be subject to penalties under section 6722.

(c) *Regulated investment company (RIC) and real estate investment trust (REIT) reporting*—(1) *Section 1061 disclosures.* A RIC or REIT that reports or designates a dividend, or part thereof, as a capital gain dividend, may, in addition to the information otherwise required to be furnished to a shareholder, disclose two amounts for purposes of section 1061—

(i) *One Year Amounts Disclosure.* The *One Year Amounts Disclosure* of a RIC or REIT is a disclosure by the RIC or REIT of an amount that is attributable to a computation of the RIC's or REIT's net capital gain excluding capital gain and capital loss not taken into account for purposes of section 1061 under § 1.1061-4(b)(6). The aggregate amounts provided in the One Year Amounts Disclosures with respect to a taxable year of a RIC or REIT must equal the lesser of the RIC's or REIT's net capital gain, excluding any capital gains and capital losses not taken into account for purposes of section 1061 under § 1.1061-4(b)(6), for the taxable year or the RIC's or REIT's aggregate capital gain dividends for the taxable year.

(ii) *Three Year Amounts Disclosure.* The *Three Year Amounts Disclosure* of a RIC or REIT is a disclosure by the RIC or REIT of an amount that is attributable to a computation of the RIC's or REIT's One Year Amounts Disclosure substituting “three years” for “one year” in applying section 1222. The aggregate amounts provided in the Three Year Amounts Disclosures with respect to a taxable year of a RIC or REIT must equal the lesser of the aggregate amounts provided in the RIC's or REIT's One Year Amounts Disclosures substituting “three years” for “one year” in applying section 1222 for the taxable year or the RIC's or REIT's aggregate capital gain dividends for the taxable year.

(2) *Pro rata disclosures.* The One Year Amounts Disclosure and Three Year Amounts Disclosure made to each shareholder of a RIC or REIT must be proportionate to the share of capital gain dividends reported or designated to that shareholder for the taxable year.

(3) *Report to shareholders.* A RIC or REIT that provides the section 1061 disclosures described in paragraphs (c)(1)(i) and (ii) of this section must provide those section 1061 disclosures in writing to its shareholders with the statement described in section 852(b)(3)(C)(i) or the notice described in section 857(b)(3)(B) in which the capital gain dividend is reported or designated.

(d) *Qualified electing fund (QEF) reporting.* A passive foreign investment company with respect to which the

shareholder has a QEF election (as described in section 1295(a)) in effect for the taxable year that determines net capital gain as provided in § 1.1293-1(a)(2)(A) may provide additional information to its shareholders to enable API Holders to determine the amount of their inclusion under section 1293(a)(1) that would be included in the API One Year Distributive Share Amounts and API Three Year Distributive Share Amounts. If such information is not provided, an API Holder must include all amounts of long-term capital gain from the QEF in its API One Year Distributive Share Amounts and no amounts in its API Three Year Distributive Share Amount. An API Holder who receives the additional information described in this paragraph (d) must retain such information as required by § 1.1295-1(f)(2)(ii).

(e) *Applicability date.* The provisions of this section apply to taxable years of Owner Taxpayers and Passthrough Entities beginning on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

■ **Par. 5.** Section 1.1223-3 is amended by:

- 1. Redesignating paragraph (b)(5) as paragraph (b)(6);
- 2. Adding new paragraph (b)(5);
- 3. Designating Example 1 through Example 8 of paragraph (f) as paragraphs (f)(1) through (f)(8);
- 4. Adding paragraphs (f)(9) and (10); and
- 5. Adding a sentence at the end of paragraph (g).

The additions read as follows:

§ 1.1223-3 Partners relating to the holding periods of partnership interests.

* * * * *

(b) * * *

(5) *Divided holding period if partnership interest comprises in whole or in part one or more profits interests*—(i) *In general.* If a partnership interest is comprised in whole or in part of one or more profits interests (as defined in paragraph (b)(5)(ii) of this section), then, for purposes of applying paragraph (b)(1) of this section, the portion of the holding period to which a profits interest relates is determined based on the fair market value of the profits interest upon the disposition of all, or part, of the interest (and not at the time that the profits interest is acquired). Paragraph (b)(1) of this section continues to apply to the extent that a partner acquires portions of a partnership interest that are not comprised of a profits interest and the value of the profits interest is not included for purposes of determining

the value of the entire partnership interest under that paragraph.

(ii) *Definition of profits interest.* For purposes of this paragraph (b)(5), a profits interest is a partnership interest other than a capital interest. A capital interest is an interest that would give the holder a share of the proceeds if the partnership's assets were sold at fair market value at the time the interest was received and then the proceeds were distributed in a complete liquidation of the partnership. A profits interest, for purposes of this paragraph (b)(5), is received in connection with the performance of services to or for the benefit of a partnership in a partner capacity or in anticipation of being a partner, and the receipt of the interest is not treated as a taxable event for the partner or the partnership under applicable federal income tax guidance.

* * * * *

(f) * * *

(9) *Example 9.* On June 1, 2020, GP contributes \$10,000 to PRS for a

partnership interest in PRS. On June 30, 2023, GP received a 20% interest in the profits of PRS that is an applicable partnership interest (API), as defined in § 1.1061-1, in PRS. On June 30, 2025, GP sells its interest in PRS for \$30,000. At the time of GP's sale of its interest, the API has a fair market value of \$15,000. GP has a divided holding period in its interest in PRS; 50% of the partnership interest has a holding period beginning on June 1, 2020, and 50% has a holding period that begins on June 30, 2023.

(10) *Example 10.* Assume the same facts as in Example 9, except that on June 30, 2024, GP contributes an additional \$5,000 cash to GP prior to GP's sale of its interest in 2025. Immediately after the contribution of the \$5,000 on June 23, 2024, GP's interest in PRS has a value of \$15,000, not taking into account the value of GP's profits interest in PRS. GP calculates its holding period in the portions not comprised by the profits interest and

two-thirds of its holding period runs from June 30, 2020, and one-third runs from June 30, 2024. On June 30, 2025, GP sells its interest for \$30,000 and the API has a fair market value of \$15,000. Accordingly, on the date of disposition, one-third of GP's interest has a five year holding period from its interest received in 2020 for its \$10,000 contribution, one-half of GP's interest has a two year holding period from the profits interest issued on June 30, 2023, and one-sixth of GP's interest has a one year holding period from the contribution of the \$5,000.

(g) * * * Paragraph (b)(5), (f)(9), and (f)(10) of this section apply to taxable years beginning on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

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Part IV

Department of Education

34 CFR Parts 600, 674 et al.

Federal Perkins Loan Program, Federal Work-Study Programs, Federal Supplemental Educational Opportunity Grant Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, National Direct Student Loan Program, Teacher Education Assistance for College and Higher Education Grant Program, Federal Pell Grant Program, Leveraging Educational Assistance Partnership Program, and Gaining Early Awareness and Readiness for Undergraduate Programs; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 600, 674, 675, 676, 682, 685, 686, 690, 692, and 694

[Docket ID ED-2019-OPE-0081]

RIN 1840-AD40, 1840-AD44

Federal Perkins Loan Program, Federal Work-Study Programs, Federal Supplemental Educational Opportunity Grant Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, National Direct Student Loan Program, Teacher Education Assistance for College and Higher Education Grant Program, Federal Pell Grant Program, Leveraging Educational Assistance Partnership Program, and Gaining Early Awareness and Readiness for Undergraduate Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: In response to the United States Supreme Court decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer* (Trinity Lutheran), and the United States Attorney General's October 7, 2017 Memorandum on Federal Law Protections for Religious Liberty pursuant to Executive Order No. 13798 (Attorney General's memorandum), the Department of Education (Department or we) amends the current regulations regarding the eligibility of faith-based entities to participate in the Federal Student Aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), and the eligibility of students to obtain certain benefits under those programs. The Department also amends the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program regulations to minimize the number of TEACH Grants that are converted to Federal Direct Unsubsidized Loans, and to update, strengthen, and clarify other areas of the TEACH Grant Program regulations.

DATES:

Effective date: These regulations are effective July 1, 2021.

Implementation date: For the implementation dates of the included regulatory provisions, see the *Implementation Date of These Regulations* section of this document.

FOR FURTHER INFORMATION CONTACT: For information about the provisions of this regulation, contact Sophia McArdle at (202) 453-6318 or by email at Sophia.McArdle@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:**Executive Summary**

Purpose of This Regulatory Action: Through this regulatory action, the Department responds to the United States Supreme Court decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer* (Trinity Lutheran), 137 S. Ct. 2012 (2017), and the United States Attorney General's October 7, 2017 Memorandum on Federal Law Protections for Religious Liberty pursuant to Executive Order No. 13798 (Attorney General's memorandum)¹ in order to ensure that members of religious orders are not denied access to title IV funding or benefits under the title IV programs. The Department also amends the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program regulations to minimize the number of TEACH Grants that are converted to Federal Direct Unsubsidized Loans, and to update, strengthen, and clarify other areas of the TEACH Grant Program regulations. A more detailed summary can be found in the *Summary of the Major Provisions of This Regulatory Action* section.

Summary of the Major Provisions of This Regulatory Action:

To restore religious liberty to faith-based institutions and religious students, these regulations—

- Restore the ability of members of religious orders, who also are pursuing courses of study at institutions of higher education, to participate in the title IV programs by eliminating regulatory provisions that treat members of religious orders as having no financial need in certain circumstances.
- Allow certain borrowers, who serve as full-time volunteers in tax-exempt organizations and give religious instruction, conduct worship service, proselytize, or fundraise to support religious activities as part of their official duties, to defer repayment of Federal Perkins Loans, National Direct Student Loans (NDSLs), and Federal Family Education Loan Program (FFEL) loans.
- Provide an interpretation of the PSLF regulations that permits borrowers who work for employers that engage in

religious instruction, worship services, or proselytizing to qualify for PSLF.

- Clarify requirements for private secondary and postsecondary faith-based institutions' participation in the GEAR UP program.
 - Conform language in the Leveraging Educational Assistance Partnership Program (LEAP) and Federal Work-Study Programs (FWSP) regulations regarding allowable program activities to statutory language.
- For the TEACH Grant Program, the regulations—
- Clarify that grant recipients may satisfy the TEACH Grant service obligation by teaching for an educational service agency that serves low-income students.
 - Clarify the beginning date of the eight-year period for completing the TEACH Grant service obligation.
 - Revise the definition of "highly qualified."
 - Update and expand the conditions under which a TEACH Grant recipient may satisfy the TEACH Grant service obligation by teaching in a high-need field listed in the Department's annual Teacher Shortage Area Nationwide Listing (Nationwide List) at <https://tsa.ed.gov>.
 - Clarify the service obligation requirements for TEACH Grant recipients who withdraw from the institution where they received a TEACH Grant before completing the program for which they received the grant, then later re-enroll in the same program or in a different TEACH Grant eligible program at the same academic level.
 - Provide that a TEACH Grant recipient may request reversal of a voluntary grant-to-loan conversion so that the recipient can complete the service obligation, as long as the service obligation is completed within eight years from when the grant recipient ceased enrollment at the institution where the recipient received the grant or, in the case of a student who received a TEACH Grant at one institution and subsequently transferred to another institution and enrolled in another TEACH Grant-eligible program, within eight years of ceasing enrollment at the other institution, excluding periods of suspension, which the recipient could apply for retroactively.
 - Expand the information that is provided to TEACH Grant recipients during initial, subsequent, and exit counseling, and add a new conversion counseling requirement for grant recipients whose TEACH Grants are converted to Direct Unsubsidized Loans.
 - Provide counseling requirements for TEACH Grant recipients who receive

¹ U.S. Att'y Gen. Memorandum on Federal Law Protections for Religious Liberty (Oct. 6, 2017) (hereinafter "Mem."), <https://www.justice.gov/opa/press-release/file/1001891/download>.

reversals of voluntary grant-to-loan conversions.

- Add new conditions under which a TEACH Grant recipient may receive a temporary suspension of the eight-year period for completing the service obligation and for grant recipients whose grants were converted to loans in error and who need additional time to complete the teaching service obligation once the error is corrected.

- Remove the current regulatory requirement for TEACH Grant recipients to certify, within 120 days of completing the program for which they received TEACH Grants, that they have begun qualifying teaching service, or that they have not yet begun teaching, but they intend to satisfy the service obligation.

- Simplify the regulations specifying the conditions under which TEACH Grants are converted to Direct Unsubsidized Loans so that for all grant recipients, loan conversion will occur only if the recipient asks the Secretary to convert his or her TEACH Grants to loans, or if the recipient fails to begin or maintain qualifying teaching service within a timeframe that would allow the recipient to satisfy the service obligation within the eight-year service obligation period.

- Specify that the Secretary will send grant recipients, at least annually, a notice containing detailed information about the TEACH Grant service obligation requirements, a summary of the grant recipient's progress toward satisfying the service obligation, and an explanation of the process by which a grant recipient whose TEACH Grants are converted to Direct Unsubsidized Loans may request reconsideration of the conversion if he or she believes that the grants were converted in error.

- Provide that grant recipients will be automatically provided with a "statement of error" when a grant that was incorrectly converted to a loan is later reconverted to a TEACH Grant.

- Describe the actions that the Secretary will take if a grant recipient's request for reconsideration of the conversion of the grant to a loan is approved or denied.

- Specify that the Secretary will notify a grant recipient in advance of the date by which he or she will be subject to loan conversion for failure to begin or maintain qualifying teaching service within a timeframe that would allow the recipient to complete the service obligation within the eight-year service obligation period, and inform the recipient of the final date by which he or she must provide documentation of teaching service to avoid having his or her grants converted to loans.

- Incorporate statutory changes and update, simplify, and clarify various areas of the TEACH Grant Program regulations.

Costs and Benefits

As discussed in the *Regulatory Impact Analysis* section of this notice, the Department estimates that these final regulations would not result in significant costs. Changes regarding faith-based institutions and religious students have minimal impacts on financial aid costs to the Federal government because these provisions affect relatively few students and borrowers. Changes regarding the PSLF program to comply with the Religious Freedom Restoration Act (RFRA) carry potential costs related to a relatively small increase in the population of eligible recipients. Changes regarding the GEAR UP program have no estimated costs as participation in the Department's competitive grant programs is voluntary, and the program currently serves a small number of religiously affiliated schools. While changes to the TEACH Grant Program improve the reporting and documentation process for recipients and increase the number of teaching positions in which TEACH Grant recipients could satisfy their service obligations, we do not believe that the changes would result in a significant increase in the number of grant recipients.

Implementation Date of These Regulations: Section 482(c) of the HEA requires that we publish regulations affecting programs under title IV of the HEA in final form by November 1, prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulations may choose to implement earlier and the conditions for early implementation.

The Secretary is exercising her authority under section 482(c) of the HEA to designate the regulatory changes to regulations at title 34, parts 600, 674, 675, 676, 682, 685, 686, 690, 692, and 694, of the Code of Federal Regulations included in this document for early implementation beginning on August 14, 2020, at the discretion of each institution, or each agency, as appropriate. The Department will implement the regulations as soon as possible after the implementation date and will publish a separate notice announcing the timing of the implementation. Otherwise, the final regulations included in this document are effective July 1, 2021.

Public Comment: In response to our invitation in the notice of proposed rulemaking (NPRM) published in the **Federal Register** on December 11, 2019 (84 FR 67778), we received 46 comments on the proposed regulations. We do not discuss comments or recommendations that are beyond the scope of this regulatory action or that would require statutory change. Generally, we do not address technical or other minor changes.

Analysis of Comments and Changes

We developed these regulations through negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. The negotiated rulemaking committee reached consensus on the proposed regulations that we published on December 11, 2019 (84 FR 6778). The Secretary requested comments on the proposed regulations by January 10, 2020, and 46 parties submitted comments. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address minor, non-substantive changes, recommended changes that the law does not authorize the Secretary to make, or comments pertaining to operational processes. We also do not address comments pertaining to issues that were not within the scope of the NPRM.

Faith-Based Entities

General Comments

Comments: Many commenters supported the proposed changes, because the proposed revisions better reflect the demands of the Free Exercise and Free Speech Clauses of the First Amendment to the United States Constitution and the current understanding of the Establishment Clause of the First Amendment. One commenter noted that even if *Trinity Lutheran* had not been decided and the Attorney General's memorandum had not been issued, the Department's proposed changes would be necessary to bring the Department's regulations into

compliance with four decades of Supreme Court jurisprudence, including *Widmar v. Vincent*,² *Rosenberger v. University of Virginia*,³ and *Witters v. Washington Department of Services for the Blind*.⁴ In particular, the commenter noted that the Free Exercise Clause prohibits the government from imposing “special disabilities” on individuals or institutions based on their religious views or status. The commenter also noted that RFRA prohibits the Federal government from substantially burdening a person’s religious exercise unless it can demonstrate a compelling interest unachievable by less restrictive means. Another commenter stated that the proposed regulations would provide relief to qualified student borrowers while maintaining critical safeguards to prevent Federal funds from being diverted to religious purposes.

Discussion: We appreciate the commenters’ support.

Changes: None.

Comments: Some commenters supported the faith-based provisions of the proposed regulations and encouraged the Department to early implement the new provisions.

Discussion: We agree that institutions should have the ability to early implement the faith-based provisions of the final regulations where possible, and that borrowers should similarly benefit from early implementation by the Department of regulatory changes that affect their ability to qualify for certain loan repayment benefits. Instructions regarding early implementation are discussed in the *Implementation Date of These Regulations* section of this preamble.

Changes: The Department provides instructions regarding early implementation in the *Implementation Date of These Regulations* section of this preamble.

Comments: Several commenters opposed the Department’s faith-based proposed regulations, arguing that the regulations misapply Supreme Court precedent. These commenters expressed concerns that the Department ignored relevant case law in the NPRM,

including *Mitchell v. Helms*⁵ and *Locke v. Davey*.⁶ Commenters also asserted that RFRA does not apply to the Department’s current regulations, since a borrower who desires to perform non-qualifying work should not receive public benefits.

Commenters opined that the current regulations are sufficient to protect citizens’ religious freedoms, and that the proposed regulations regarding title IV programs would subsidize religious activities. These commenters expressed concern that the Department’s proposed regulations would favor religious institutions over their secular counterparts and would therefore violate the Establishment Clause. Commenters pointed to the facts in *Locke v. Davey* and argued that the State in that case refused to extend government funding to Davey, not because of his religious status, but because of how he proposed to use the funding—to study theology. These commenters argued that, because the grantees and recipients at issue in the Department’s regulations are religious, they will use grants or deferments in a manner similar to Davey and will therefore violate the Establishment Clause. One commenter also pointed out that the Establishment Clause still prohibits the government from awarding funds for a religious purpose or with an effect of advancing religion.

Other commenters stated that *Trinity Lutheran* has no precedential value with respect to the Department’s regulations. They claimed that the Court in that decision limited its holding to discrimination based on religious identity *only* with respect to playground resurfacing. One commenter disapproved of the Department’s reliance on *Trinity Lutheran* to justify its changes but recognized that the Department’s changes would not require public funds to be used for religious purposes, and therefore expressed support for the changes. But that commenter stated that the Department did not need to cite *Trinity Lutheran* to support its final regulations.

Discussion: The Department agrees with commenters that it must not violate the Establishment Clause’s

prohibition on government advancement of religion. The Department agrees that Congress may bar the use of government funds for religious purposes consistent with the Supreme Court’s holding in *Locke v. Davey* if it wished to do so. We also agree that the Department may provide direct aid to religious institutions without having the effect of advancing religion as long as there is no governmental indoctrination, religion is not used to define recipients, and there is no excessive governmental entanglement with religion, consistent with *Mitchell v. Helms*.⁷

The Department does not agree, however, with those commenters who argued that the Establishment Clause requires the Department’s previous prohibitions in order to bar the use of government funds to advance religion or for religious purposes. Those commenters urged the Department to go beyond the requirements of the Establishment Clause. The Supreme Court has made it clear that a “policy preference” of “achieving greater separation of church and State than is already ensured under the Establishment Clause” is insufficient to justify excluding religious organizations from generally available benefits. *Trinity Lutheran*, 137 S. Ct. at 2024 (quoting *Widmar v. Vincent*, 454 U.S. 263, 276 (1981)). Indeed, there is substantial Supreme Court precedent supporting the proposition that the government must not discriminate against individuals or entities on the basis of their religious identity. *See, e.g., Trinity Lutheran*, 137 S. Ct. at 2019; *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 533, 542 (1993); *McDaniel v. Paty*, 435 U.S. 618, 626 (1978) (plurality opinion); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 16 (1947).

Some commenters also stated the Department’s changes to eligibility requirements for certain aid would have the effect of advancing religion. The Department’s aid will not advance religion, nor do the Department’s changes require aid to be used for religious purposes. In the final regulations, the Department is correcting prior rules that disfavored faith-based institutions and students—not, as some commenters worried, to favor them over their secular counterparts. The changes affecting faith-based institutions and individuals in the final regulations fall into two broad categories: First, the eligibility of faith-based entities to participate in Federal Student Aid programs under title IV of the HEA; and second, the

² 454 U.S. 263 (1981)(holding unconstitutional a university’s exclusion of religious groups from the use of school facilities made available to other student groups and holding that such use would not have the “primary effect” of advancing religion in violation of the Establishment Clause).

³ 515 U.S. 819 (1995) (finding that, to abide by the Establishment Clause, it was not necessary for a university to deny eligibility to a student publication seeking to print religious viewpoints).

⁴ 474 U.S. 481 (1986) (holding that the Establishment Clause permitted a State to extend assistance to a blind person who chose to study at a religious college to become a pastor, missionary, or youth director).

⁵ These commenters cited Justice O’Connor’s concurrence, in which she disagreed with “the plurality’s conclusion that actual diversion of government aid to religious indoctrination is consistent with the Establishment Clause” and explained “that we have long been concerned that secular government aid not be diverted to the advancement of religion.” 530 U.S. 793, 840 (2000) (O’Connor, J., concurring in the judgment).

⁶ 540 U.S. 712, (2004) (finding that preventing the use of public funds for devotional theology instruction does not violate the Free Exercise Clause).

⁷ 530 U.S. 793 at 808.

eligibility of students to obtain benefits under those programs. Accordingly, the final rules permit members of a religious order to receive aid under title IV programs, including the Federal Pell Grant Program, the Federal Perkins Loan Program, the FWSP, the Federal Supplemental Educational Opportunity Grant Program (FSEOG) Program, the FFEL Program, and the Direct Loan Program. Also, the rules allow private secondary and postsecondary faith-based educational institutions to participate in GEAR UP. The final regulations set religious individuals and entities on equal footing with their secular counterparts by allowing such individuals and entities to qualify for the same aid already available to nonreligious individuals and entities. Therefore, such treatment is correcting an inequality, not creating one.

Because of such inequality, the Department does not agree with the commenter who argued that RFRA is not implicated by the Department's current rules excluding religious individuals and entities from the ability to participate in generally available benefit programs. Congress has tasked the Department with the duty to ensure that the Department's actions, including its regulatory actions, do not substantially burden a person's exercise of religion (absent a compelling government interest and a showing that the burden is the least restrictive means of furthering that interest). 42 U.S.C. 2000bb, *et seq.* Because the current regulations discriminate against religious groups and deny individuals the ability to participate in important government programs on the basis of their religious status, the current regulations likely amount to a substantial burden on those entities' exercise of religion.

RFRA defines "religious exercise" as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. 2000bb-2(4) (citing 42 U.S.C. 2000cc-5). The current rules impose a "penalty" on these individuals' free exercise of religion, *Trinity Lutheran*, 137 S. Ct. at 2021—which they engage in by becoming members of religious orders, attending religious institutions, participating in or working at religious organizations, among other ways—by requiring them to "choose between their religious beliefs and receiving a government benefit." *Id.* at 2023 (quoting *Locke*, 540 U.S. at 720–21); see *Sherbert v. Verner*, 374 U.S. 398, 404 (1963) (finding a substantial burden where it was "apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion,"

forcing her "to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand"); see also 42 U.S.C. 2000bb(b)(1) ("The purposes of this chapter are—(1) to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened . . .").

And the Department's status-based restrictions are neither necessary to further a compelling government interest, nor are they the least restrictive means of furthering any such interest. Therefore, RFRA would require the Department to alleviate the substantial burden imposed by its regulations.

The Department also disagrees with one commenter's suggestion that RFRA does not apply at all; the statute binds the "Government" which includes the Department in its regulating capacity, 42 U.S.C. 2000bb-1(a), and further "applies to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993." 42 U.S.C. 2000bb-3(a).

The Department disagrees with commenters who claimed that the Department's current rules are sufficiently protective of religious freedom. The Supreme Court has upheld some religious-funding restrictions,⁸ but those decisions are in considerable tension with more recent Supreme Court cases that recognized that the First Amendment permits—and in some situations, requires—the government to provide religious organizations with access to government property under neutral and generally applicable rules. Additionally, the Supreme Court has repudiated the principle that the Establishment Clause bars government aid from flowing from religiously neutral government programs to religious institutions. See, e.g., *Mitchell v. Helms*, 530 U.S. at 835 (plurality opinion) (overruling *Wolman v. Walter*, 433 U.S. 229 (1977) and *Meek v. Pittenger*, 421 U.S. 349 (1975)); *id.* at 837 (O'Connor, J., concurring in the judgment) (same); *Agostini v. Felton*, 521 U.S. 203, 235 (overruling *Aguilar v. Felton*, 473 U.S. 402 (1985) and *School*

District of the City of Grand Rapids v. Ball, 473 U.S. 373 (1985)).

The Supreme Court has made it clear that the government should be "neutral in its relations with groups of religious believers and non-believers; [the Establishment Clause] does not require the state to be their adversary." *Everson v. Board of Education*, 330 U.S. 1, 18 (1947). And a law that burdens religious practice that is not neutral and not generally applicable "must undergo the most rigorous of scrutiny" under the Free Exercise Clause. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993).

In *Trinity Lutheran*, the Court reiterated that this nondiscrimination principle of the Free Exercise Clause applies to government benefits and funding. The Court in that case rejected the State's interest in "skating as far as possible from religious establishment concerns" as a basis for categorically excluding a religious organization from a generally available funding program. *Trinity Lutheran*, 137 S. Ct. at 2024. The Court applied "the most exacting scrutiny" to the government program, finding that it "expressly discriminate[d]" against an entity that would be otherwise eligible for the government grant but for that entity's religious character. *Id.*

That same basic defect is present in the Department's current regulations: But for the entities' and individuals' religious character, they would have qualified for government aid under title IV. For example, under current 34 CFR 674.9(c)(1), a student is prohibited from receiving a Federal Perkins Loan if that student was a "member of a religious order" that has as its primary objective "the promotion of ideals and beliefs regarding a Supreme Being" and which required its members to forego monetary support and receive subsistence support from the order. Because the restriction only applies to individuals based on an individual's members in a religious order, that restriction is based on the individual's religious status. The Department believes that otherwise-eligible students and institutions should not be denied participation in title IV programs based solely on their religious identities and, furthermore, that the Free Exercise Clause prohibits such status-based religious discrimination.

The Department considered commenters' concerns that its changes amount to government subsidies for religious activities. These commenters included discussions of *Locke v. Davey*, which the Supreme Court distinguished in *Trinity Lutheran* as a case in which the recipient was denied a scholarship not because of who he was, but because

⁸ See *Tilton v. Richardson*, 403 U.S. 672, 683 (1971), and *Committee for Public Education & Religious Liberty v. Nyquist*, 413 U.S. 756, 762 (1973).

of how he proposed to use the government funding—to prepare for ministry. See *Trinity Lutheran*, 137 S. Ct. at 2023. Under this analysis, the Court demonstrated that the constitutionality of an aid restriction depends on whether the restriction is predicated on the recipient's religious status (which is presumptively unconstitutional), or whether it is based upon how the Federal aid will be used (which is a permissible restriction under *Locke* but not required under the Free Exercise Clause). Thus, a state could disallow or allow federal aid to be used for religious instruction under *Locke*.

Some commenters argued that the current regulations fall within the latter category—that allowing religious individuals and entities to qualify for Federal aid would amount to promoting religion, because the recipients would use their aid to practice their religion. But those regulations deny eligibility based on a person's membership in a religious order (see, e.g., 34 CFR 674.9), or because a person chose to perform volunteer work for a religious organization providing services to the community (see, e.g., 34 CFR 674.35(c)(5)(iv)). These restrictions are on the basis of a person's or entity's religious identity; they are not use-based restrictions. Additionally, *Locke v. Davey* held that the government may refuse to use government funds for a degree in devotional theology; that decision does not require the government to refuse to do so. The Department's determination of how to use any leeway allowed under *Locke v. Davey* must be guided by policy and legal considerations, including the statutory mandate of RFRA.

The Supreme Court has long held that the government may furnish “general . . . benefits to all its citizens without regard to their religious belief.” *Everson*, 330 U.S. at 16. In cases following *Everson*, the Court consistently affirmed that an important factor in upholding Government aid programs against an Establishment Clause attack is those programs’ “neutrality towards religion.” *Good News Club v. Milford Central School*, 533 U.S. 98, 114 (2001) (quoting *Rosenberger*, 515 U.S. at 839). The Constitution is “respected, not offended,” when the Government employs neutral criteria and extends benefits to “recipients whose ideologies and viewpoints, including religious ones, are broad and diverse.” *Rosenberger*, 515 U.S. at 839 (emphasis added). In *Mitchell*, a plurality of justices endorsed the bright-line rule that neutral, generally available Government aid does not violate the Establishment Clause. See 530 U.S. at

809–14. Later, in *Zelman v. Simmons-Harris*, the Supreme Court held that a school voucher program did not need to exclude religious recipients to comply with the Establishment Clause. See *Zelman*, 536 U.S. 639, 653–60 (2002). The U.S. Department of Justice, Office of Legal Counsel has likewise held that, in some circumstances, the Government may provide aid to sectarian or religious entities.⁹ And finally, the Establishment Clause does not prohibit religious organizations from receiving Government benefits such as tax deductions and exemptions, which direct significant economic benefits to both religious and secular organizations, on an equal basis with secular organizations. See *Walz*, 397 U.S. at 674; *Zelman*, 536 U.S. at 665–68 (O'Connor, J., concurring) (discussing tax deductions and exemptions).

Commenters also argued that the Department errs in relying on *Trinity Lutheran*. They argued that, according to footnote 3 in the decision, *Trinity Lutheran* applies only to the narrow factual circumstance of a church-run school seeking to compete for a playground resurfacing grant.

But footnote 3 is not part of the majority opinion in *Trinity Lutheran*, because two of the six Justices in the majority opinion joined the opinion “except as to footnote 3.” *Trinity Lutheran*, 137 S. Ct. at 2016. In any event, footnote 3 does not limit the force of the Court's reasoning.

The Court has long held that “[w]hen an opinion issues for the Court, it is not only the result but also those portions of the opinion necessary to that result by which we are bound.” *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 67 (1996). And even broadly applicable principles discussed by the Supreme Court often lead to the creation of generally applicable legal rules. See Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Review 1175, 1175–81 (1989). Indeed, in explaining why he did not join footnote 3, Justice Gorsuch asserted that the court's cases are governed by general principles, rather than ad hoc improvisations.” *Trinity Lutheran*, 137 S. Ct. at 2023 (quoting *Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1, 25 (2004) (Gorsuch, J., concurring in part)). Here,

⁹ See *Authority of the Department of the Interior to Provide Historic Preservation Grants to Historic Religious Properties Such as the Old North Church*, 27 Op. O.L.C. 91, 114 (2003) (concluding that the Department of the Interior could provide historic preservation grants to renovate a still-active house of worship); *Authority of FEMA to Provide Disaster Assistance to Seattle Hebrew Academy*, 26 Op. O.L.C. 114, 129 (2002) (opining that FEMA could provide disaster relief funds for reconstruction after an earthquake to a Hebrew secondary school).

the majority opinion in *Trinity Lutheran* recognized that the Court had “repeatedly confirmed that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest of the highest order.” *Id.* at 2019 (majority op.). It confirmed that this principle applies to “the refusal to allow [a Church plaintiff]—solely because it is a church—to compete with secular organizations for a grant,” *id.* at 2022, and it rejected the argument that a “policy preference for skating as far as possible from religious establishment concerns” could justify such refusal, *id.* at 2024. This reasoning is persuasive and applicable here.

Changes: None.

Comments: One commenter raised concerns that the Department subjected constitutional principles to negotiated rulemaking inappropriately and that there were few stakeholders with expertise in church and State issues on the negotiated rulemaking committee.

Discussion: The HEA requires the Department to regulate all issues relating to title IV of the HEA through a negotiated rulemaking process. The Department followed the requirements of the HEA when negotiating these issues. To ensure adequate expertise on church and State issues, the Department created a subcommittee that met three times for a total of six days to discuss thoroughly the issues relating to church and State, including extensive discussion regarding the constitutional issues implicated by the proposed regulations. The subcommittee consisted of nine members, all of whom had extensive knowledge and experience with respect to church and State issues. Representatives of national organizations that have litigated both sides of these issues in Federal courts served on the subcommittee.

Subcommittee representatives presented their proposals and analysis to the full committee multiple times during the negotiated rulemaking. Both sides of issues, those for and against the Department's proposed amendments to the regulations, were presented to the full committee. Additionally, multiple members of the full committee worked for faith-based organizations or otherwise had experience working on church and State issues.

The Department agrees with the commenters that the work of the negotiated rulemaking committee cannot overrule the Constitutional opinions of the U.S. Supreme Court, including cases like *Trinity Lutheran*. As a result, the Department has tailored

the final rule to be consistent with those opinions, as further described herein.

Changes: None.

Student Eligibility (§ 674.9); Student Eligibility (§ 675.9); Student Eligibility (§ 676.9); Eligibility of Borrowers for Interest Benefits on Stafford and Consolidation Loans (§ 682.301); Borrower Eligibility (§ 685.200); Determination of Eligibility for Payment (§ 690.75)

Comments: The Department received comments on its proposal to remove provisions in §§ 674.9, 675.9, 676.9, 682.301(a)(2), 685.200, and 690.75 that specify that a member of a religious order is considered to have no financial need if the religious order has as its primary objective the promotion of ideals and beliefs regarding a supreme being, requires its members to forgo monetary or other support substantially beyond the support it provides, and directs the member to pursue the course of study or provides subsistence support to its members.

Some commenters agreed with the proposed removal, indicating that the current language violates the Free Exercise and the Free Speech Clauses. Specifically, commenters noted that religious observance, including vows of poverty and obedience, are protected by the First Amendment of the United States Constitution and should not be cited as a reason for exclusion from Federal student aid programs.

Other commenters opposed the proposed removal, because they believe that without the current regulatory language, the Department would be subsidizing inherently religious activities, such as religious education and proselytizing, in violation of the Establishment Clause. One commenter further indicated that the procedural history of the regulations indicates that the rationale for the current regulations is not based on belief but on real-world considerations of financial status of individuals in religious orders who may receive financial subsidies even if they do not have an income.

Discussion: The Department thanks commenters who supported the proposed change. The Department disagrees that the proposed regulations would cause the Department to subsidize inherently religious activities. The Department would merely be providing financial aid for otherwise eligible students to attend postsecondary education regardless of their membership in a religious order and without considering that order's primary objective. Financial aid funds would go to individual students who have demonstrated financial need to

attend postsecondary education and would not fund religious activities. An independent decision by a student aid recipient to participate in inherently religious activities does not create a government subsidy of those activities.

The formulas for determining financial need in U.S. Code Part F consider subsidies received by students from any entity, including religious and non-religious entities. The current regulatory language that specifies that members of religious orders are presumed not to have need singles out such members for differential treatment and is likely not narrowly tailored to address a compelling interest. Such a provision also unnecessary for determining financial need as the formulas are themselves sufficient.

Changes: None.

Deferment of Repayment—Federal Perkins Loans Made Before July 1, 1993; Deferment of Repayment—NDSLs Made on or After October 1, 1993

Comments: Many commenters supported proposed changes to §§ 674.35 and 674.36 that would remove language that denies deferment of repayment of certain Federal loans for borrowers working as volunteers if their volunteer duties include giving religious instruction, conducting worship services, proselytizing, or fundraising to support religious activities. Many commenters agreed with the Department that in some cases the provision of secular services is inextricably intertwined with inherently religious activities and that deferment provisions in the current regulations may violate the Free Exercise and Free Speech Clauses and RFRA. These commenters noted that the Federal government will not violate the Establishment Clause if it permits volunteers engaged in religious activities to defer loan repayment based on religiously neutral criteria. The commenters cited *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), *Mitchell v. Helms* 530 U.S. 793 (2000), and other Supreme Court cases in support of their position.

Other commenters opposed the removal of these provisions, indicating that allowing a borrower to be eligible for subsidies if the borrower works on inherently religious activities would be directly subsidizing individuals engaged in religious activities in violation of the Establishment Clause.

Discussion: The Department thanks the commenters for their support. The Department agrees with the commenters who argued that the Establishment Clause would not be violated by the removal of these provisions. The Department believes that removal of

these provisions is necessary to avoid violations of individuals' rights to freely exercise their religions and their free speech rights. These provisions do not violate the Establishment Clause because the Supreme Court has long held that the government may furnish general benefits to all its citizens without regard to their religious belief or their membership in a particular religious organization or sect. *See Everson*, 330 U.S. at 16 (holding that the State "cannot exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, because of their faith, or lack of it, from receiving the benefits of public welfare legislation."). In cases following *Everson*, the Court consistently affirmed that an important factor in upholding Government aid programs against an Establishment Clause attack is those programs' "neutrality towards religion." *Good News Club v. Milford Central School*, 533 U.S. 98, 114 (2001) (quoting *Rosenburger*, 515 U.S. at 839). The Constitution is "respected, not offended," when the Government employs neutral criteria and extends benefits to "recipients whose ideologies and viewpoints, including religious ones, are broad and diverse." *Rosenberger*, 515 U.S. at 839 (emphasis added). In *Mitchell*, a plurality of justices endorsed the bright-line rule that neutral, generally available government aid does not violate the Establishment Clause. *See* 530 U.S. at 809–14.

Under the current regulations, a borrower may be eligible for deferment if working as a full-time volunteer for a tax-exempt organization providing services to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions for at least one year. However, the regulation disqualifies that same borrower from deferment if he or she, as part of his or her duties, gives religious instruction, conducts worship services, engages in religious proselytizing, or engages in fundraising to support religious activities. The regulations thus disfavor borrowers participating in otherwise-eligible public services merely because that public service is performed from a religious perspective. For some borrowers, these restrictions may also impose a substantial burden on their free exercise of religion by forcing them to choose between such religious exercise and eligibility for loan deferments. No compelling government

interest warrants the imposition of such burdens. Ultimately, the eligibility requirements in these final regulations maintain the government's stance of neutrality towards religion by not disfavoring a particular type of public service.

The Supreme Court has noted the distinction, for Establishment Clause purposes, between direct provision of government aid to a religious programs and indirect government aid that flows to religious programs based on private choice in its Establishment Clause cases. For example, in *Zelman v. Simmons-Harris*, the Supreme Court held that a school voucher program did not need to exclude religious recipients to comply with the Establishment Clause where funding would only reach such recipients following the private choice of the individual using the voucher. See *Zelman*, 536 U.S. 639, 653–60 (2002). Likewise, in this case, the borrower receiving the benefit of loan deferment under the regulation makes a private choice between different volunteer options in the community and therefore does not create an Establishment Clause problem by choosing to volunteer with a religious entity performing religious tasks. As a result of the intervening private choice of the borrower, “no imprimatur of state approval can be deemed to have been conferred on any particular religion, or on religion generally” by the borrower’s receipt of a deferment for volunteer work. See *Zelman*, 536 U.S. at 650 (internal citations, quotation marks omitted).¹⁰

Changes: None.

Eligible Employers and General Conditions and Limitation on Employment (§ 675.20)

Comments: The Department received comments on proposed changes to § 675.20 that would replace language in the FWSP regulations with language from § 443(b)(1)(C) of the HEA to clarify that work performed under the FWSP may “not involve the construction, operation, or maintenance of so much of any facility as is used or is to be used for sectarian instruction or as a place for religious worship.” Several commenters stated that the statutory language is problematic but is clearer than the current regulatory language.

One commenter indicated that both the statute and the regulation fail to define “sectarian instruction.” That commenter wondered whether the term

includes only inherently religious instruction or whether it also includes efforts to integrate religious convictions into other subjects.

Several commenters indicated that the statutory language includes unjustified discrimination against religion, religious individuals, and religious activities in violation of the Free Exercise and Free Speech Clauses as well as RFRA. One commenter noted that the Department has the authority and an independent duty to obey the Constitution and RFRA regardless of the statutory language in the HEA.

One commenter contended that the changes would allow FWSP students to serve in facilities dedicated solely to religious functions which would violate the separation of church and State.

Discussion: The Department agrees with commenters that it has an independent duty to obey the Constitution and RFRA. The Department does not believe the statute is clearly unconstitutional under current Supreme Court precedent. Even when the Government has established a secular, neutral aid program, it may retain an interest in defining the program to exclude certain religious uses. See *Religious Restrictions on Capital Financing for Historically Black Colleges and Universities*, 2019 WL 4565486 O.L.C. at 19. Under *Locke v. Davey*, the government—in this case, Congress—may lawfully decline to subsidize religious activity. See *Locke*, 540 at 720–21. It therefore does not appear that the FWSP restriction violates the Free Exercise Clause.

Nor does the Department believe that the restriction necessarily runs counter to RFRA. It is true that RFRA applies retrospectively and prospectively to “all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after” its effective date, 42 U.S.C. 2000bb–3(a), including the FWSP restriction here. On the one hand, because the restriction is religious in nature, it is possible that the restriction could substantially burden the exercise of religion by institutions of higher education and/or individual student participants. The restriction appears to be aimed at preventing the use of government funds to support religious activities. However, the restriction is neither required by the Establishment Clause in light of the need for intervening private choice by an institution of higher education and an individual student participant before program funds could be linked with religious activity, see *Zelman*, 536 U.S. 639, 653–60 (2002), nor is it a compelling government interest for purposes of RFRA, as any remaining

“policy preference for skating as far as possible from religious establishment concerns” cannot qualify as a compelling government interest, see *Trinity Lutheran*, 137 S. Ct. at 2024. Thus, under RFRA the Department cannot enforce the FWSP restriction against any person whose exercise of religion is substantially burdened by such application. As a result, the Department has added language to that effect in the regulation to make clear how RFRA applies. Of course, even in the absence of such additional clarifying language, the Department interprets all of its statutes and regulations through the lens of RFRA because none of its statutes contains an explicit exemption from RFRA. 42 U.S.C. 2000bb–3(b).

To the extent that the FWSP restriction does not substantially burden a person’s exercise of religion, however, it does not appear to violate the Constitution or RFRA.

In otherwise amending the regulation to conform to the statute, the Department intends to provide as much clarity and flexibility as possible within the confines of the HEA and to ensure adherence to the statute. Chapels and other religious structures are often part of larger multi-use facilities on college campuses. The Department wishes to clarify that FWSP students may construct, operate, or maintain portions of multiuse structures that are not dedicated solely to religious purposes.

The Department disagrees with commenters who claimed that, under the statutory language, FWSP students would be involved in the construction, operation, or maintenance of facilities dedicated solely to religious functions. The statutory language precludes such opportunity by specifying that work performed under the FWSP may “not involve the construction, operation, or maintenance of so much of any facility as is used or is to be used for sectarian instruction or as a place for religious worship.” Therefore, if a building is used solely for sectarian instruction or as a place for religious worship, FWSP employment may not include the construction, operation, or maintenance of that building. For large, multi-use structures, however, FWSP employment may include the construction, operation, or maintenance of that building.

While neither the statute nor the current regulations define the term “sectarian instruction,” the Department follows a similar definition to that set forth in a published opinion by the Department of Justice’s Office of Legal Counsel. See *Religious Restrictions on Capital Financing for Historically Black Colleges and Universities*, 2019 WL

¹⁰ See also *Am. Jewish Congress v. Corp. for Nat’l & Cmty. Serv.*, 399 F.3d 351 (D.C. Cir. 2005) (government agency placing teachers in religious schools did not violate Establishment Clause when some teachers chose to teach religion as well as secular subjects).

4565486 O.L.C. at 18. In its opinion, the Office of Legal Counsel defined the word “sectarian” in the phrase “sectarian activities” to mean “devotional activities.” *Id.* According to *Black’s Law Dictionary*, sectarian instruction would ordinarily be defined as instruction that “supports a particular religious group and its beliefs,” 1557 (10th ed. 2014), and *Webster’s Third* would define it as instruction that has “the characteristics of one or more sects of a religious character,” *Webster’s Third New International Dictionary* 2052 (2002). Thus, instruction that is predominately devotional and religious is “sectarian instruction.” Sectarian instruction would include instruction such as Christian or Jewish homilies or Islamic khutbahs. Instruction related to the provision of generally secular services does not constitute sectarian instruction, including various types of counseling or educational instruction that may include some sectarian or religious content but that is not predominately religious or devotional in nature. Individuals or organizations may integrate religious ideas or teachings into otherwise secular instruction without engaging in sectarian instruction.

The Department concludes that this reading of the restriction is independently justified in light of the canon of constitutional avoidance. *See, e.g., Clark v. Martinez*, 543 U.S. 371, 381–82 (2005). A broad reading of the restriction could potentially cover all buildings where instruction takes place at a religious institution, potentially converting the restriction from a use-based restriction into the kind of status based restriction expressly prohibited in *Trinity Lutheran*, 137 S. Ct. at 2023. In order to avoid this potential Free Exercise Clause problem, the Department construes the restriction narrowly to only cover instruction that is predominately devotional and religious.

In addition, the Department’s interpretation of “sectarian instruction” is independently supported by RFRA. A broad reading of the restriction could cover all buildings where instruction takes place at a religious institution, potentially forcing the institution to choose between participation in the FWSP and continuing in its religious exercise. This would place a substantial burden on such institutions’ exercise of religion without advancing any compelling government interest by the least restrictive means and would therefore run counter to RFRA. *See, e.g., Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1141 (10th Cir. 2013) (en

banc), *aff’d sub nom. Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014). A denial of, or condition on the receipt of, government benefits may substantially burden the exercise of religion if such denial or condition exerts significant pressure on an adherent to modify his or her religious observance or practice. *See* U.S. Att’y Gen. Memorandum on Federal Law Protections for Religious Liberty (Oct. 6, 2017); *Sherbert v. Verner*, 374 U.S. 398, 405–06 (1963); *Hobbie v. Unemployment Appeals Comm’n of Fla.*, 480 U.S. 136, 141 (1987); *Thomas v. Review Board of Indiana Employment Security Div.*, 450 U.S. 707, 717–18 (1981). And for the reasons explained above, such a broad restriction would neither be required by the Establishment Clause, nor justified by a compelling governmental interest. A narrower reading of “sectarian instruction” avoids these problems and, thus, would appear to be more consistent with congressional intent to impose this restriction without exempting it from RFRA.

Changes: The Department amends the proposed regulation to specify the narrow definition of sectarian instruction and to include the exception for situations involving a substantial burden on a person’s exercise of religion under RFRA.

Deferment (§ 682.210)

Comments: In response to a directed question in the NPRM, the Department received several comments stating that in order to provide consistent treatment of deferments across loan programs, we should remove § 682.210(m)(1)(iv), which states that certain FFEL loans cannot be deferred for volunteer work unless the borrower “does not as part of his or her duties give religious instruction, conduct worship services, engage in religious proselytizing, or engage in fund-raising to support religious activities.” Commenters indicated that it would be unfair and inconsistent to treat eligibility for loan deferment under the FFEL program differently than under the Perkins and NDSL programs.

Discussion: The Department agrees with commenters that there should be consistent treatment of loan deferments across loan programs.

Changes: The Department has removed § 682.210(m)(1)(iv).

Public Service Loan Forgiveness Program (§ 685.219)

Comments: The Department received many comments on the proposed changes to § 685.219 relating to the PSLF program. In particular,

commenters were concerned about proposed § 685.219(c)(4), which would provide that time spent participating in religious instruction, worship services, or any form of proselytizing while employed by a non-profit organization under section 501(c)(3) of the Internal Revenue Code would not be included toward meeting the full-time requirement.

Many commenters asserted that both the original regulatory language and the proposed change violate RFRA, because the regulations force borrowers to choose between exercising their religion and obtaining a meaningful government benefit. Also, commenters stated that the proposed regulations would unlawfully continue to exclude those who are participating in religious exercise and speech from qualifying for the generally available benefit of loan forgiveness. Commenters believed that, under the proposed rules, borrowers could be compelled to work for secular organizations over religious organizations in order to obtain loan forgiveness. From a practical perspective, commenters noted that religious activities may be intertwined with secular work, making it difficult to clearly separate out the hours and creating uncertainty and confusion on the part of the applicants and employing organizations. These commenters indicated that religious activities should not be excluded in the calculation of work hours for PSLF.

Some commenters stated that the Establishment Clause does not require borrowers eligible for loan forgiveness to exclude religious activities from their full-time work hours. Commenters also contended that the proposed provision would raise a significant threat of entanglement under the Establishment Clause when the government tries to evaluate whether a religious organization’s employees are properly defining work that touches on religious education or worship.

Further, commenters asserted that because the proposed language is not the least restrictive means of advancing any government interest, the language also violates RFRA.

One commenter also raised concerns that the terms “religious instruction,” “worship services,” and “proselytizing” are not defined and are not workable. For example, the commenter argued that worship cannot be separated from the teaching of moral values, and that it is not clear whether proselytizing includes secular viewpoints. The commenter stated that use of these terms has the effect of excluding people engaged in religious speech. The commenter argued

that it would be more appropriate to treat all applicants for PSLF equally.

Other commenters expressed concern that it would violate the Establishment Clause if borrowers received loan forgiveness to work on inherently religious activities. One commenter argued that the Department's justification for this proposal misinterprets the decision in *Trinity Lutheran* and that RFRA does not apply to this situation in which the Government is not preventing the borrower from performing the desired religious activities and does not deny benefits to religious persons engaging in qualified work. These commenters urged the Department to maintain the proposed language as published in the NPRM.

Commenters stated that using RFRA to create a religious exemption for PSLF work requirements is at odds with the tailored approach required by RFRA, and that RFRA does not give the Department authority to adjudicate claims it anticipates might happen and create blanket exemptions. Instead, RFRA requires a "careful, individualized, and searching review."

Many commenters encouraged the Department to adopt the proposed language or to maintain the current regulatory language.

Discussion: The Department is persuaded that the proposed regulations requiring borrowers to exclude work spent on religious activities from full-time work is not required by the Establishment Clause and may pose unnecessary burdens. The Establishment Clause does not require that borrowers work solely for secular organizations to obtain loan forgiveness.¹¹

The Department also recognizes that there are practical difficulties associated with separating religious work from public service work, as the two may not always be cleanly divided. There would be burdens on both the borrowers in attempting to record the different time spent on religious activities and on the Department in overseeing such a restriction. Moreover, concerns about potentially overbroad interpretations of the religious activities that could not count toward full-time work could dissuade borrowers from working for religious organizations or pressure them to forgo the economic benefits that flow from loan forgiveness. And to the extent that the proposed language was interpreted broadly to disqualify from

loan forgiveness individuals who hold particular views about the religious nature of their public service—for example, those who view their service as a form of proselytization even if it contains no explicit call to conversion—would raise Free Exercise or RFRA concerns. As a result, the Department has not included proposed § 685.219(c)(4) in the final regulations. The final regulations will set religious individuals and entities on equal footing with their secular counterparts by allowing such individuals and entities to qualify for the same aid already available to nonreligious individuals and entities.

The Department does not agree with commenters who argued that RFRA is not implicated by the Department's current rules excluding religious individuals and entities from participation in generally available benefit programs. Nor does the Department agree with commenters who argued that the Department is using RFRA to create overly broad, blanket exceptions. The rule is designed to both correct existing RFRA violations under the current regulations and to prevent future violations. Congress has tasked the Department with the duty to ensure that the Department's regulations do not substantially burden a person's exercise of religion (absent a compelling government interest and a showing that the burden is the least restrictive means of furthering that interest). 42 U.S.C. 2000bb, *et seq.* This mandate, as previously discussed, applies to "all Federal law, and the implementation of that law, whether statutory or otherwise." 42 U.S.C. 2000bb-3(a). Thus, the Department's establishment of this regulation clearly falls under the mandate of RFRA.

Because the current regulations discriminate against religious groups and deny individuals the ability to participate in important government programs on the basis of their religious status, the current regulations likely amount to a substantial burden on those entities' exercise of religion.

RFRA defines "religious exercise" as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. 2000bb-2(4) (citing 42 U.S.C. 2000cc-5). The current rules impose a "penalty" on these individuals' free exercise of religion, *Trinity Lutheran*, 137 S. Ct. at 2021—which they engage in by becoming members of religious orders, attending religious institutions, participating in or working at religious organizations, among other ways—by requiring them to "choose between their religious beliefs and receiving a government

benefit." *Id.* at 2023 (quoting *Locke*, 540 U.S. at 720–21); *see Sherbert v. Verner*, 374 U.S. 398, 404 (1963) (finding a substantial burden where it was "apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion," forcing her "to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand"); *see also* 42 U.S.C. 2000bb(b)(1) ("The purposes of this chapter are—(1) to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened").

And the Department's status-based restrictions are neither necessary to further a compelling government interest, nor are they the least restrictive means of furthering any such interest. Therefore, RFRA would require the Department to alleviate any such substantial burden.

Some commenters believe that the Department's changes to eligibility requirements for certain aid would have the effect of advancing religion. The Department's aid will not advance religion, nor do the Department's changes require aid to be used for religious purposes. Rather, the Department's aid will advance public service generally, by eliminating a condition on eligibility for loan forgiveness that might have deterred individuals from performing such volunteer work, and it will accommodate the religious exercise of those who seek to perform volunteer work for a religious organization. Importantly, the Department's final regulations correct rules that singled out individuals employed by organizations that are engaged in religious activities for disfavored treatment.

Additionally, the Supreme Court has repudiated the suggestion, advanced by some commenters, that the Establishment Clause bars government aid from flowing from religiously neutral government programs to religious institutions. *See, e.g., Mitchell v. Helms*, 530 U.S. 793, 835 (plurality opinion) (overruling *Wolman v. Walter*, 433 U.S. 229 (1977) and *Meek v. Pittenger*, 421 U.S. 349 (1975)); *id.* at 837 (O'Connor, J., concurring in the judgment) (same); *Agostini v. Felton*, 521 U.S. 203, 235 (overruling *Aguilar v. Felton*, 473 U.S. 402 (1985) and *School District of the City of Grand Rapids v. Ball*, 473 U.S. 373 (1985)).

¹¹ *Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002); *Mitchell v. Helms*, 530 U.S. 793, 829 (2000); *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 839 (1995); *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1, 17 (1947).

In addition, under the principle set forth in *Zelman*, a benefit program like PSLF need not exclude religious recipients to comply with the Establishment Clause where funding would only reach such recipients following the private choice of the individual using the benefit. See *Zelman*, 536 U.S. 639, 653–60 (2002). Likewise, in this case, the borrower receiving the benefit of PSLF under the regulation makes a private choice between different volunteer options in the community and does not create an Establishment Clause problem by choosing to volunteer with a religious entity that performs religious tasks. As a result of the intervening private choice of the borrower, “no imprimatur of state approval can be deemed to have been conferred on any particular religion, or on religion generally.” *Zelman*, 536 U.S. at 650 (internal citations, quotation marks omitted).

Although the current regulations do not raise an Establishment Clause problem, they do raise a Free Exercise Clause concern. In *Trinity Lutheran*, the Court reiterated that the Free Exercise Clause applies to government benefits and funding. The Court in that case rejected the State’s interest in “skating as far as possible from religious establishment concerns” as a basis for categorically excluding a religious organization from a generally available funding program. *Id.* at 2021. The Court applied “the most exacting scrutiny” to the government program, finding that it “expressly discriminate[d]” against an entity that would be otherwise eligible for the government grant but for that entity’s religious character. *Id.*

A materially similar fact pattern exists in the current regulations: But for the religious character of the public service organization that a borrower works for and the types of religious activities the organization performs, the borrower would have qualified for loan forgiveness under title IV. The benefit available under § 685.219 is generally available, except to borrowers who work for non-profit organizations that are engaged in religious activities. Such an exclusion is based on the religious status of an organization and, therefore, is unconstitutional. Some commenters argue that the Department errs in relying on *Trinity Lutheran*. They contend that, according to footnote 3 in the decision, *Trinity Lutheran* applies only to the narrow factual circumstance of a church-run school seeking to compete for a playground resurfacing grant.

As discussed above in the Department’s response to general comments on Faith-Based Entities, footnote 3 does not undermine the force

of the reasoning in *Trinity Lutheran* and was only joined by four Justices. *Trinity Lutheran*, 137 S. Ct. at 2016.

Changes: The Department has removed proposed § 685.219(c)(4), which would have prohibited PSLF applicants from counting hours spent on religious instruction, worship, proselytizing, and fund raising towards the full-time work requirement of the PSLF program.

How does a State administer its community service-learning job program? (§ 692.30)

Comments: Several commenters indicated that they have the same concerns about the proposed changes to § 692.30 relating to the LEAP program that they raised with respect to § 675.20 relating to the FWSP.

Discussion: See the discussion on § 675.20 above.

Changes: None.

Who may provide GEAR UP services to students attending private schools? (§ 694.6)

Comments: All commenters who opined on § 694.6 supported the Department’s proposal with respect to the treatment of private schools in the GEAR UP program. Commenters indicated that the proposal provides additional clarification and retains important protections and guidelines for serving GEAR UP students in private schools. Commenters noted that the proposal retains the requirement that government funded services be “secular, neutral, and nonideological” and thus maintains boundaries required by the Establishment Clause.

Discussion: The Department thanks commenters for their support.

Changes: None.

What are the requirements that a Partnership must meet in designating a fiscal agent for its project under this program? (§ 694.10)

Comments: Many commenters supported the proposed changes to § 694.10 to remove language prohibiting pervasively sectarian organizations from serving as fiscal agents in GEAR UP grants. Some noted that it is inappropriate for the government to make determinations as to whether an institution is pervasively sectarian. Others noted that the term “pervasively sectarian” is outdated and reflects an anti-religious bias. Commenters also noted that the proposed regulations reflect current case law regarding the Establishment Clause and the Free Exercise Clause. Others indicated that they support the proposed change in combination with the retention of the

requirement that benefits provided to GEAR UP students must be “secular, neutral, and nonideological.”

Discussion: The Department thanks commenters for their support.

Changes: None.

Teach Grant Program

General Comments

Comments: In general, commenters supported the proposed regulations. Commenters believed that, by simplifying the requirements, the proposed regulations would reduce the number of TEACH Grants inadvertently converted to Direct Unsubsidized Loans. They also felt that changes would be helpful for TEACH Grant recipients, including expanding and strengthening counseling and notification provisions, providing additional conditions under which the period for completing the teaching service obligation may be temporarily suspended, providing a reconsideration process for TEACH Grants inadvertently converted to loans, and expanding options for satisfying the teaching service obligation.

Discussion: We thank the commenters for their support.

Changes: None.

Comments: Some commenters expressed concerns about servicer and institutional accountability regarding the administration of the TEACH Grant program and recommended that the Department impose liabilities and escalating consequences on servicers and institutions that fail to properly carry out their responsibilities.

Discussion: We appreciate the commenters’ concerns. However, these concerns are outside the scope of this regulatory effort. The Department holds servicers accountable through contractual agreements and can impose escalating consequences and even terminate a contract of a servicer that has failed to properly carry out its responsibilities. Institutions can only disburse TEACH Grants if they maintain institutional eligibility to disburse Federal student aid. One requirement for institutional eligibility is that an institution must satisfy standards of administrative capability. Failure to do so can result in termination of the institution’s eligibility. In addition, we note that the Department’s Federal Student Aid (FSA) office maintains a Feedback System, which includes a formal process for borrowers to report issues or file complaints about their loan experiences, including problems with servicing. Borrowers may also elevate complaints to the FSA Ombudsman Group—a neutral and confidential resource available to

borrowers to resolve disputes related to their loans.

Changes: None.

Definitions (§ 686.2)

Highly Qualified

Comments: A couple of commenters expressed concern that a reference to section 602(10) of the Individuals with Disabilities Education Act (IDEA) was removed from the definition of “highly qualified.” The commenters stated that this section should continue to be referenced in the “highly qualified” definition.

Discussion: We agree with the commenters. The reference to section 602(10) of the IDEA was inadvertently removed.

Changes: We have restored the reference to section 602(10) of the IDEA.

Comments: A couple of commenters stated their belief that it was inappropriate for the TEACH Grant Program regulations to use language from the teacher loan forgiveness provisions in sections 428J(g)(3) and 460(g)(3) of the HEA to describe how private school teachers who are exempt from State certification requirements can meet the highly qualified teacher standards. The commenters noted that the TEACH Grant program is designed to incentivize highly qualified educators, who receive hundreds of hours of professionally supervised pre-service field experiences and undergo a comprehensive, standards-based curriculum to teach in the most underserved schools in the most undersupplied subject areas.

Discussion: We disagree with the commenters. As we explained in the NPRM, teaching in an eligible non-profit private school can be qualifying service for purposes of satisfying the TEACH Grant service obligation, but the definition of “highly qualified” in the Elementary and Secondary Education Act (ESEA) does not address private school teachers. Therefore, we are expanding the definition of “highly qualified” to include the language from sections 428J(g)(3) and 460(g)(3) of the HEA that describes how private school teachers who are exempt from State certification requirements can meet the highly-qualified teacher standards for teacher loan forgiveness purposes. We believe it is appropriate to incorporate this language, since student loan borrowers seeking teacher loan forgiveness must meet the same highly qualified teacher standards that apply to TEACH Grant recipients.

Changes: None.

Agreement To Serve or Repay (§ 686.12)

Comments: A couple of commenters expressed concern with § 686.12 based on their belief that a TEACH Grant recipient who completes a TEACH Grant-eligible educator preparation program in the middle of the academic year will lose a full calendar year of the eight-year period for satisfying the service obligation because of the requirement that a teacher teach full-time for a full school year.

Discussion: Under these conditions, a grant recipient who starts teaching mid-year would not lose a full calendar year of the eight-year period for completing the service obligation. The HEA requires that a grant recipient serve as a full-time teacher for a total of not less than four academic years within eight years after completing the course of study for which the TEACH grant was received. The current regulations, in part, define “academic year or its equivalent for elementary and secondary schools (elementary or secondary academic year)” to be one complete school year, or two complete and consecutive half-years from different school years, excluding summer sessions, that generally fall within a 12-month period. To clarify this in the regulations, in the NPRM we proposed to replace the reference to “eight calendar years” with “eight years”.

Changes: None.

Comments: A couple of commenters felt that the grace period for seeking qualifying employment should be extended to the earlier of—(1) one year from the date a recipient is no longer enrolled in a qualifying TEACH Grant program, or (2) the date the recipient begins qualifying employment in a TEACH-eligible school and subject area.

Discussion: The regulations do not require a TEACH Grant recipient to begin qualifying teaching service within a certain timeframe after the recipient has ceased to be enrolled in the program of study for which he or she received a TEACH Grant. Rather, a grant recipient must begin and maintain qualifying teaching within a timeframe that will allow the recipient to complete the four-year service obligation within the eight-year service obligation period.

Changes: None.

Counseling Requirements (§ 686.32)

Comments: A couple of commenters disagreed with the policy reflected in the proposed regulations that prohibited the reversal of the conversion of a TEACH Grant to a loan if the grant recipient had requested the conversion. The commenters believed that the circumstances that led a grant recipient

to request a conversion could later change such that the grant recipient may now want to teach and satisfy the service obligation. In such cases, the commenters felt that the grant recipient should be able to have the conversion reversed so that the recipient could teach and help address the nation’s teacher shortages.

Discussion: We agree that a grant recipient who previously requested conversion should be able to have the conversion reversed, so that the recipient could perform qualifying teaching to satisfy the TEACH Grant service obligation. This cannot be an open-ended opportunity, however. The grant recipient must still be able to fulfill the service obligation within eight years from when the recipient ceased enrollment at the institution where the recipient received the TEACH grant or, in the case of a student who received a TEACH Grant at one institution and subsequently transferred to another institution and enrolled in another TEACH Grant-eligible program, within eight years of ceasing enrollment at the other institution. The eight-year period for completing the required four years of teaching does not include periods of suspension, which the recipient could apply for retroactively, if applicable. However, the eight-year period will include the period when the grant was in loan status. If a grant recipient requests reversal of a prior voluntary conversion at a point when the recipient would no longer have enough time to complete the service obligation during the eight-year period unless he or she qualifies for a retroactive suspension, an application for suspension will need to be submitted and approved prior to reconversion. This option should be explained to the recipient during initial, subsequent, exit, and conversion counseling.

Changes: We have added new § 686.43(a)(8) to provide that, in the case of a grant recipient whose TEACH Grant was converted to a loan in accordance with § 686.43(a)(1)(i), the Secretary will reconvert the loan to a TEACH Grant if requested by the grant recipient, and restore the recipient’s TEACH Grant service obligation, if there is sufficient time remaining for the grant recipient to complete the required four academic years of qualifying teaching service within eight years from the date the grant recipient ceased enrollment at the institution where the recipient received the grant or, in the case of a student who received a TEACH Grant at one institution and subsequently transferred to another institution and enrolled in another TEACH Grant-eligible program, within eight years of ceasing enrollment

at the other institution. New § 686.43(a)(8) further states that the eight-year period for completing the required four years of teaching does not include periods of suspension for which the recipient qualifies under § 686.41. It also provides that a period of suspension for which the recipient applies and is determined to be eligible may be applied retroactively. If the recipient would not have sufficient time remaining to complete the service obligation within the eight-year period the Secretary will not reconvert the recipient's loan to a TEACH Grant unless the recipient first requests and is determined to be eligible for a retroactive suspension.

We have removed the language in the proposed regulations addressing the initial, subsequent, and exit counseling requirements which state that the conversion of a TEACH Grant to a loan cannot be reversed if the grant recipient requested the conversion, and have revised the regulations governing the initial, subsequent, and exit counseling requirements in § 686.32(a), (b), and (c), respectively, and the new conversion counseling requirements in § 686.32(e) by adding for each type of counseling a requirement that the counseling explain the terms and conditions under which a grant recipient who voluntarily requested conversion of a TEACH Grant to a loan under § 686.43(a)(1)(i) may subsequently request and be approved for a reversal of the conversion, as described above. We have also added new paragraph § 686.12(b)(7) to provide that the contents of the agreement to serve or repay must include this same information.

We believe that the expanded counseling reflected in these regulations will help reduce the number of grants that are converted to loans. We note, however, that, consistent with the rules relating to the Direct Loan Program, a recipient's failure to receive or read the counseling materials is not a basis for reconverting the loan to a grant.

The proposed regulations describing the initial, subsequent, exit, and conversion counseling included language stating that the counseling must explain that a TEACH Grant that has been converted to a Direct Unsubsidized Loan may be reconverted to a grant if the Secretary determines that the grant was converted to a loan in error. For consistency with redesignated § 686.43(a)(5), we have revised this language to state that a grant that was converted to a loan may also be reconverted to a grant based on documentation showing that the recipient was satisfying the service

obligation within the required time frame.

We have deleted § 686.43(d), which stated that a TEACH Grant that is converted to a Federal Direct Unsubsidized Loan cannot be reconverted to a grant, consistent with the other changes to this section.

Comments: A couple of commenters recommended that all types of TEACH Grant counseling should provide grant recipients with information about the options of income-driven repayment plans and public service loan forgiveness for those whose TEACH Grants are converted to loans.

Discussion: In the NPRM, we proposed to provide information about income-driven repayment plans and public service loan forgiveness in the new conversion counseling for recipients whose grants are converted to loans. We do not believe it is necessary to include this information in initial, subsequent, or exit counseling, since the information is relevant only to recipients whose grants are being converted to loans.

Changes: None.

Documenting the Service Obligation (§ 686.40)

Comments: A couple of commenters expressed concern about removing the requirement for grant recipients to confirm their status within 120 days of ceasing enrollment in a program for which they received a TEACH Grant. The commenters felt that by removing the requirement for initial certification, grant recipients would lose track of the requirement to certify their progress toward satisfying the service obligation in subsequent years, despite seeking to obtain, or even working, in qualifying employment. Other commenters supported the proposed changes that were intended to simplify the procedures for grant recipients to certify that they are meeting the required service obligation, and the provisions for the Secretary to provide periodic notifications to grant recipients reminding them of their service obligation requirements.

Discussion: We continue to believe that the current 120-day certification requirement should be removed because it adds unnecessary complexity to the requirements for documenting the service obligation. That complexity may, in some cases, have resulted in grant recipients who were otherwise meeting the service obligation requirements having their grants converted to loans. Under § 686.42(a)(2), at least annually during the service obligation period the Secretary will provide the grant recipient with

information that includes the number of years of qualifying teaching that the recipient has completed and the remaining timeframe within which the grant recipient must complete the service obligation. We believe that these notifications will provide the information the grant recipient needs to stay on track to fulfill the service obligation.

Changes: None.

Periods of Suspension (§ 686.41)

Comments: A couple of commenters noted that there may be life circumstances that reasonably prohibit grant recipients from securing employment in eligible schools.

Discussion: While we appreciate the commenters' concern, it would be difficult for the Department to determine all the life circumstances that might reasonably prohibit grant recipients from securing employment in eligible schools, and any such determination could be considered arbitrary. We note that, under new § 686.41(d), the Secretary may provide temporary suspensions of the period for completing the service obligation on a case-by-case basis if the Secretary determines that a grant recipient was unable to complete a full academic year of teaching or begin the next academic year of teaching due to exceptional circumstances significantly affecting the operation of the school or educational service agency where the grant recipient was employed or the grant recipient's ability to teach.

Changes: None.

Obligation To Repay the Grant (§ 686.43)

Comments: None.

Discussion: After further review of the NPRM, the Department recognizes that there was substantial overlap between proposed § 686.43(a)(5) and § 686.43(a)(6) and that the latter section was not clear. Specifically, paragraph (a)(6) provided for reconversion of a grant that had been "involuntarily" converted (that is, a grant that had been converted for a reason other than a voluntary request for conversion from the grant recipient, which would include the circumstances described in paragraph (a)(5)), and it also provided for reconversion of a grant that had been "improperly" converted to a loan (that is, a grant that had been converted in error), based on documentation provided by the recipient or in the Department's records demonstrating that the recipient was satisfying the service obligation, or that the grant had been converted to a loan in error. The

Department has revised these sections to clarify the requirements.

Changes: The Department has removed proposed § 686.43(a)(5), redesignated paragraph (a)(6) as (a)(5), revised redesignated paragraph (a)(5) for greater clarity, and renumbered the remaining paragraphs in § 686.43(a).

Comments: Some commenters felt that, to strengthen the effectiveness of provisions regarding incorrect grant-to-loan conversions, the Department should automatically provide any recipient with a written “statement of error” when a grant that was incorrectly converted is reconverted to a TEACH Grant. Under the proposed regulations, this statement of error would have been provided at the recipient’s request.

Discussion: We agree with the commenters. Automatically providing the grant recipient with a written statement confirming that the TEACH Grant had been converted to a loan in error when the loan is reconverted to a TEACH grant would ensure that the grant recipient has documentation that the Department determined that the conversion was incorrect without further inconveniencing the affected individual.

Changes: Proposed § 686.43(a)(7)(iv), which stated that a statement of error would be provided to a grant recipient at the recipient’s request, has been redesignated as § 686.43(a)(6)(vi) and revised to provide that the Secretary will automatically send a statement of error to the recipient when a TEACH Grant that was converted to a loan in error is reconverted to a TEACH Grant.

Comments: Some commenters believed that there should be a formalized process for a TEACH Grant recipient to request reconsideration of other adverse actions that impact the recipient’s ability to complete the service obligation, stating that grant recipients should have the opportunity to request reconsideration by the Secretary of any adverse action taken against them by the Secretary in connection with the servicing of their grant. Such adverse actions would include, but would not be limited to, the rejection of a certification of teaching service, a determination that the recipient’s employment does not meet the service obligation requirements, or a denial of a request for suspension or discharge. The commenters recommended that if the Secretary determines that the adverse action was taken in error, the Secretary should reverse the adverse action and take all other actions necessary to correct the adverse action. The commenters believed that implementing this type of process would likely result in fewer

erroneous grant-to-loan conversions resulting from wrongfully rejected certifications or other types of erroneous actions.

Discussion: We are not aware of widespread problems involving “wrongful” rejections of certifications or other erroneous actions such as those cited by the commenters. The Department rejects a certification form or a suspension/discharge request if information needed to confirm the qualifying service or approve the suspension/discharge is missing, or if the information provided on the certification or the suspension/discharge request does not confirm qualifying service or establish eligibility for the suspension/discharge (e.g., if the dates of teaching are missing or incomplete, or if the school listed on the certification form is not listed in the Teacher Cancellation Low Income Directory). These situations are generally resolved by the recipient providing the missing or additional information. If information is missing, a letter is sent to the recipient explaining what information the recipient needs to submit so the certification or request can be processed. If the information provided does not confirm that the individual has performed qualifying service or does not support the recipient’s eligibility for suspension/discharge, the recipient receives a letter explaining the reason for the rejection and has an opportunity to provide information documenting the qualifying service or suspension/discharge eligibility. In addition, if recipients continue to disagree with the decision, they may contact the Department’s Federal Student Aid Ombudsman’s office to try to resolve the issue. Thus, we do not believe it is necessary to establish a formalized process for grant recipients to request reconsideration of actions such as rejections of certification forms or denials of suspension or discharge requests. Processes are already in place for recipients to be notified of any problems with a certification form or suspension/discharge request, and to provide an opportunity for the recipient to submit corrected or missing information. We further note that the simplified requirements for documenting the service obligation in these final regulations should significantly reduce the number of grant-to-loan conversions.

Changes: None.

Directed Questions

Comments: In response to the directed questions that were included in the NPRM, a commenter supported the suggestion that a student’s service

obligation period be extended by the number of years their TEACH grants were incorrectly in loan status, regardless of whether the student completed one or more years of qualifying service during the period during which the grant was treated as a loan as described in the first directed question, or did not complete any qualifying service during the erroneous conversion period as described in the second directed question. The commenter felt that, in either scenario, the TEACH recipient may have left qualifying service at some point after the grant-to-loan conversion. The commenter further stated that re-entering qualifying service is not a simple undertaking, noting that grant recipients may have relocated to an area without qualifying service positions or made other life choices that would hinder their ability to immediately re-enter a qualifying position. The commenter felt that extending the timeframe for completing the service obligation would give these individuals sufficient time to find qualifying positions to establish their eligibility for TEACH grants with minimal disruption to their lives and would mitigate the harm they have already suffered from the erroneous grant-to-loan conversion.

Discussion: We agree with the commenter that the eight-year service obligation period should not include the period of time that the TEACH Grant was incorrectly in loan status, and that individuals whose grants were converted to loans in error may have stopped teaching because they believed that they would no longer receive credit for their service or for other reasons, and that after the erroneous conversion has been corrected it may take a significant period of time for these recipients to find qualifying teaching positions. However, because it provides more time for a recipient to find qualifying employment and to complete the teaching service obligation, we believe it would be more appropriate to adopt the alternative approach described in the directed question scenarios. That is, after the correction of the erroneous conversion we would provide the grant recipient with an additional period of time, equal to eight years minus the number of full academic years of qualifying teaching that the recipient had completed prior to the reconversion of the recipient’s loan to a TEACH Grant (including any years of qualifying teaching that the recipient completed during the period when the grant was incorrectly in loan status), to complete the remaining portion of the service

obligation. This approach is illustrated by Example 1 below.

Example 1

- A grant recipient completes the program for which he or she received a TEACH Grant and enters the service obligation period.
- The recipient receives no suspensions and does not begin qualifying teaching until the start of the fifth year of the eight-year service obligation period.
- The recipient completes two academic years of qualifying teaching during the fifth and sixth years of the eight-year service obligation period. At the beginning of the seventh year of the service obligation period, the recipient's TEACH Grant is converted to a loan in error and remains incorrectly in loan status for three years.
- During the period when the grant is incorrectly in loan status, the recipient completes one additional academic year of qualifying teaching service.
- After the erroneous conversion is reversed and the recipient's loan is reconverted to a TEACH Grant, the three years of completed service (including the year of teaching completed while the grant was incorrectly in loan status) is subtracted from eight years, giving the recipient an additional five years following the correction of the erroneous conversion to complete the remaining one year of teaching required under the service obligation.

In contrast to the approach described in the directed question and illustrated by the above example, under the proposed regulations the grant recipient in Example 1 would have had only two years following the correction of the erroneous conversion to complete the remaining one year of the service obligation.

Changes: We have redesignated proposed § 686.43(a)(7) as § 686.43(a)(6), and now address this issue in § 686.43(a)(6)(ii) and (iii), which provide that after the Secretary reconverts an incorrectly converted loan to a TEACH Grant, the Secretary (1) applies any full academic years of qualifying teaching that the recipient completed during the period when the grant was incorrectly in loan status toward the grant recipient's four-year service obligation requirement, and (2) provides the recipient with an additional period of time to complete the remaining portion of the service obligation equal to eight years, minus the number of full academic years of qualifying teaching that the recipient completed prior to the correction of the erroneous conversion.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

Under Executive Order 12866, section 3(f)(1), the changes proposed in this regulatory action would materially alter the rights and obligations of recipients of Federal financial assistance under title IV of the HEA. Therefore, OMB has determined that this is a significant regulatory action subject to review by OMB.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. The final regulations are a significant regulatory action under Executive Order 12866. However, Executive Order 13771 does not apply to "transfer rules" that cause only income transfers between taxpayers and program beneficiaries. Because the portion of the regulatory changes relating to the TEACH Grant Program and PSLF are a transfer rule and the remaining proposed regulatory changes impose minimal estimated costs of approximately \$1.27 million in

annualized net PRA costs at a 7 percent discount rate, discounted to a 2016 equivalent, over a perpetual time horizon, the requirement to offset new regulations in Executive Order 13771 does not apply to this final regulation. Accordingly, the Department is not required to identify deregulatory actions under Executive Order 13771.

We have also reviewed these final regulations under *Executive Order 13563*, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, *Executive Order 13563* requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these final regulations only on a reasoned determination that their benefits justify their costs. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, or Tribal

governments in the exercise of their governmental functions.

In this regulatory impact analysis, we discuss the need for regulatory action, the potential costs and benefits, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

Need for Regulatory Action

In 2007, Congress established the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program to increase the number of teachers in high-need fields in low-income schools. In exchange for receiving a TEACH Grant, recipients agree to teach in a high-need field¹² such as reading, mathematics, or science, at a low-income school for at least four years in an eight-year period and annually certify that they intend to meet this requirement. If a recipient does not meet the grant requirements or the annual certification requirements, the grant converts to a Federal Direct Unsubsidized Loan with interest charged from the date of each TEACH Grant disbursement.

A 2015 Government Accountability Office (GAO) report found that around 36,000 out of more than 112,000 TEACH Grant recipients had not fulfilled TEACH Grant requirements and had their grants converted to loans (GAO, 2015).¹³ GAO concluded that the Department needs to explore ways to increase awareness among students of how the TEACH Grant program operates and improve program management, especially with respect to the grant-to-loan conversion dispute process. GAO further noted that the Department should take steps to understand why teachers often do not meet the TEACH program requirements. GAO reiterated that the goal of reducing grant-to-loan conversions and increasing program completion should help drive the Department's efforts. GAO cited inconsistent and confusing external guidance regarding grant to loan conversions and the dispute process available to recipients as a failure of "Federal internal control standards that highlight effective external communication." The revised

regulations help to address GAO's concerns by improving the administration of the program and providing clearer information to recipients earlier in their service to prevent future problems, and more thoroughly explaining the dispute process if issues do arise.

A 2018 study conducted for the Department by the American Institutes for Research (U.S. Department of Education, 2018)¹⁴ found that as of June 2016, 63 percent of TEACH Grant recipients who started their eight-year service obligation period before July 2014 had their grants converted to Unsubsidized Loans because they did not meet the service obligation requirements or the annual certification requirements. For instance, the study reported that 39 percent of recipients who were in loan status cited teaching in a position that did not qualify for TEACH Grant service and 33 percent cited not working as a certified teacher. Thirty-two percent said they did not understand the service requirements. Other factors related to teachers having grants converted to loans included not knowing about annual certification (19 percent), challenges related to the certification process (13 percent), forgetting about annual certification (9 percent) and other factors made up 24 percent, such as recipients who were never certain of their intention to teach or who changed their employment to a nonteaching position prior to meeting their service obligation.

To address the concerns raised by these studies, we are changing the regulations to facilitate the process of documenting satisfaction of the service obligation requirements and ensure that recipients who fulfill their service obligation receive credit for it. Additionally, these regulations create a process to remediate conversions caused by life events (including on a case-by-case basis as determined by the Secretary) or administrative error to facilitate the completion of service obligation requirements for those who seek to do so. This will help reduce the percentage of TEACH Grants that erroneously convert to Direct Unsubsidized Loans and fulfill the TEACH Grant Program's intended outcomes.

The regulations also ensure that faith-based entities, students who are members of religious orders, and borrowers fulfilling service obligations are not further burdened by their

religious beliefs, and instead have equal access to broadly available programs and government funding. In response to the Supreme Court's decision in *Trinity Lutheran* and Executive Order 13798 (U.S. Attorney General Memorandum on Federal Law Protections for Religious Liberty (October 6, 2017)), the Department engaged in a full review of its regulations related to title IV, HEA programs in order to identify provisions that may discriminate against otherwise eligible students and faith-based entities by disqualifying them from title IV, HEA programs due to their religious beliefs in violation of the Free Exercise Clause of the First Amendment to the United States Constitution (Free Exercise Clause). The Department proposes to make changes to regulatory provisions that may discriminate against students or faith-based entities as a result of their religious beliefs to ensure compliance with the Free Exercise Clause.

Discussion of Costs, Benefits and Transfers

The Department has analyzed the costs and benefits of complying with these final regulations and our estimates are a function of the uncertainty and limitations of relevant data. As discussed below, we believe that these final regulations will result in modest transfers from the Federal government and will benefit recipients of support under the affected programs.

Benefits of the Final Regulations

With respect to the TEACH Grant Program, we anticipate that by simplifying and clarifying certification procedures and providing greater flexibility to recipients to meet their service obligation, the final regulations will result in a decrease in the number of TEACH Grant recipients that have their grants converted to loans. We further anticipate that this outcome and the expansion of opportunities that students can use to fulfill the service obligation will result in more teachers teaching in high-need fields at low-income schools as well as in authorized teacher shortage areas.

The final regulations related to other programs will also reduce the potential for discrimination against students and faith-based institutions due to their religious beliefs in violation of the Free Exercise Clause.

Net Budget Impacts

Regarding changes to the TEACH Grant Program, the changes improve the reporting and documentation process for grant recipients and could lead to a reduction in the number of grant-to-loan conversions. According to Department

¹² Section 420N(b)(1)(C) of the HEA describes high-need fields as mathematics, science, foreign languages, bilingual education, special education, reading specialist, or another field documented as high-need by the Federal Government, State government, or LEA, and approved by the Secretary.

¹³ Government Accountability Office. (2015). Higher Education: Better Management of Federal Grant and Loan Forgiveness Programs for Teachers Needed to Improve Participant Outcomes (GAO 15-314). Washington, DC: United States Government Accountability Office.

¹⁴ U.S. Department of Education. (2018). Study of the Teacher Education Assistance for College and Higher Education (TEACH) Program. Respondents could select more than one option.

data, the percentage of TEACH Grant recipients demonstrating effort to fulfill their service requirement by performing one or more years of qualified teaching service after six or more years following their last TEACH award has been increasing steadily. The improvements to the process for recipients to document their teaching service included in these final regulations will help prevent or resolve unintended grant to loan conversions.

For FY 2020, The Department estimates that approximately 32,000 recipients will receive \$92 million in TEACH Grants with an average award of slightly over \$3,000. Over the past five years from fiscal year 2014 through fiscal year 2019, the Department has provided a total of \$524.6 million in TEACH grant funding to 190,686 students. Based on program data through FY 2019, the Department estimates that 64 percent of students receiving TEACH Grants will fail to complete their required service commitment and will have their grants converted to Direct Unsubsidized Stafford Loans.

Using a sensitivity analysis of grant-to-loan conversions, we estimate that for the 2020 cohort, a one percentage point reduction in the grant-to-loan conversion would result in a transfer from the Federal Government of \$727,034, since each grant that is not converted to a loan where the student is obligated to pay it back remains a grant. The Department recognizes that the percentage change that the final regulations would have on the percentage of conversions is uncertain. The Department intends that these regulatory changes will reduce the loan conversion rate. However, students fail to meet the TEACH Grant service requirements for many reasons, including teaching in positions that do not qualify or changing to non-teaching employment. For instance, the PPSS/AIR study cited earlier reported that approximately 39 percent of TEACH recipients whose grants had been converted to loans reported teaching in a position that did not qualify for the TEACH program, 33 percent reported not teaching or not completing the teaching certificate program, 32 percent stated they did not understand the service requirements, and about 44 percent of respondents reported factors related to the annual certification process as influencing them to not complete the program requirements. Since respondents could select more than one response category, the total percentage does not add to 100 percent. Of those that indicated the annual certification process was a problem, the

distribution revealed that about 19 percent said they did not know about the annual certification process; 13 percent reported not certifying because of challenges to the certification process; 9 percent reported not certifying because they forgot, and about 2 percent listed other reasons.

While predicting how recipients might change their behavior due to the final regulations is speculative, the PPSS/AIR responses give us reason to assume that there will be improvement based on the recipients who cited the certification process as a factor in their conversion. Such improvement would logically lead to some reduction in the grant-to-loan conversion rate.

Given an estimated grant-to-loan conversion rate, it is possible to identify a series of transfers for a series of percentage reductions that give context to the potential impact that the proposed regulations would have.

FIVE PERCENTAGE POINT INTERVAL GRANT-TO-LOAN CONVERSION IMPACTS

Percentage point reduction (%)	Cost (\$millions)
5	3.6
10	7.3
15	10.9
20	14.6
25	18.2

The above table suggests that if the grant-to-loan conversion rate were reduced from the estimated 64 percent to 59 percent—a five percentage point reduction—the Federal Government would incur additional transfers of approximately \$3.6 million based on the 2020 cohort. And, if the projected 64 percent rate were reduced by 10 percentage points to 54 percent for the same 2020 cohort, there would be a cost of about \$7.3 million. However, this transfer from the Federal Government would also result in a benefit to student TEACH Grant recipients who would not have to repay their TEACH Grants which would not be converted to loans. Note that these are five percentage percentage-point intervals, and not percentage decreases of the current rate.

Currently, a TEACH Grant recipient may not satisfy the service obligation by teaching in a geographic region of a State that has been designated in the Nationwide List (at <https://tsa.ed.gov>) as having a shortage of teachers, or by teaching at a particular grade level not associated with a high-need field that has been designated in the Nationwide List as having a shortage of teachers. Instead, the recipient must teach in a

high-need field listed in the Nationwide List.

The final regulations remove this limitation. For example, under the final regulations, a grant recipient could satisfy the service obligation by serving as a full-time highly qualified general elementary school or secondary school teacher at a low-income school in a State that has reported a general shortage of elementary or secondary teachers in the Nationwide List. This is not currently allowed. Therefore, the final regulations allow grant recipients who are unable to find qualifying teaching jobs in a high-need field to meet the service obligation by teaching at a low-income school located in a geographic teacher shortage area or at a grade level where there is a shortage of teachers. This could facilitate increased opportunities for TEACH recipients toward meeting the service obligation and perhaps impact the conversion rate to loans. More importantly, it could serve as an important incentive to attract highly qualified teachers to serve in higher need areas and fields. It would be speculative to assume any specific amount of change in the conversion rate attributable to potential expanded teaching opportunities. Also, the proposed change might result in some grant recipients simply transferring from one low-income school to another low-income school to accept a teaching position that might previously have not been eligible.

Based on available data from the Department's Teacher Shortage Area listing,¹⁵ there are about 10 States, including California, Idaho, Illinois, Maine, Michigan, North Dakota, South Dakota, Pennsylvania, Virginia, West Virginia, and the District of Columbia, that appear to have teacher shortages, particularly in the elementary education area, that could potentially expand the eligible teaching opportunities for TEACH Grant recipients. According to National Center for Education Statistics data, these States represented approximately 27 percent of teachers in public elementary and secondary schools in the 2011–12 Schools and Staffing Survey data, both for overall teachers and for those in their first 10 years of teaching.¹⁶ As indicated in the PPSS/AIR responses, approximately 15

¹⁵ <https://tsa.ed.gov/#/reports>.

¹⁶ U.S. Department of Education, National Center for Education Statistics, Digest of Education Statistics 2017, Table 209.30. Highest degree earned, years of full-time teaching experience, and average class size for teachers in public elementary and secondary schools, by state: 2011–12. Data not reported for 5 states, including the District of Columbia, so percentage is adjusted to be total of those reporting.

percent of those respondents whose grants converted to loans said they were unable to find a job in a high-need field and, adjusting for the nationwide percentage of public schools with 30 percent or more of students receiving a free and reduced lunch of approximately 70 percent,¹⁷ we estimate that the changes removing the high needs field requirement in qualifying States will reduce the overall grant-to-loan conversion rate by approximately 3 percent, so relieving that requirement for those States would have some net budget impact. Nevertheless, while the changes expand options for grant recipients to meet the service obligation by allowing grant recipients who are not teaching in a high-need subject area to qualify by teaching at a low-income school in a geographic shortage area or in a grade-level shortage area, we do not believe the final regulations would lead to a significant increase in the actual number of TEACH grant recipients.

Overall, the final regulations have the potential to improve some aspects of the certification process and opportunities for recipients to meet their service requirements, which would benefit recipients, in keeping with the original goal of the program. As several provisions are expected to decrease the grant-to-loan conversion rate and result in additional cost to the Federal Government, we have estimated a net budget impact of that change.

In addition to the 3 percent decrease attributed to the changes to the high needs field requirements, we assume that the additional changes to the TEACH Grant program described in this preamble will decrease grant-to-loan conversions. We expect this effect will be lower for existing cohorts as improved counseling is provided to future participants and participants who took out TEACH Grants several years ago may be established in jobs that may not qualify or may have moved on from the profession, possibly limiting the ways those with older TEACH grants may respond to the changes made by these regulations. As a result, we applied the decreases shown in Table [2] to the grant-to-loan conversion rate to the President’s Budget 2021 baseline. For past cohorts, the changes are applied only to future years of activity.

¹⁷ United States Department of Education, National Center for Education Statistics, Condition of Education—Characteristics of Traditional Public Schools and Charter Schools, Figure 3. Percentage of traditional public schools and public charter schools, by percentage of students eligible for free or reduced-price lunch: School year 2016–17. Available at https://nces.ed.gov/programs/coe/indicator_cla.asp.

TABLE 2—GRANT-TO-LOAN CONVERSION RATE DECREASE FACTOR

Cohorts	Decrease (%)
2008–2012	4
2013–2019	9
2020–2029	15

The estimated net budget impact is a cost of \$141.4 million, including a modification to existing cohorts of \$16.6 million and a cost for cohorts 2020 to 2029 of \$124.8 million.

A number of the changes to the regulations relate to the eligibility of certain entities and recipients to participate in the title IV programs. The final regulations remove language prohibiting borrowers with Perkins loans made before July 1, 1993 and National Defense Student Loans (NDSL) made between October 1, 1980 and July 1, 1993 from obtaining deferments during periods of otherwise eligible full-time volunteer work that includes providing religious instruction, conducting religious services, proselytizing, or engaging in fundraising to support religious activities. Due to the small group of borrowers expected to benefit from these changes and the heavy discounting effect that would apply to any deferment costs on such old loans, we do not estimate any budget impact from these changes.

The final regulations remove current provisions that state that a member of a religious order pursuing a course of study in an institution of higher education has no financial need for purposes of the Pell Grant Program, Federal Perkins Loan Program, FWSP, FSEOG, FFEL Program, or the Direct Loan Program.

Despite this change, the additional eligibility for student aid for a very small group of participants in a given religious order would not, in our estimation, result in any additional significant financial aid costs to the government. We have little firm data on the number of members in religious orders subject to these changes who would actually choose to accept the financial aid for which they are eligible. For instance, the Franciscans are perhaps the largest and most well-known mendicant religious order, which means the priests take a vow of poverty. According to a 2013 reference,¹⁸ there are around 14,000 first order Franciscan members, including 9,700 priests. Even considering other orders within the Franciscans and additional smaller monastic sects such

¹⁸ *Annuario Pontificio 2013* (Libreria Editrice Vaticana 2013 ISBN 978–88–209–9070–1), p. 1422.

as the Benedictines and Dominicans, the membership estimates would not be large. Thus, the Department believes that the pool of members potentially impacted by this regulatory change is already small to begin with and the final regulations are not going to induce changes in member practices and would not result in measurable financial aid estimates. Note that there are already many postsecondary institutions with a faith-based mission that are title IV eligible and are not affected by these final regulations. Therefore, the changes would allow our regulations to be consistent with the Supreme Court decision in *Trinity Lutheran* without involving a significant economic impact.

The regulatory changes would also affect PSLF. Under the final regulations, certain institutions that are tax-exempt under section 501(c)(3) of the Internal Revenue Code that are religious organizations would be considered public service eligible employers for purposes of PSLF. The application form for PSLF (OMB No. 1845–0110) specifically states that a qualifying employer includes a “not-for-profit organization that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code” but makes no exclusion for religious purposes. The current application makes it clear that, in performing job duties toward the full-time requirement, a borrower’s qualifying employment at a 501(c)(3) organization or a not-for-profit organization does not include time spent participating in religious instruction, worship services, or any form of proselytizing. This provision is changed in the final regulations in response to concerns that such provisions would violate RFRA. There is little to no existing data within the Department to isolate the potential population that may be newly eligible after this changed rule. The Department’s assumption under the NPRM was that eligible 501(c)(3) employers and workers would cooperate in the structure of their work responsibilities to allow all potentially eligible workers not engaging in exclusively religious activity to meet the existing qualification requirements. However, there may have been previously ineligible workers, primarily clergy, who will be eligible under the changed rule. While their employers may have met the 501(c)(3) criteria, they were prohibited from receiving forgiveness due to the ineligibility of their work activities under the existing regulation. Based on an analysis of Bureau of Labor Statistics (BLS) data,

the percentage of workers at non-profit religious organizations as a proportion of the total population of workers potentially eligible for Public Service Loan Forgiveness is very small, approximately 0.50% of total workers. This high-level potential population is further reduced by isolating the BLS occupation clergy, a proxy for our analysis purposes of workers engaged in exclusively previously ineligible activity at otherwise eligible 501(c)(3) employers. Further characteristics that filter this population are the percentage who borrow, percentage who work full-time, and finally, the percentage who the Department estimates will successfully complete the requirements for PSLF, that is 120 qualifying payments and 10 years of service. These estimated adjustments to the currently eligible PSLF population for this newly eligible potential population results in a 0.06% increase in the population qualifying for PSLF from the current baseline. Transfers in the Direct Loan Program for subsidy costs related to this potential group of newly eligible potential population may be as much as \$213 million, \$122 million for existing cohorts and \$91 million for future cohorts.

The changes to the GEAR UP program regulations would clarify that providers of GEAR UP services to students enrolled in private schools must be contracted independently of the private schools and would allow pervasively sectarian institutions of higher education to serve as fiscal agents for GEAR UP grants. In general, the Department does not estimate costs associated with changes to regulations governing competitive grant programs as participation in such programs is voluntary and funding still must be limited to what is appropriated by Congress. However, it is possible that certain changes in the regulatory framework governing a competitive grant program could produce transfers in program benefits among entities or recipients of services.

Regarding the provision requiring providers of services to students enrolled in private schools to be independent of the school, the Department first assessed the extent to which GEAR UP services are currently provided to students enrolled in such schools. During the most recent reporting period, GEAR UP grantees reported serving students in 4,033 schools. Of those schools, the Department was able to identify only

five private schools in which students received GEAR UP services. In total, private schools represented only 0.1 percent of schools served by the program and, even among the grantees serving such schools, private schools represented 0.9 percent of the total schools they served. As such, we do not believe that the requirement relating to the employment relationship between individuals providing services in such schools and the schools themselves is likely to have a large impact on the administration of the program.

Regarding who may serve as a fiscal agent for a GEAR UP Grant, as noted above, the final regulations would allow pervasively sectarian institutions of higher education to serve in such a capacity. However, nothing in the current GEAR UP regulations precludes a pervasively sectarian institution of higher education from being a member of a GEAR UP partnership. As such, pervasively sectarian institutions can currently participate in and provide services under a GEAR UP grant. The Department does not have readily available data to identify all members of GEAR UP partnerships and whether they are pervasively sectarian. With such information, the Department could more easily quantify the potential number of partnerships affected by the change. However, even without such information, given that pervasively sectarian institutions are already eligible members of partnerships, we do not believe the change to allow them to serve as fiscal agents would dramatically change the makeup of the GEAR UP applicant pool. Any pervasively sectarian institution that currently wishes to participate in the GEAR UP program may do so and this change would only result in a shift in who has primary fiscal liability for the grant.

Alternatives Considered

With respect to the TEACH Grant program, we considered maintaining the current regulations as is, that is not including provisions related to the current reconsideration process in the final regulations, maintaining the current counseling requirements without adding a separate conversion counseling requirement, maintaining, instead of expanding, the current regulations related to qualifying teacher shortage areas for fulfilling the service obligation, and not expanding allowable suspensions beyond those that are currently available. As we describe in

previous sections, making these changes gives the Department the opportunity to address GAO concerns specifically, and generally provide from more information and clarity to recipients of the TEACH Grant program.

For the faith-based provisions, we considered not making the changes and leaving the current regulatory language in place as written.

Regulatory Flexibility Act Certification

The Secretary certifies that the final regulations will not have a significant economic impact on a substantial number of small entities. In fact, the primary entities who are affected by the final regulations are individual students, not organizations, businesses, or governmental units. This holds true for the faith-based component of the final regulations that address individuals participating in religious orders, or student borrowers applying for PSLF. Similarly, the changes to the TEACH Grant Program regulations primarily affect students who are interested in teaching and apply for a TEACH grant.

Of the entities that would be affected by the final regulations, many institutions, especially institutions with a faith-based mission, would be considered small. The Department recently proposed a size classification based on enrollment using IPEDS data that established the percentage of institutions in various higher education sectors considered to be small entities, as shown in Table [6].¹⁹ This size classification was described in the NPRM published in the **Federal Register** on July 31, 2018 for the proposed borrower defense rule (83 FR 37242, 37302). Under the Department's proposed size standards, "small entities" have an enrollment of 1,000 students or less at 4-year schools or 500 students or less at 2-years schools. The Department has discussed the proposed standard with the Chief Counsel for Advocacy of the Small Business Administration, and while no change has been finalized, the Department continues to believe this approach better reflects a common basis for determining size categories that is linked to the provision of educational services.

¹⁹ U.S. Department of Education, National Center for Education Statistics. Integrated Postsecondary Education Data System 2016 Institutional Characteristics: Directory Information survey file downloaded March 3, 2018. Available at nces.ed.gov/ipeds/datacenter/DataFiles.aspx.

TABLE 6—SMALL ENTITIES UNDER ENROLLMENT BASED DEFINITION

Level	Type	Small	Total	Percent
2-year	Public	342	1,240	28
2-year	Private	219	259	85
2-year	Proprietary	2,147	2,463	87
4-year	Public	64	759	8
4-year	Private	799	1,672	48
4-year	Proprietary	425	558	76
Total		3,996	6,951	57

The final regulations would affect students who belong to religious orders and those students most likely attend institutions with a religious mission. In general, we believe faith-based institutions are more likely to be small institutions. However, the final regulations do not affect the title IV eligibility of such institutions.

Accordingly, The Secretary certifies that the final regulations will not have a significant economic impact on a substantial number of small entities. Nothing in the final regulations would compel institutions, small or not, to engage in substantive changes to their programs. Therefore, there is no estimated associated institutional burden.

Even if the affected institutions were considered small entities, the final regulations are designed to permit them to participate in title IV programs without jeopardizing their religious mission. Nothing in the final regulations would require institutions to expand their enrollment, take on additional students, or to participate in title IV aid programs, but the final regulations would give them that opportunity.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the

general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department’s collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Part 686 contains information collection requirements. Under the PRA the Department has submitted a copy of these sections to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number.

Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations we will display the control numbers assigned by

OMB to any collection requirements adopted in the final regulations.

Section 686.12—Agreement to serve or repay.

Requirements: Under final § 686.12, the TEACH Grant agreement to serve or repay will be expanded and updated with revised definitions, requirements, and explanations of the program and participant conditions, and options as discussed in the preamble.

Burden Calculation: These final regulations will require changes to the TEACH Grant agreement to serve form currently approved under OMB Control Number 1845–0083. We do not believe those changes will impact the current burden associated with this form. We estimate that, on average, it will take a grant recipient 30 minutes (.50 hours) to review and complete the updated agreement, which is done electronically. We continue to anticipate 50,793 TEACH applicants will annually utilize the agreement accepting the program terms, including the required teaching service, or the conversion of the grant to a Direct Unsubsidized Loan if such service is not met or the applicant does not otherwise comply with the terms of the agreement. Based on one response per applicant, we continue to estimate an annual reporting burden for individuals of 25,397 hours (50,793 × .50 hours).

§ 686.12—AGREEMENT TO SERVE OR REPAY

[OMB control number 1845–0083]

Entity	Respondent	Responses	Time to respond (hours)	Burden hours
Individual	50,793	50,793	.50	25,397
Total	50,793	50,793		25,397

Section 686.32—Counseling requirements.

Requirements: The final regulations in § 686.32 will expand the information that is provided to TEACH Grant recipients during initial, subsequent, and exit counseling. The final

regulations will add a new conversion counseling requirement for grant recipients whose TEACH Grants are converted to Direct Unsubsidized Loans.

Burden Calculation: Currently there is burden of 24,459 hours assessed to 37,749 respondents for the counseling

requirements of § 686.32 in the regulatory information collection 1845–0084 as filed in January 2018. These figures do not include the new conversion counseling that will be required under the final regulations. The expansion and revision of the

required program counseling will require changes to the counseling currently available. We anticipate that approximately 1,520 TEACH Grant recipients will either voluntarily convert their grant to a loan or will run out of time to complete the teaching obligation and have the grant converted to a loan. This is based on the number of voluntary and out of time conversions noted for 2019. We do not believe there

will be a significant increase or decrease in such activity.

We believe that it will take a TEACH Grant recipient the same approximate 20 minutes (.33 hours) to review the new conversion counseling materials as it takes them to review the other required counseling materials. We estimate the total burden of 502 hours (1,520 × .33 hours) for recipients to

review the conversion counseling material.

The changes to the initial, subsequent, exit, and new conversion counseling information collection will be completed and a full public clearance filing will be made after publication of the final rule and before being made available for use by the effective date of the regulations.

§ 686.32—COUNSELING REQUIREMENTS

[OMB control number 1845–0084 new conversion counseling figures only]

Entity	Respondent	Responses	Time to respond (hours)	Burden hours
Individual	1,520	1,520	.33	502
Total	1,520	1,520	.....	502

Section 686.40—Documenting the service obligation.

Requirements: The final regulations clarify the requirements regarding the documentation of completion of the teaching service obligation in the TEACH Grant Program and how it is reported. To support the requirement, we provided a draft “TEACH Grant Certification of Completed Teaching” form with the Notice of Proposed Rulemaking. While no public comments were received regarding the form, we have determined that we need to add to the form. We are modifying the “TEACH Grant Certification of Completed Teaching” form by adding an option to allow TEACH Grant recipients to certify that they have begun qualifying teaching service within a timeframe that will allow them to complete the service obligation within the eight year service

obligation period, to avoid having their TEACH Grants converted to loans in accordance with Section 686.43(a)(1)(ii). This form continues to require both TEACH grant recipient and eligible school official information.

Burden Calculation: The changes to the regulations relating to the required service obligation will require a new certification form. During the 2018 calendar year, Department records indicate we received documentation for 52,989 grantees regarding yearly service obligation completion. We estimate that to meet the requirements of § 686.40 each respondent will need 20 minutes (.33 hours) to complete the certification form. We estimate the total burden of 17,486 hours (52,989 × .33 hours) for completion of this form.

We believe that the second certification option on the “TEACH Grant Certification of Completed

Teaching” form is needed to allow TEACH Grant recipients who have not yet completed any qualifying teaching, but who have sufficient time remaining in the eight-year service obligation period to complete the required four-years of teaching, to certify that they have begun qualifying teaching to avoid conversion of the TEACH Grants to loans under Section 686.43(a)(1)(ii). We estimate that to meet the certification requirements each respondent will need 20 minutes (.33 hours) to complete the certification form. We estimate that approximately 24 TEACH Grant recipients will submit the certification form for this purpose. We estimate a total burden of 8 hours (24 × .33 hours = 8 hours) for completion of the form.

We estimate the total burden of 17,494 hours (53,013 × .33 hours) under OMB Control Number 1845–0158.

§ 686.40—DOCUMENTING THE SERVICE OBLIGATION

[OMB control number 1845–0158]

Entity	Respondent	Responses	Time to respond (hours)	Burden hours
Individual documenting service obligation	52,989	52,989	.33	17,486
Individual documenting beginning eligible teaching	24	24	.33	8
Total	53,013	53,013	.....	17,494

Section 686.41—Periods of suspension.

Requirements: The final regulations add new conditions under which a TEACH Grant recipient may receive a temporary suspension of the period for completing the service obligation.

Burden Calculation: The final regulations added new conditions that

will allow a TEACH Grant recipient to receive a temporary suspension of the period for completing the service obligation. These new conditions, including completion of licensure requirements, military orders for the grantee’s spouse, and residing or being employed in a federally declared major disaster area require new temporary

suspension forms. The qualifying leave under the Family and Medical Leave Act of 1993, and the call to military service are retained in the regulations.

Department records indicate that, during the 2018 calendar year, we received documentation supporting suspension of 589 grantees for enrollment to complete licensure

requirements. We estimate that to meet the requirements in final § 686.41(a)(1)(ii), each respondent will need 20 minutes (.33 hours) to complete the certification form. We estimate a total burden of 194 hours (589 × .33 hours).

Department records indicate that, during the 2018 calendar year, we received documentation supporting suspension of 334 grantees for qualifying leave under the Family and Medical Leave Act of 1993. We estimate that to meet the requirements in final § 686.41(a)(1)(iii), each respondent will need 20 minutes (.33 hours) to complete the certification form. We estimate a

total burden of 110 hours (334 × .33 hours).

Department records indicate that, during the 2018 calendar year, we received documentation supporting suspension of 24 grantees for call to military service. We estimate that to meet the requirements in final § 686.41(a)(1)(iv), each respondent will need 20 minutes (.33 hours) to complete the certification form. We estimate a total burden of 8 hours (24 × .33 hours).

We anticipate that we will receive documentation supporting suspension of 25 grantees based on military orders for the grantee’s spouse. We estimate that to meet the requirements in final § 686.41(a)(1)(v), each respondent will

need 20 minutes (.33 hours) to complete the certification form. We estimate a total burden of 8 hours (25 × .33 hours).

We anticipate that we will receive documentation supporting suspension of 500 grantees based on residing or being employed in a federally declared major disaster area. We estimate that to meet the requirements in final § 686.41(a)(1)(vi), each respondent will need 20 minutes (.33 hours) to complete the certification form. We estimate a total burden of 165 hours (500 × .33 hours).

We estimate the total burden of 485 hours (1,472 × .33 hours) under OMB Control Number 1845–0158.

§ 686.41—PERIODS OF SUSPENSION

[OMB control number 1845–0158]

Entity	Respondent	Responses	Time to respond (hours)	Burden hours
Individual (a)(1)(ii)	589	589	.33	194
Individual (a)(1)(iii)	334	334	.33	110
Individual (a)(1)(iv)	24	24	.33	8
Individual (a)(1)(v)	25	25	.33	8
Individual (a)(1)(vi)	500	500	.33	165
Total	1,472	1,472	.....	485

Section 686.42—Discharge of agreement to serve or repay.

Requirements: The final regulations revise the conditions under which a TEACH Grant recipient may discharge an agreement to serve or repay based on military service.

Burden Calculation: Department records indicate that, during the 2018 calendar year, we received documentation supporting suspension of 10 grantees for discharge due to an extended call to military service. We estimate that to meet the requirements

in final § 686.42(c), each respondent will need 20 minutes (.33 hours) to complete the new certification form also used for military service suspension.

We estimate a total burden of 3 hours (10 × .33 hours) under OMB Control Number 1845–0158.

§ 686.42—DISCHARGE OF AGREEMENT TO SERVE OR REPAY

[OMB control number 1845–0158]

Entity	Respondent	Responses	Time to respond (hours)	Burden hours
Individual	10	10	.33	3
Total	10	10	.....	3

Section 686.43—Obligation to repay the grant.

Requirements: The final regulations simplify the rules governing when a TEACH Grant will be converted to a Direct Unsubsidized Loan and provide for annual notifications from the Secretary to the recipient regarding the status of a recipient’s TEACH Grant service obligation. Under the final regulations, a TEACH Grant recipient can request conversion of the grant to a loan if the recipient decides not to fulfill the TEACH Grant obligations for any reason or if the recipient fails to begin

or maintain qualifying teaching service within a timeframe that would allow the recipient to complete the service obligation in the requisite eight-year period. Additionally, the final regulations describe the notifications the Secretary will annually send to all TEACH Grant recipients regarding the service obligation requirements.

Burden Calculation: We believe that the final regulations will require action on the part of TEACH grant recipients. Based on Department data, during the 2018 calendar year there were 52,989 TEACH Grant recipients who submitted

evidence of completed teaching service. We estimate that an additional 25 percent of that figure or about 13,247 grant recipients will be working toward their teaching obligation for a total of 66,236 grant recipients who will receive the annual notice from the Secretary as required under final § 686.43(a)(2). We estimate that grant recipients will require 10 minutes (.17 hours) to review the information provided in each annual notice. We estimate the total burden of 11,260 hours (66,236 × .17 hours).

There will be burden on those recipients who are notified that their

TEACH Grant will be converted to a loan if the recipient does not submit required documentation to show that they are satisfying the service obligation. Based on the Department's data, during calendar year 2018 there were a total of 10,591 TEACH Grant recipients whose grants were converted to loans based on the recipients' voluntary request, or because the recipient was out of time to perform the service obligation or because the recipient did not provide evidence of

meeting the service obligation as required under § 686.43(a)(4). We estimate that grant recipients will require 10 minutes (.17 hours) to review the information in the notice. We estimate a total burden of 1,800 burden hours (10,591 × .17 hours).

Additionally, there will be burden on any TEACH Grant recipient whose grant was involuntarily converted to a Direct Unsubsidized Loan to request reconsideration from the Secretary. Based on the Department's data, during

calendar year 2018 there were 282 correctable conversions of TEACH Grants into loans. We estimate that a recipient will require 15 minutes (.25 hours) to gather documentation to present to the Secretary and make such a request as required under § 686.43(a)(5). We estimate a total burden of 71 burden hours (282 × .25 hours).

We estimate a total burden of 13,131 burden hours under OMB Control Number 1845-0157.

§ 686.43—OBLIGATION TO REPAY THE GRANT
[OMB control number 1845-0157]

Entity	Respondent	Responses	Time to respond (hours)	Burden hours
Individual (a)(2)	66,236	66,236	.17	11,260
Individual (a)(4)	*	10,591	.17	1,800
Individual (a)(5)	*	282	.25	71
Total	66,236	77,109	.....	13,131

* These respondents will be part of the universe of respondents who receive the annual notifications and are not summed to avoid duplication of respondents.

The estimated cost to the recipients is \$1,680,714, based on the \$29.48 per hour averaged for 2018 elementary, middle school and high school teacher salaries from the 2019 Bureau of Labor Statistics Occupational Handbook.

Regulatory section	Information collection	OMB control No. and estimated burden (change in burden)	Estimated costs
§ 686.12 Agreement to serve or repay.	Under final § 686.12 the TEACH Grant agreement to serve or repay will need to be expanded and updated with revised definitions, requirements, and explanations of the program and participant conditions, and options as discussed in the preamble.	1845-0083 +25,397 hours.	\$748,704
§ 686.32 Counseling requirements.	The final regulations in § 686.32 will expand the information that is provided to TEACH Grant recipients during initial, subsequent, and exit counseling. The final regulations add a new conversion counseling requirement for grant recipients whose TEACH Grants are converted to Direct Unsubsidized Loans.	1845-0084 +502 hours	14,799
§ 686.40 Documenting the service obligation.	The final regulations will clarify the requirements regarding the documentation of completion of the teaching service obligation in the TEACH Grant Program and how it is reported.	1845-0158 +17,494 hours.	515,723
§ 686.41 Periods of suspension.	The final regulations will add new conditions under which a TEACH Grant recipient may receive a temporary suspension of the period for completing the service obligation.	1845-0158 +485 hours	14,298
§ 686.42 Discharge of agreement to serve or repay.	The final regulations will revise the language for conditions under which a TEACH Grant recipient may discharge an agreement to serve or repay based on military service.	1845-0158 +3 hours	88
§ 686.43 Obligation to repay the grant.	The final regulations will simplify the rules governing when a TEACH Grant will be converted to a Direct Unsubsidized Loan, as well as provide for annual notifications from the Secretary to the recipient regarding the status of a recipient's TEACH Grant service obligation. Under the final regulations, TEACH Grant recipients can request conversion if the recipient decides not to fulfill the TEACH Grant obligations for any reason or if the recipient fails to begin or maintain qualifying teaching service within a timeframe to complete the service obligation in the requisite eight-year period. Additionally, the final regulations describe the notifications the Secretary will annually send to all TEACH Grant recipients regarding the service obligation requirements.	1845-0157 +13,131 hours.	387,102

Collections of Information

The total burden hours and change in burden hours associated with each OMB

control number affected by the final regulations follows:

Control No.	Total burden hours	Change in burden hours
1845-0083 ..	25,397	No change.
1845-0084 ..	37,175	+502.
1845-0158 ..	17,982	+17,982.
1845-0157 ..	13,131	+13,131.
Total	93,685	31,615.

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In the NPRM we requested comments on whether the regulations would require transmission of information that any other or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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 program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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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.

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects

34 CFR Part 674

Loan programs—education, Reporting and recordkeeping, Student aid.

34 CFR Part 675

Colleges and universities, Employment, Grant programs—

education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 676

Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 686

Administrative practice and procedure, Colleges and universities, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 690

Colleges and universities, Education of disadvantaged, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 692

Colleges and universities, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 694

Colleges and universities, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Betsy DeVos,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education amends parts 674, 675, 676, 682, 685, 686, 690, 692, and 694 of title 34 of the Code of Federal Regulations as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087aa–1087hh; Pub. L. 111–256, 124 Stat. 2643; unless otherwise noted.

■ 2. Section 674.9 is amended by:
■ a. In the introductory text, adding the words “Prior to October 1, 2017,” at the beginning of the sentence, removing “A” and adding “a” in its place. , and

removing the word “is” and adding in its place the word “was”; and

■ b. Revising paragraph (c).

The revision reads as follows:

§ 674.9 Student eligibility.

* * * * *

(c) Has financial need as determined in accordance with part F of title IV of the HEA.

* * * * *

§ 674.35 [Amended]

■ 3. Section 674.35 is amended by removing paragraph (c)(5)(iv) and redesignating paragraph (c)(5)(v) as (c)(5)(iv).

■ 4. Section 674.36 is amended by revising paragraph (c)(4) to read as follows:

§ 674.36 Deferment of repayment—NDSLs made on or after October 1, 1980, but before July 1, 1993.

* * * * *

(c) * * *

(4) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs). The Secretary considers that a borrower is providing comparable service if he or she satisfies the following four criteria:

(i) The borrower serves in an organization that is exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization.

(iv) The borrower has agreed to serve on a full-time basis for a term of at least one year.

* * * * *

PART 675—FEDERAL WORK-STUDY PROGRAMS

■ 5. The authority citation for part 675 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087, 1094; 42 U.S.C. 2751–2756b; unless otherwise noted.

■ 6. Section 675.9 is amended by revising paragraph (c) to read as follows:

§ 675.9 Student eligibility.

* * * * *

(c) Has financial need as determined in accordance with part F of title IV of the HEA.

■ 7. Section 675.20 is amended by revising paragraph (c)(2)(iv) to read as follows:

§ 675.20 Eligible employers and general conditions and limitation on employment.

* * * * *

(c) * * *
(2) * * *

(iv) Involve the construction, operation, or maintenance of so much of any facility as is used or is to be used for instruction that is predominantly devotional and religious or as a place for religious worship, except to the extent that excluding such work would impose a substantial burden on a person's exercise of religion.

* * * * *

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

■ 8. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

■ 9. Section 676.9 is amended by revising paragraph (c) to read as follows:

§ 676.9 Student eligibility.

* * * * *

(c) Has financial need as determined in accordance with part F of title IV of the HEA.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 10. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071–1087–4, unless otherwise noted.

§ 682.210 [Amended]

■ 11. Section 682.210 is amended by removing and reserving paragraph (m)(1)(iv).

§ 682.301 [Amended]

■ 12. Section 682.301 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(3) as paragraph (a)(2).

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 13. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087a, *et seq.*, unless otherwise noted.

§ 685.200 [Amended]

■ 14. Section 685.200 is amended by removing and reserving paragraph (a)(2)(ii).

■ 15. Section 685.219 is amended in paragraph (b) by revising the definition of “public service organization” and by revising paragraph (c)(1)(ii) to read as follows:

§ 685.219 Public Service Loan Forgiveness Program.

* * * * *

(b) * * *

Public service organization means:

- (i) A Federal, State, local, or Tribal government organization, agency, or entity;
- (ii) A public child or family service agency;
- (iii) A non-profit organization under section 501(c)(3) of the Internal Revenue Code that is exempt from taxation under section 501(a) of the Internal Revenue Code;
- (iv) A Tribal college or university; or
- (v)(A) A private organization that provides the following public services: Emergency management, military service, public safety, law enforcement, public interest law services, early childhood education (including licensed or regulated child care, Head Start, and State funded pre-kindergarten), public service for individuals with disabilities and the elderly, public health (including nurses, nurse practitioners, nurses in a clinical setting, and full-time professionals engaged in health care practitioner occupations and health care support occupations, as such terms are defined by the Bureau of Labor Statistics), public education, public library services, school library or other school-based services; and

(B) Is not a business organized for profit, a labor union, or a partisan political organization.

* * * * *

(c) * * *
(1) * * *

(ii) Is employed full-time by a public service organization or serving in a full-time AmeriCorps or Peace Corps position—

(A) When the borrower makes the 120 monthly payments described under paragraph (c)(1)(iii) of this section;

(B) At the time of application for loan forgiveness; and

(C) At the time the remaining principal and accrued interest are forgiven.

* * * * *

PART 686—TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION (TEACH) GRANT PROGRAM

■ 16. The authority citation for part 686 continues to read as follows:

Authority: 20 U.S.C. 1070g, *et seq.*, unless otherwise noted.

■ 17. Section 686.1 is revised to read as follows:

§ 686.1 Scope and purpose.

The TEACH Grant program awards grants to students who intend to teach, to help meet the cost of their postsecondary education. In exchange for the grant, the student must agree to serve as a full-time teacher in a high-need field in a school serving low-income students, or as a full-time teacher in a high-need field for an educational service agency serving low-income students, for at least four academic years within eight years of ceasing enrollment at the institution where the student received the grant or, in the case of a student who receives a TEACH Grant at one institution and subsequently transfers to another institution and enrolls in another TEACH Grant-eligible program, within eight years of ceasing enrollment at the other institution. The eight-year period for completing the required four years of teaching does not include periods of suspension in accordance with § 686.41. If the student does not satisfy the service obligation, the amounts of the TEACH Grants received are treated as a Direct Unsubsidized Loan and must be repaid with interest charged from the date of each TEACH Grant disbursement. A TEACH Grant that has been converted to a Direct Unsubsidized Loan can be reconverted to a grant only in accordance with § 686.43.

■ 18. Section 686.2 is amended:

■ a. In paragraph (b), by adding in alphabetical order and entry for “Free application for Federal student aid (FAFSA)”; and

■ b. In paragraph (d) by:

■ i. Removing the definition of “Agreement to serve (ATS)” and adding in alphabetical order a definition for “Agreement to serve or repay”;

■ ii. Adding in alphabetical order a definition for “Educational service agency”;

■ iii. In paragraph (5) of the definition of “High-need field”, adding “, including, but not limited to, computer science” after the word “Science”;

■ iv. In paragraph (7) of the definition of “High-need field”, removing the words “in accordance with 34 CFR 682.210(q)”;

- v. Revising the definition of “Highly qualified”;
- vi. Removing the definition of “School serving low-income students (low-income school)” and adding in alphabetical order a definition for “School or educational service agency serving low-income students (low-income school)”;
- vii. Revising the definition of “TEACH Grant-eligible program”;
- viii. Adding in alphabetical order a definition for “Teacher Shortage Area Nationwide Listing (Nationwide List)”.

The additions and revisions read as follows:

§ 686.2 Definitions.

* * * * *

(b) * * *

Free application for Federal student aid (FAFSA).

* * * * *

(d) * * *

Agreement to serve or repay: An agreement under which the individual receiving a TEACH Grant commits to meet the service obligation or repay the loan as described in § 686.12 and to comply with notification and other provisions of the agreement.

* * * * *

Educational service agency: A regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies (LEAs).

* * * * *

Highly qualified: Has the meaning set forth in paragraphs (i) through (iv) of this definition, or the meaning set forth in section 602(10) of the Individuals With Disabilities Education Act.

(i) When used with respect to any public elementary school or secondary school teacher in a State, means that—

(A) The teacher has obtained full State certification as a teacher (including certification obtained through alternative routes to certification) or passed the State teacher licensing examination, and holds a license to teach in such State, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State’s public charter school law; and

(B) The teacher has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis.

(ii) When used with respect to—

(A) An elementary school teacher who is new to the profession, means that the teacher—

(1) Holds at least a bachelor’s degree; and

(2) Has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum (which may consist of passing a State-required certification or licensing test or tests in reading, writing, mathematics, and other areas of the basic elementary school curriculum); or

(B) A middle or secondary school teacher who is new to the profession, means that the teacher holds at least a bachelor’s degree and has demonstrated a high level of competency in each of the academic subjects in which the teacher teaches by—

(1) Passing a rigorous State academic subject test in each of the academic subjects in which the teacher teaches (which may consist of a passing level of performance on a State-required certification or licensing test or tests in each of the academic subjects in which the teacher teaches); or

(2) Successful completion, in each of the academic subjects in which the teacher teaches, of an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing.

(iii) When used with respect to an elementary, middle, or secondary school teacher who is not new to the profession, means that the teacher holds at least a bachelor’s degree and—

(A) Has met the applicable standard in paragraph (ii) of this definition, which includes an option for a test; or

(B) Demonstrates competence in all the academic subjects in which the teacher teaches based on a highly objective uniform State standard of evaluation that—

(1) Is set by the State for both grade-appropriate academic subject matter knowledge and teaching skills;

(2) Is aligned with challenging State academic content and student academic achievement standards and developed in consultation with core content specialists, teachers, principals, and school administrators;

(3) Provides objective, coherent information about the teacher’s attainment of core content knowledge in the academic subjects in which a teacher teaches;

(4) Is applied uniformly to all teachers in the same academic subject and the same grade level throughout the State;

(5) Takes into consideration, but is not based primarily on, the time the teacher has been teaching in the academic subject;

(6) Is made available to the public upon request; and

(7) May involve multiple, objective measures of teacher competency.

(iv)(A) When used with respect to any public, or other non-profit private, elementary or secondary school teacher who is exempt from State certification requirements means that the teacher is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in the applicable grade levels and subject areas.

(B) For purposes of paragraph (iv)(A) of this definition, the competency tests taken by a private school teacher must be recognized by five or more States for the purpose of fulfilling the highly qualified teacher requirements as described in paragraphs (i) through (iii) of this definition, and the score achieved by the teacher on each test must equal or exceed the average passing score of those five States.

* * * * *

School or educational service agency serving low-income students (low-income school): An elementary school, secondary school, or educational service agency that is listed in the Department’s Teacher Cancellation Low-Income (TCLI) Directory. The Secretary considers all elementary and secondary schools and educational service agencies operated by the Bureau of Indian Education (BIE) in the Department of the Interior or operated on Indian reservations by Indian Tribal groups under contract or grant with the BIE to qualify as schools or educational service agencies serving low-income students.

* * * * *

TEACH Grant-eligible program: An eligible program, as defined in 34 CFR 668.8, is a program of study at a TEACH Grant-eligible institution that is designed to prepare an individual to teach as a highly qualified teacher in a high-need field and leads to a baccalaureate or master’s degree, or is a post-baccalaureate program of study. A two-year program of study that is acceptable for full credit toward a baccalaureate degree is considered to be a program of study that leads to a baccalaureate degree.

* * * * *

Teacher Shortage Area Nationwide Listing (Nationwide List): A list of teacher shortage areas, as defined in 34 CFR 682.210(q)(8)(vii), in each State.

* * * * *

■ 19. Section 686.10 is revised to read as follows:

§ 686.10 Application.

To receive a grant under this part, a student must—

(a) Complete and submit the Free application for Federal student aid (FAFSA) in accordance with the instructions in the FAFSA;

(b) Complete and sign an agreement to serve or repay in accordance with § 686.12; and

(c) Provide any additional information requested by the Secretary and the institution.

§ 686.11 [Amended]

■ 20. Section 686.11 is amended:

■ a. In paragraph (a)(1)(i), by removing the words “submitted a completed application” and adding in their place the words “met the application requirements in § 686.10”;

■ b. By removing paragraph (a)(1)(ii);

■ c. By redesignating paragraphs (a)(1)(iii), (iv), and (v) as paragraphs (a)(1)(ii), (iii), and (iv), respectively;

■ d. In paragraph (b) introductory text, by removing the words “submitted a completed application” and adding in their place the words “met the application requirements in § 686.10”;

■ e. By removing paragraph (b)(1); and

■ f. By redesignating paragraphs (b)(2) and (3) as paragraphs (b)(1) and (2), respectively.

■ 21. Section 686.12 is revised to read as follows:

§ 686.12 Agreement to serve or repay.

(a) *General.* A student who meets the eligibility requirements in § 686.11 may receive a TEACH Grant only after he or she signs an agreement to serve or repay provided by the Secretary and receives counseling in accordance with § 686.32.

(b) *Contents of the agreement to serve or repay.* The agreement to serve or repay—

(1) Provides that, for each TEACH Grant-eligible program for which the student received TEACH Grant funds, the grant recipient must fulfill a service obligation by performing creditable teaching service by serving—

(i) As a full-time teacher for a total of not less than four elementary or secondary academic years within eight years after the date the recipient ceased to be enrolled at the institution where the recipient received the TEACH Grant, or in the case of a student who receives a TEACH Grant at one institution and subsequently transfers to another institution and enrolls in another TEACH Grant-eligible program, within eight years of ceasing enrollment at the other institution;

(ii) In a low-income school as defined in § 686.2(d) and subject to the requirements under § 686.40(a)(3);

(iii) As a highly qualified teacher as defined in § 686.2(d); and

(iv) In a high-need field in the majority of classes taught during each

elementary and secondary academic year;

(2) Requires the grant recipient to submit, upon completion of each year of service, documentation of the service in the form of a certification by a chief administrative officer of the school;

(3) Explains that the eight-year period for completing the service obligation does not include periods of suspension in accordance with § 686.41;

(4) Explains the conditions under which a TEACH Grant may be converted to a Direct Unsubsidized Loan, as described in § 686.43;

(5) Explains that, if a TEACH Grant is converted to a Direct Unsubsidized Loan, the grant recipient must repay the loan in full, with interest charged from the date of each TEACH Grant disbursement; and

(6) Explains that to avoid further accrual of interest as described in paragraph (b)(5) of this section, a grant recipient who decides not to teach in a qualified school or field, or who for any other reason no longer intends to satisfy the service obligation, may request that the Secretary convert his or her TEACH Grant to a Direct Unsubsidized Loan so that the grant recipient may begin repaying immediately, instead of waiting for the TEACH Grant to be converted to a loan under the condition described in § 686.43(a)(1)(ii); and

(7) Explains that a grant recipient whose TEACH Grant was converted to a Direct Unsubsidized Loan based on a request from the recipient in accordance with § 686.43(a)(1)(i) may request that the Secretary reconvert the recipient's loan to a TEACH Grant as provided in § 686.43(a)(8); and

(8) Requires the grant recipient to comply with the terms, conditions, and other requirements consistent with §§ 686.40 through 686.43 that the Secretary determines to be necessary.

(c) *Completion of the service obligation.* (1) A grant recipient must complete one service obligation for all TEACH Grants received for undergraduate study, and one service obligation for all TEACH Grants received for graduate study. Each service obligation begins when the grant recipient ceases enrollment at the institution where the TEACH Grants were received, or, in the case of a grant recipient who receives a TEACH Grant at one institution and subsequently transfers to another institution, within eight years from the date the grant recipient ceases enrollment at the other institution. However, creditable teaching service, a suspension approved under § 686.41(a)(2), or a military discharge granted under § 686.42(c)(2)

may apply to more than one service obligation.

(2) Unless paragraph (c)(3) of this section applies—

(i) In the case of a TEACH Grant recipient who withdraws from an institution before completing a baccalaureate or post-baccalaureate program of study for which he or she received TEACH Grants, but later re-enrolls at the same institution or at a different institution in either the same baccalaureate or post-baccalaureate program or in a different TEACH Grant-eligible baccalaureate or post-baccalaureate program prior to the date that his or her TEACH Grants are converted to Direct Unsubsidized Loans under § 686.43(a)(1)(ii) and receives additional TEACH Grants or the Secretary otherwise confirms that the grant recipient has re-enrolled in a TEACH Grant-eligible program, the Secretary adjusts the starting date of the period for completing the service obligation to begin when the grant recipient ceases to be enrolled at the institution where he or she has re-enrolled; and

(ii) In the case of a TEACH Grant recipient who withdraws from an institution before completing a master's degree program of study for which he or she received TEACH Grants, but later re-enrolls at the same institution or at a different institution in either the same master's degree program or in a different TEACH Grant eligible master's degree program prior to the date that his or her TEACH Grants are converted to Direct Unsubsidized Loans under § 686.43(a)(1)(ii) and receives additional TEACH Grants or the Secretary otherwise confirms that the grant recipient has re-enrolled in a TEACH Grant-eligible program, the Secretary adjusts the starting date of the period for completing the service obligation to begin when the grant recipient ceases to be enrolled at the institution where he or she has re-enrolled.

(3) In the case of a TEACH Grant recipient covered under paragraph (c)(2)(i) or (ii) of this section who completed one or more complete academic years of creditable teaching service as described in § 686.12(b) during the period between the grant recipient's withdrawal and re-enrollment—

(i) The Secretary does not adjust the starting date of the period for completing the service obligation unless requested by the recipient;

(ii) The completed teaching service counts toward satisfaction of the grant recipient's service obligation under paragraph (c)(2)(i) of this section; and

(iii) If the grant recipient continues to perform creditable teaching service after re-enrolling in a TEACH Grant-eligible program, the grant recipient may receive credit toward satisfaction of the service obligation for any complete academic years of creditable teaching performed while the recipient is concurrently enrolled in the TEACH Grant-eligible program only if the recipient does not request and receive a temporary suspension of the period for completing the service obligation under § 686.41(a)(1)(i).

(d) *Teaching in a high-need field listed in the Nationwide List.* For a grant recipient's teaching service in a high-need field listed in the Nationwide List to count toward satisfying the recipient's service obligation, the high-need field in which he or she prepared to teach must be listed in the Nationwide List for the State in which the grant recipient teaches—

(1) For teaching service performed before July 1, 2010, at the time the grant recipient begins teaching in that field, even if that field subsequently loses its high-need designation for that State; or

(2) For teaching service performed on or after July 1, 2010—

(i) At the time the grant recipient begins teaching in that field, even if that field subsequently loses its high-need designation for that State; or

(ii) At the time the grant recipient signed the agreement to serve or repay or received the TEACH Grant, even if that field subsequently loses its high-need designation for that State before the grant recipient begins teaching in that field.

§ 686.21 [Amended]

■ 22. Section 686.21 is amended:

■ a. In paragraphs (a)(2)(i) and (ii), by removing the word “aggregate” and adding in its place the word “total”; and

■ b. In paragraph (a)(2)(ii), by removing the words “a master's degree” and adding in their place the words “graduate study”.

§ 686.31 [Amended]

■ 23. Section 686.31 is amended:

■ a. In paragraph (a)(3), by adding the words “or repay” after the word “serve” and

■ b. In paragraph (e)(2)(ii), by removing the word “Federal” before the words “Direct Unsubsidized Loan”.

■ 24. Section 686.32 is amended by revising paragraphs (a)(3), (b)(3), (c)(4), and (d) and adding paragraph (e) to read as follows:

§ 686.32 Counseling Requirements.

(a) * * *

(3) The initial counseling must—

(i) Explain the terms and conditions of the TEACH Grant agreement to serve or repay as described in § 686.12;

(ii) Provide the grant recipient with information about how to identify low-income schools and documented high-need fields;

(iii) Inform the grant recipient that, for the teaching to count towards the recipient's service obligation, the high-need field in which he or she has prepared to teach must be—

(A) One of the six high-need fields listed in § 686.2; or

(B) A high-need field that is listed in the Nationwide List for the State in which the grant recipient teaches—

(1) At the time the grant recipient begins teaching in that field, even if that field subsequently loses its high-need designation for that State; or

(2) For teaching service performed on or after July 1, 2010, at the time the grant recipient signed the agreement to serve or repay or received the TEACH Grant, even if that field subsequently loses its high-need designation for that State before the grant recipient begins teaching in that field;

(iv) Inform the grant recipient of the opportunity to request a suspension of the eight-year period for completion of the agreement to serve or repay and the conditions under which a suspension may be granted in accordance with § 686.41;

(v) Explain to the grant recipient that conditions, such as conviction of a felony, could preclude the grant recipient from completing the service obligation;

(vi) Emphasize to the grant recipient that if the grant recipient fails or refuses to complete the service obligation contained in the agreement to serve or repay or any other condition of the agreement to serve or repay—

(A) The TEACH Grant must be repaid as a Direct Unsubsidized Loan; and

(B) The grant recipient will be obligated to repay the full amount of each grant and the accrued interest from each disbursement date;

(vii) Explain the circumstances, as described in § 686.43, under which a TEACH Grant will be converted to a Direct Unsubsidized Loan;

(viii) Explain that to avoid further accrual of interest as described in § 686.12(b)(4)(ii), a grant recipient who decides not to teach in a qualified school or field, or who for any other reason no longer intends to satisfy the service obligation, may request that the Secretary convert his or her TEACH Grant to a Direct Unsubsidized Loan that the grant recipient may begin repaying immediately, instead of waiting for the TEACH Grant to be

converted to a loan under the condition described in § 686.43(a)(1)(ii);

(ix) Emphasize that, once a TEACH Grant is converted to a Direct Unsubsidized Loan, it may be reconverted to a grant only if—

(A) The Secretary determines, based on documentation provided by the recipient or in the Secretary's records, that the grant recipient was satisfying the service obligation as described in § 686.12 or that the grant was converted to a loan in error; or

(B) In the case of a grant recipient whose TEACH Grant was converted to a Direct Unsubsidized Loan in accordance with § 686.43(a)(1)(i), the grant recipient requests that the Secretary reconvert the loan to a grant and is determined to be eligible for reconversion in accordance with § 686.43(a)(8);

(x) Review for the grant recipient information on the availability of the Department's Federal Student Aid Ombudsman's office;

(xi) Describe the likely consequences of loan default, including adverse credit reports, garnishment of wages, Federal offset, and litigation; and

(xii) Inform the grant recipient of sample monthly repayment amounts based on a range of student loan indebtedness.

(b) * * *

(3) Subsequent counseling must—

(i) Review the terms and conditions of the TEACH Grant agreement to serve or repay as described in § 686.12;

(ii) Emphasize to the grant recipient that if the grant recipient fails or refuses to complete the service obligation contained in the agreement to serve or repay or any other condition of the agreement to serve or repay—

(A) The TEACH Grant must be repaid as a Direct Unsubsidized Loan; and

(B) The grant recipient will be obligated to repay the full amount of the grant and the accrued interest from the disbursement date;

(iii) Explain the circumstances, as described in § 686.43, under which a TEACH Grant will be converted to a Direct Unsubsidized Loan;

(iv) Explain that to avoid further accrual of interest as described in § 686.12(b)(4)(ii), a grant recipient who decides not to teach in a qualified school or field, or who for any other reason no longer intends to satisfy the service obligation, may request that the Secretary convert his or her TEACH Grant to a Direct Unsubsidized Loan that the grant recipient may begin repaying immediately, instead of waiting for the TEACH Grant to be converted to a loan under the condition described in § 686.43(a)(1)(ii);

(v) Emphasize that, once a TEACH Grant is converted to a Direct Unsubsidized Loan, it may be reconverted to a grant only if—

(A) The Secretary determines, based on documentation provided by the recipient or in the Secretary's records, that the grant recipient was satisfying the service obligation as described in § 686.12 or that the grant was converted to a loan in error; or

(B) In the case of a grant recipient whose TEACH Grant was converted to a Direct Unsubsidized Loan in accordance with § 686.43(a)(1)(i), the grant recipient requests that the Secretary reconvert the loan to a grant and is determined to be eligible for reconversion in accordance with § 686.43(a)(8); and

(vi) Review for the grant recipient information on the availability of the Department's Federal Student Aid Ombudsman's office.

(c) * * *

(4) The exit counseling must—

(i) Review the terms and conditions of the TEACH Grant agreement to serve or repay as described in § 686.12 and emphasize to the grant recipient that the four-year service obligation must be completed within the eight-year period described in § 686.12;

(ii) Explain the treatment of a grant recipient who withdraws from and then reenrolls in a TEACH Grant-eligible institution as described in § 686.12(c);

(iii) Inform the grant recipient of the opportunity to request a suspension of the eight-year period for completion of the service obligation and the conditions under which a suspension may be granted in accordance with § 686.41;

(iv) Provide the grant recipient with information about how to identify low-income schools and documented high-need fields;

(v) Inform the grant recipient that, for the teaching to count towards the recipient's service obligation, the high-need field in which he or she has prepared to teach must be—

(A) One of the six high-need fields listed in § 686.2; or

(B) A high-need field that is listed in the Nationwide List for the State in which the grant recipient teaches—

(1) At the time the grant recipient begins teaching in that field, even if that field subsequently loses its high-need designation for that State; or

(2) For teaching service performed on or after July 1, 2010, at the time the grant recipient signed the agreement to serve or repay or received the TEACH Grant, even if that field subsequently loses its high-need designation for that

State before the grant recipient begins teaching in that field;

(vi) Emphasize to the grant recipient that if the grant recipient fails or refuses to complete the service obligation contained in the agreement to serve or repay or fails to meet any other condition of the agreement to serve or repay—

(A) The TEACH Grant must be repaid as a Direct Unsubsidized Loan; and

(B) The grant recipient will be obligated to repay the full amount of each grant and the accrued interest from each disbursement date;

(vii) Explain to the grant recipient that the Secretary will, at least annually during the service obligation period, send the recipient the notice described in § 686.43(a)(2);

(viii) Explain the circumstances, as described in § 686.43, under which a TEACH Grant will be converted to a Direct Unsubsidized Loan;

(ix) Explain that to avoid further accrual of interest as described in § 686.12(b)(4)(ii), a grant recipient who decides not to teach in a qualified school or field, or who for any other reason no longer intends to satisfy the service obligation, may request that the Secretary convert his or her TEACH Grant to a Direct Unsubsidized Loan that the grant recipient may begin repaying immediately, instead of waiting for the TEACH Grant to be converted to a loan under the condition described in § 686.43(a)(1)(ii);

(x) Emphasize that once a TEACH Grant is converted to a Direct Unsubsidized Loan it may be reconverted to a grant only if—

(A) The Secretary determines, based on documentation provided by the recipient or in the Secretary's records, that the grant recipient was satisfying the service obligation as described in § 686.12 or that the grant was converted to a loan in error; or

(B) In the case of a grant recipient whose TEACH Grant was converted to a Direct Unsubsidized Loan in accordance with § 686.43(a)(1)(i), the grant recipient requests that the Secretary reconvert the loan to a grant and is determined to be eligible for reconversion in accordance with § 686.43(a)(8); and

(xi) Explain to the grant recipient how to contact the Secretary.

(5) If exit counseling is conducted through interactive electronic means, an institution must take reasonable steps to ensure that each grant recipient receives the counseling materials and participates in and completes the exit counseling.

* * * * *

(d) *Compliance.* The institution must maintain documentation substantiating the institution's compliance with paragraphs (a) through (c) of this section for each TEACH Grant recipient.

(e) *Conversion counseling.* (1) At the time a TEACH Grant recipient's TEACH Grant is converted to a Direct Unsubsidized Loan, the Secretary conducts conversion counseling with the recipient by interactive electronic means and by mailing written counseling materials to the most recent address provided by the recipient.

(2) The conversion counseling—

(i) Informs the borrower of the average anticipated monthly repayment amount based on the borrower's indebtedness;

(ii) Reviews for the borrower available repayment plan options, including standard, graduated, extended, income-contingent, and income-based repayment plans, including a description of the different features of each plan and the difference in interest paid and total payments under each plan;

(iii) Explains to the borrower the options to prepay each loan, to pay each loan on a shorter schedule, and to change repayment plans;

(iv) Provides information on the effects of loan consolidation including, at a minimum—

(A) The effects of consolidation on total interest to be paid, and length of repayment;

(B) The effects of consolidation on a borrower's underlying loan benefits, including grace periods, loan forgiveness, cancellation, and deferment opportunities; and

(C) The options of the borrower to prepay the loan and to change repayment plans;

(v) Includes debt-management strategies that are designed to facilitate repayment;

(vi) Explains to the borrower the availability of Public Service Loan Forgiveness and teacher loan forgiveness;

(vii) Explains how the borrower may request reconsideration of the conversion of the TEACH Grant to a Direct Unsubsidized Loan if the borrower believes that the grant was converted to a loan in error, or if the borrower can provide documentation showing that he or she was satisfying the service obligation as described in § 686.12;

(viii) Describes the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;

(ix) Informs the borrower of the grace period as described in § 686.43(c);

(x) Provides—

(A) A general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or discharge of the loan (including under the Public Service Loan Forgiveness Program), defer repayment of the loan, or be granted a forbearance on repayment of the loan; and

(B) A copy, either in print or by electronic means, of the information the Secretary makes available pursuant to section 485(d) of the HEA;

(xi) Requires the borrower to provide current information concerning name, address, Social Security number, and driver's license number and State of issuance, as well as the borrower's permanent address;

(xii) Reviews for the borrower information on the availability of the Federal Student Aid Ombudsman's office;

(xiii) Informs the borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS) and how NSLDS can be used to obtain title IV loan status information;

(xiv) Provides a general description of the types of tax benefits that may be available to borrowers;

(xv) Informs the borrower of the amount of interest that has accrued on the converted TEACH Grants and explains that any unpaid interest will be capitalized at the end of the grace period; and

(xvi) In the case of a borrower whose TEACH Grant was converted to a Direct Unsubsidized Loan in accordance with § 686.43(a)(1)(i), explains that the borrower may request that the Secretary reconvert the loan to a grant as provided in § 686.43(a)(8).

■ 25. Section 686.40 is revised to read as follows:

§ 686.40 Documenting the service obligation.

(a) If a grant recipient is performing full-time teaching service in accordance with the agreement to serve or repay, or agreements to serve or repay if more than one agreement exists, the grant recipient must, upon completion of each of the four required elementary or secondary academic years of teaching service, provide to the Secretary documentation of that teaching service on a form approved by the Secretary and certified by the chief administrative officer of the school or educational service agency in which the grant recipient is teaching. The documentation must show that the grant recipient—

(1) Taught full-time in a low-income school as a highly qualified teacher as defined in § 686.2(d); and

(2)(i) Taught a majority of classes during the period being certified in any of the high-need fields of mathematics, science, a foreign language, bilingual education, English language acquisition, special education, or as a reading specialist; or

(ii) Taught a majority of classes during the period being certified in another high-need field designated by that State and listed in the Nationwide List, in accordance with § 686.12(d).

(b) For purposes of completing the service obligation, the elementary or secondary academic year may be counted as one of the grant recipient's four complete elementary or secondary academic years if the grant recipient completes at least one-half of the elementary or secondary academic year and the grant recipient's school employer considers the grant recipient to have fulfilled his or her contract requirements for the elementary or secondary academic year for the purposes of salary increases, tenure, and retirement if the grant recipient is unable to complete an elementary or secondary academic year due to—

(1) A condition that is a qualifying reason for leave under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2612(a)(1) and (3));

(2) A call or order to Federal or State active duty, or Active Service as a member of a Reserve Component of the Armed Forces named in 10 U.S.C. 10101, or service as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5); or

(3) Residing in or being employed in a federally declared major disaster area as defined in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)).

(c)(1) A grant recipient who taught in more than one qualifying school or qualifying educational service agency during an elementary or secondary academic year and demonstrates that the combined teaching service was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools or educational service agencies involved, is considered to have completed one elementary or secondary academic year of qualifying teaching.

(2) If the school or educational service agency at which the grant recipient is employed meets the requirements of a low-income school in the first year of the grant recipient's four elementary or secondary academic years of teaching and the school or educational service

agency fails to meet those requirements in subsequent years, those subsequent years of teaching qualify for purposes of satisfying the service obligation described in § 686.12(b).

■ 26. Section 686.41 is revised to read as follows:

§ 686.41 Periods of suspension.

(a)(1) A grant recipient who has completed or who has otherwise ceased enrollment in a TEACH Grant-eligible program for which he or she received TEACH Grant funds may request a suspension from the Secretary of the eight-year period for completion of the service obligation based on—

(i) Enrollment in a program of study for which the recipient would be eligible for a TEACH Grant or in a program of study that has been determined by a State to satisfy the requirements for certification or licensure to teach in the State's elementary or secondary schools;

(ii) Receiving State-required instruction or otherwise fulfilling requirements for licensure to teach in a State's elementary or secondary schools;

(iii) A condition that is a qualifying reason for leave under the FMLA;

(iv) A call to order to Federal or State active duty or Active Service as a member of a Reserve Component of the Armed Forces named in 10 U.S.C. 10101, or service as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5);

(v) Military orders for the recipient's spouse for—

(A) Deployment with a military unit or as an individual in support of a call to Federal or State Active Duty, or Active Service; or

(B) A change of permanent duty station from a location in the continental United States to a location outside of the continental United States or from a location in a State to any location outside of that State; or

(vi) Residing in or being employed in a federally declared major disaster area as defined in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)).

(2) A grant recipient may receive a suspension described in paragraphs (a)(1)(i) through (vi) of this section in one-year increments that—

(i) Does not exceed a combined total of three years under paragraphs (a)(1)(i) through (iii) of this section;

(ii) Does not exceed a total of three years under paragraph (a)(1)(iv) of this section;

(iii) Does not exceed a total of three years under paragraph (a)(1)(v) of this section; or

(iv) Does not exceed a total of three years under paragraph (a)(1)(vi) of this section.

(b) A grant recipient, or his or her representative in the case of a grant recipient who qualifies under paragraph (a)(1)(iv) or (vi) of this section, must apply for a suspension on a form approved by the Secretary, prior to being subject to any of the conditions under § 686.43(a)(1) through (5) that would cause the TEACH Grant to convert to a Direct Unsubsidized Loan.

(c) A grant recipient, or his or her representative in the case of a grant recipient who qualifies under paragraph (a)(1)(iv) or (vi) of this section, must provide the Secretary with documentation supporting the suspension request as well as current contact information including home address and telephone number.

(d) On a case-by-case basis, the Secretary may grant a temporary suspension of the period for completing the service obligation if the Secretary determines that a grant recipient was unable to complete a full academic year of teaching or begin the next academic year of teaching due to exceptional circumstances significantly affecting the operation of the school or educational service agency where the grant recipient was employed or the grant recipient's ability to teach.

(e) The Secretary notifies the grant recipient regarding the outcome of the application for suspension.

■ 27. Section 686.42 is amended:

■ a. In the section heading by adding the words "or repay" after the word "serve";

■ b. In paragraphs (a)(1) introductory text and (a)(2), by adding the words "or repay" after the word "serve";

■ c. By revising paragraph (b); and

■ d. In paragraph (c)(4), by removing the words "and the Coast Guard" and adding in their place the words "the Coast Guard, a reserve component of the Armed Forces named in 10 U.S.C. 10101, or the National Guard".

The revision reads as follows:

§ 686.42 Discharge of agreement to serve or repay.

* * * * *

(b) *Total and permanent disability.* (1) A grant recipient's agreement to serve or repay is discharged if the recipient becomes totally and permanently disabled, as defined in 34 CFR 685.102(b), and the grant recipient applies for and satisfies the eligibility requirements for a total and permanent disability discharge in accordance with 34 CFR 685.213.

(2) If at any time the Secretary determines that the grant recipient does

not meet the requirements of the three-year period following the discharge as described in 34 CFR 685.213(b)(7), the Secretary will notify the grant recipient that the grant recipient's obligation to satisfy the terms of the agreement to serve or repay is reinstated.

(3) The Secretary's notification under paragraph (b)(2) of this section will—

(i) Include the reason or reasons for reinstatement;

(ii) Provide information on how the grant recipient may contact the Secretary if the grant recipient has questions about the reinstatement or believes that the agreement to serve or repay was reinstated based on incorrect information; and

(iii) Inform the TEACH Grant recipient that he or she must satisfy the service obligation within the portion of the eight-year period that remained after the date of the discharge.

(4) If the TEACH Grant made to a recipient whose TEACH Grant agreement to serve or repay is reinstated is later converted to a Direct Unsubsidized Loan, the recipient will not be required to pay interest that accrued on the TEACH Grant disbursements from the date the agreement to serve or repay was discharged until the date the agreement to serve or repay was reinstated.

* * * * *

■ 28. Section 686.43 is revised to read as follows:

§ 686.43 Obligation to repay the grant.

(a)(1) The TEACH Grant amounts disbursed to the recipient will be converted into a Direct Unsubsidized Loan, with interest accruing from the date that each grant disbursement was made and be collected by the Secretary in accordance with the relevant provisions of subpart A of 34 CFR part 685 if—

(i) The grant recipient, regardless of enrollment status, requests that the TEACH Grant be converted into a Direct Unsubsidized Loan because he or she has decided not to teach in a qualified school or educational service agency, or not to teach in a high-need field, or for any other reason; or

(ii) The grant recipient does not begin or maintain qualified employment within the timeframe that would allow that individual to complete the service obligation within the number of years required under § 686.12.

(2) At least annually during the service obligation period under § 686.12, the Secretary notifies the grant recipient of—

(i) The terms and conditions that the grant recipient must meet to satisfy the service obligation;

(ii) The requirement for the grant recipient to provide to the Secretary, upon completion of each of the four required elementary or secondary academic years of teaching service, documentation of that teaching service on a form approved by the Secretary and certified by the chief administrative officer of the school or educational service agency in which the grant recipient taught and emphasizes the necessity to keep copies of this information and copies of the recipient's own employment documentation;

(iii) The service years completed and the remaining timeframe within which the grant recipient must complete the service obligation;

(iv) The conditions under which the grant recipient may request a temporary suspension of the period for completing the service obligation;

(v) The conditions as described under paragraph (a)(1) of this section under which the TEACH Grant amounts disbursed to the recipient will be converted into a Direct Unsubsidized Loan;

(vi) The potential total interest accrued;

(vii) The process by which the recipient may contact the Secretary to request reconsideration of the conversion, the deadline by which the grant recipient must submit the request for reconsideration, and a list of the specific documentation required by the Secretary to reconsider the conversion; and

(viii) An explanation that to avoid further accrual of interest as described in § 686.12(b)(4)(ii), a grant recipient who decides not to teach in a qualified school or field, or who for any other reason no longer intends to satisfy the service obligation, may request that the Secretary convert his or her TEACH Grant to a Direct Unsubsidized Loan that the grant recipient may begin repaying immediately, instead of waiting for the TEACH Grant to be converted to a loan under the condition described in paragraph (a)(1)(ii) of this section.

(3) On or about 90 days before the date that a grant recipient's TEACH Grants would be converted to Direct Unsubsidized Loans in accordance with paragraph (a)(1)(ii) of this section, the Secretary notifies the grant recipient of the date by which the recipient must submit documentation showing that the recipient is satisfying the obligation.

(4) If the TEACH Grant amounts disbursed to a recipient are converted to a Direct Unsubsidized Loan, the Secretary notifies the recipient of the conversion and offers conversion counseling as described in § 686.32(e).

(5) Except as provided in paragraph (a)(8) of this section, if a grant recipient's TEACH Grant was converted to a Direct Unsubsidized Loan, the Secretary will reconvert the loan to a TEACH Grant based on documentation provided by the recipient or in the Secretary's records demonstrating that the recipient was satisfying the service obligation as described in § 686.12 or that the grant was converted to a loan in error.

(6) If a grant recipient who requests reconsideration demonstrates to the satisfaction of the Secretary that a TEACH Grant was converted to a loan in error, the Secretary—

(i) Reconverts the loan to a TEACH Grant;

(ii) Applies any academic years of qualifying teaching service that the grant recipient completed before or during the period when the grant was incorrectly in loan status toward the grant recipient's four-year service obligation requirement;

(iii) Upon reconversion of the loan to a TEACH Grant, provides the grant recipient with an additional period of time, equal to eight years minus the number of full academic years of teaching that the recipient completed prior to the reconversion of the loan to a TEACH Grant, including any years of qualifying teaching completed during the period when the TEACH Grant was incorrectly in loan status, to complete the remaining portion of the service obligation.

(iv) Ensures that the grant recipient receives credit for any payments that were made on the Direct Unsubsidized Loan that was reconverted to a TEACH Grant;

(v) Notifies the recipient of the reconversion to a grant and explains that the recipient is once again responsible for meeting all requirements of the service obligation under § 686.12; and

(vi) Requests deletion of any derogatory information reported to the consumer reporting agencies related to the grant while it was in loan status and furnishes a statement confirming that the grant was converted to a loan in error that the recipient may provide to creditors until the recipient's credit history has been corrected.

(7) If a grant recipient who requests reconsideration does not demonstrate to the satisfaction of the Secretary that a TEACH Grant was converted to a loan in error, the Secretary—

(i) Notifies the recipient that the loan cannot be converted to a TEACH Grant;

(ii) Explains the reason or reasons why the loan cannot be converted to a TEACH Grant; and

(iii) Explains how the recipient may contact the Federal Student Aid Ombudsman if he or she continues to believe that the TEACH Grant was converted to a loan in error.

(8) In the case of a grant recipient whose TEACH Grant was converted to a Direct Unsubsidized Loan in accordance with paragraph (a)(1)(i) of this section, the Secretary will reconvert the loan to a grant and restore the recipient's service obligation if—

(i) The grant recipient submits a request to the Secretary to reconvert the loan to a TEACH Grant;

(ii) Excluding any periods of suspension granted under § 686.41, there is sufficient time remaining for the grant recipient to complete the required four academic years of qualifying teaching service within eight years from the date the grant recipient ceased enrollment at the institution where the recipient received the grant or, in the case of a student who received a TEACH Grant at one institution and subsequently transferred to another institution and enrolled in another TEACH Grant-eligible program, within eight years from the date the recipient ceased enrollment at the other institution; and

(iii) In the case of a recipient who would not have sufficient time remaining to complete the service obligation within the eight-year period as described in paragraph (a)(8)(ii) of this section unless the recipient qualifies for a suspension under § 686.40, which may be granted retroactively, the recipient requests and is determined to be eligible for the suspension.

(9) A TEACH Grant recipient remains obligated to meet all requirements of the service obligation under § 686.12, even if the recipient does not receive the notices from the Secretary as described in paragraph (a)(2) of this section.

(b) A TEACH Grant that is converted to a loan, and is treated as a Direct Unsubsidized Loan, is not counted against the grant recipient's annual or aggregate loan limits under 34 CFR 685.203.

(c) A grant recipient whose TEACH Grant has been converted to a Direct Unsubsidized Loan—

(1) Enters a six-month grace period prior to entering repayment, and

(2) Is eligible for all of the benefits of the Direct Loan Program.

PART 690—FEDERAL PELL GRANT PROGRAM

■ 29. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, 1070g, unless otherwise noted.

§ 690.75 [Amended]

■ 30. Section 690.75 is amended by removing paragraph (d).

PART 692—LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

■ 31. The authority citation for part 692 continues to read as follows:

Authority: 20 U.S.C. 1070c–1070c–4, unless otherwise noted.

■ 32. Section 692.30 is amended by revising paragraph (c)(5) to read as follows:

§ 692.30 How does a State administer its community service-learning job program?

* * * * *

(c) * * *

(5) Not involve the construction, operation, or maintenance of so much of any facility as is used or is to be used for sectarian instruction or as a place for religious worship; and

* * * * *

PART 694—GAINING EARLY AWARENESS AND READINESS FOR UNDERGRADUATE PROGRAMS (GEAR UP)

■ 33. The authority citation for part 694 continues to read as follows:

Authority: 20 U.S.C. 1070a–21 to 1070a–28.

■ 34. Section 694.6 is amended by:

■ a. Revising paragraph (b); and

■ b. Removing paragraph (c).

The revision reads as follows:

§ 694.6 Who may provide GEAR UP services to students attending private schools?

* * * * *

(b) When providing GEAR UP services to students attending private schools, the employee, individual, association, agency, or organization must be employed or contracted independently of the private school that the students attend, and of any other organization affiliated with the school, and that employment or contract must be under the control and supervision of the public agency.

§ 694.10 [Amended]

■ 35. Section 694.10 is amended in paragraph (b) by removing the words “that is not pervasively sectarian”.

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Part V

Environmental Protection Agency

40 CFR Part 50

Review of the Ozone National Ambient Air Quality Standards; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 50**

[EPA-HQ-OAR-2018-0279; FRL-10012-49-OAR]

RIN 2060-AU40

Review of the Ozone National Ambient Air Quality Standards**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed action.

SUMMARY: Based on the Environmental Protection Agency's (EPA's) review of the air quality criteria and the national ambient air quality standards (NAAQS) for photochemical oxidants including ozone (O₃), the EPA is proposing to retain the current standards, without revision.

DATES: Comments must be received on or before October 1, 2020.

Public hearings: The EPA will hold two virtual public hearings on Monday, August 31, 2020, and Tuesday, September 1, 2020. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearings.

ADDRESSES: You may submit comments, identified by Docket ID No. EPA-HQ-OAR-2018-0279, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov> (our preferred method). Follow the online instructions for submitting comments.

- **Email:** a-and-r-Docket@epa.gov. Include the Docket ID No. EPA-HQ-OAR-2018-0279 in the subject line of the message.

- **Mail:** U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- **Hand Delivery or Courier (by scheduled appointment only):** EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this document. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments, see the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the

EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

The two virtual public hearings will be held on Monday, August 31, 2020, and Tuesday, September 1, 2020. The EPA will announce further details on the virtual public hearing website at <https://www.epa.gov/ground-level-ozone-pollution/setting-and-reviewing-standards-control-ozone-pollution>. Refer to the **SUPPLEMENTARY INFORMATION** section below for additional information.

FOR FURTHER INFORMATION CONTACT: For information or questions about the public hearing, please contact Ms. Regina Chappell, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards (OAQPS) (Mail Code C304-03), Research Triangle Park, NC 27711; telephone: (919) 541-3650; email address: chappell.regina@epa.gov. For information or questions regarding the review of the O₃ NAAQS, please contact Dr. Deirdre Murphy, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C504-06, Research Triangle Park, NC 27711; telephone: (919) 541-0729; fax: (919) 541-0237; email: murphy.deirdre@epa.gov.

SUPPLEMENTARY INFORMATION:**General Information***Participation in Virtual Public Hearings*

Please note that the EPA is deviating from its typical approach because the President has declared a national emergency. Due to the current Centers for Disease Control and Prevention (CDC) recommendations, as well as state and local orders for social distancing to limit the spread of COVID-19, the EPA cannot hold in-person public meetings at this time. The EPA will begin pre-registering speakers for the hearings upon publication of this document in the **Federal Register**. To register to speak at a virtual hearing, please use the online registration form available at <https://www.epa.gov/ground-level-ozone-pollution/setting-and-reviewing-standards-control-ozone-pollution> or

contact Ms. Regina Chappell at (919) 541-3650 or by email at chappell.regina@epa.gov to register to speak at the virtual hearing. The last day to pre-register to speak at one of the hearings will be August 27, 2020. On August 28, 2020, the EPA will post a general agenda for the hearings that will list preregistered speakers in approximate order at: <https://www.epa.gov/ground-level-ozone-pollution/setting-and-reviewing-standards-control-ozone-pollution>. The EPA will make every effort to follow the schedule as closely as possible on the day of each hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule. Each commenter will have 5 minutes to provide oral testimony. The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to Dr. Deirdre Murphy and Ms. Regina Chappell. The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing. Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/ground-level-ozone-pollution/setting-and-reviewing-standards-control-ozone-pollution>. While the EPA expects the hearings to go forward as set forth above, please monitor our website or contact Ms. Regina Chappell at (919) 541-3650 or chappell.regina@epa.gov to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates. If you require the services of a translator or a special accommodation such as audio description, please preregister for the hearing with Ms. Regina Chappell and describe your needs by August 21, 2020. The EPA may not be able to arrange accommodations without advance notice.

Preparing Comments for the EPA

Follow the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI)

or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, the cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

When submitting comments, remember to:

- Identify the action by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Availability of Information Related to This Action

All documents in the dockets pertaining to this action are listed on the www.regulations.gov website. This includes documents in the docket for the proposed decision (Docket ID No. EPA-HQ-OAR-2018-0279) and a separate docket, established for the Integrated Science Assessment (ISA) for this review (Docket ID No. EPA-HQ-ORD-2018-0274) that has been incorporated by reference into the docket for this proposed decision. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and may be viewed with prior arrangement with the EPA Docket Center. Additionally, a number of the documents that are relevant to this proposed decision are available through the EPA's website at <https://www.epa.gov/naaqs/ozone-o3-air-quality-standards>. These documents

include the Integrated Review Plan for the Review of the Ozone National Ambient Air Quality Standards (U.S. EPA, 2019b; hereafter IRP), available at <https://www.epa.gov/naaqs/ozone-o3-standards-planning-documents-current-review>, the Integrated Science Assessment for Ozone and Related Photochemical Oxidants (U.S. EPA, 2020a; hereafter ISA), available at <https://www.epa.gov/naaqs/ozone-o3-standards-integrated-science-assessments-current-review>, and the Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards (U.S. EPA, 2020b; hereafter PA), available at <https://www.epa.gov/naaqs/ozone-o3-standards-policy-assessments-current-review>.

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Executive Summary

This document presents the Administrator's proposed decisions in the current review of the primary (health-based) and secondary (welfare-based) O₃ NAAQS. In so doing, this document summarizes the background and rationale for the Administrator's proposed decisions to retain the current standards, without revision. In reaching his proposed decisions, the Administrator has considered the currently available scientific evidence in the ISA, quantitative and policy analyses presented in the PA, and advice from the Clean Air Scientific Advisory Committee (CASAC). The EPA solicits comment on the proposed decisions described here and on the array of issues associated with review of these standards, including judgments of public health, public welfare and science policy inherent in the proposed decisions, and requests commenters also provide the rationales upon which views articulated in submitted comments are based.

This review of the O₃ standards, required by the Clean Air Act (CAA) on a periodic basis, was initiated in 2018. The last review of the O₃ NAAQS, completed in 2015 established the current primary and secondary standards (80 FR 65291, October 26, 2015). In that review, the EPA significantly strengthened the primary and secondary standards by revising both standards from 75 ppb to 70 ppb and retaining their indicators (O₃), forms (fourth-highest daily maximum,

averaged across three consecutive years) and averaging times (eight hours). These revisions to the NAAQS were accompanied by revisions to the data handling procedures, ambient air monitoring requirements, the air quality index and several provisions related to implementation (80 FR 65292, October 26, 2015). In the decision on subsequent litigation on the 2015 decisions, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) upheld the 2015 primary standard but remanded the 2015 secondary standard to the EPA for further justification or reconsideration. The court's remand of the secondary standard has been considered in reaching the proposed decision, and the associated proposed conclusions and judgments, described in this document.

In this review as in past reviews of the NAAQS for O₃ and related photochemical oxidants, the health and welfare effects evidence evaluated in the ISA is focused on O₃. Ozone is the most prevalent photochemical oxidant in the atmosphere and the one for which there is a large body of scientific evidence on health and welfare effects. A component of smog, O₃ in ambient air is a mixture of mostly tropospheric O₃ and some stratospheric O₃. Tropospheric O₃ forms in the atmosphere when precursor emissions of pollutants, such as nitrogen oxides and volatile organic compounds (VOCs), interact with solar radiation. Precursor emissions result from man-made sources (e.g., motor vehicles, and power plants) and natural sources (e.g., vegetation and wildfires). In addition, O₃ that is created naturally in the stratosphere also mixes with tropospheric O₃ near the tropopause, and, under more limited meteorological conditions and topographical characteristics, nearer the earth's surface.

The proposed decision to retain the current primary standard, without revision, has been informed by key aspects of the currently available health effects evidence and conclusions contained in the ISA, quantitative exposure/risk analyses and policy evaluations presented in the PA, advice from the CASAC and public input received as part of this ongoing review. The health effects evidence newly available in this review, in conjunction with the full body of evidence critically evaluated in the ISA, continues to support prior conclusions that short-term O₃ exposure causes and long-term O₃ exposure likely causes respiratory effects, with evidence newly available in this review also indicating a likely causal relationship of short-term O₃ with metabolic effects. The strongest

evidence for health effects due to ozone exposure, however, continues to come from studies of short- and long-term ozone exposure and respiratory health, including effects related to asthma exacerbation in people with asthma, particularly children with asthma. The longstanding evidence base of respiratory effects, spanning several decades, documents the causal relationship between short-term exposure to O₃ and an array of respiratory effects. The clearest evidence for this conclusion comes from controlled human exposure studies, available at the time of the last review, of individuals, exposed for 6.6 hours during quasi-continuous exercise that report an array of respiratory responses including lung function decrements and respiratory symptoms. Epidemiologic studies include associations between O₃ exposures and hospital admissions and emergency department visits, particularly for asthma exacerbation in children. People at risk include people with asthma, children, the elderly, and outdoor workers.

The quantitative analyses of population exposure and risk, as well as policy considerations in the PA, also inform the proposed decision on the primary standard. The general approach and methodology for the exposure-based assessment used in this review is similar to that used in the last review. However, a number of updates and improvements have been implemented in this review which result in differences from the analyses in the prior review. These include a more recent period (2015–2017) of ambient air monitoring data in which O₃ concentrations in the areas assessed are at or near the current standard, as well as improvements and updates to models, model inputs and underlying databases. The analyses are summarized in this document and described in detail in the PA.

Based on the current evidence and quantitative information, as well as consideration of CASAC advice and public comment thus far in this review, the Administrator proposes to conclude that the current primary standard is requisite to protect public health, with an adequate margin of safety, from effects of O₃ in ambient air and should be retained, without revision. In its advice to the Administrator, the CASAC concurred with the draft PA that the currently available health effects evidence is generally similar to that available in the last review when the standard was set. Part of CASAC concluded that the primary standard should be retained. Another part of CASAC expressed concern regarding the

margin of safety provided by the current standard, pointing to comments from the 2014 CASAC, who while agreeing that the evidence supported a standard level of 70 ppb, additionally provided policy advice expressing support for a lower standard. The advice from the CASAC has been considered by the Administrator in proposing to conclude that the current standard, with its level of 70 ppb, provides the requisite public health protection, with an adequate margin of safety. The EPA solicits comment on the Administrator's proposed conclusion, and on the proposed decision to retain the standard, without revision. The EPA also solicits comment on the array of issues associated with review of this standard, including public health and science policy judgments inherent in the proposed decision.

The proposed decision to retain the current secondary standard, without revision, has been informed by key aspects of the currently available welfare effects evidence and conclusions contained in the ISA, quantitative exposure/risk analyses and policy evaluations presented in the PA, advice from the CASAC and public input received as part of this ongoing review. The welfare effects evidence newly available in this review, in conjunction with the full body of evidence critically evaluated in the ISA, supports, sharpens and expands somewhat on the conclusions reached in the last review. Consistent with the evidence in the last review, the currently available evidence describes an array of O₃ effects on vegetation and related ecosystem effects, as well as the role of O₃ in radiative forcing and subsequent climate-related effects. Further, evidence newly available in this review augments more limited previously available evidence for some additional vegetation-related effects. As in the last review, the strongest evidence and the associated findings of causal or likely causal relationships with O₃ in ambient air, as well as the quantitative characterizations of relationships between O₃ exposure and occurrence and magnitude of effects, are for vegetation effects. The scales of these effects range from the individual plant scale to the ecosystem scale, with potential for impacts on the public welfare. While the welfare effects of O₃ vary widely with regard to the extent and level of detail of the available information that describes the exposure circumstances that may elicit them, such information is most advanced for growth-related effects such as growth and yield. For example, the information

on exposure metric and relationships for these effects with the cumulative, concentration-weighted exposure index, W126, is long-standing, having been first described in the 1997 review. Utilizing this information, reduced growth is considered as proxy or surrogate for the broader array of vegetation effects in reviewing the public welfare protection provided by the current standard.

Quantitative analyses of air quality and exposure, including use of the W126 index, as well as policy considerations in the PA, also inform the proposed decision on the secondary standard. For example, analyses of air quality monitoring data across the U.S., as well as in Class I areas, updated and expanded from analyses conducted in the last review, inform EPA's understanding of vegetation exposures in areas meeting the current standard. Based on the current evidence and quantitative information, as well as consideration of CASAC advice and public comment thus far in this review, the Administrator proposes to conclude that the current secondary standard is requisite to protect the public welfare from known or anticipated adverse effects of O₃ in ambient air, and should be retained, without revision. In its advice to the Administrator, the full CASAC concurred with the preliminary conclusions in the draft PA that the current evidence supports retaining the current standard without revision. The EPA solicits comment on the Administrator's proposed conclusion that the current standard is requisite to protect the public welfare, and on the proposed decision to retain the standard, without revision. The EPA also solicits comment on the array of issues associated with review of this standard, including public welfare and science policy judgments inherent in the proposed decision.

I. Background

A. Legislative Requirements

Two sections of the CAA govern the establishment and revision of the NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify and list certain air pollutants and then to issue air quality criteria for those pollutants. The Administrator is to list those pollutants "emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare"; "the presence of which in the ambient air results from numerous or diverse mobile or stationary sources"; and for which he "plans to issue air quality criteria. . . ." (42 U.S.C.

7408(a)(1)). Air quality criteria are intended to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air. . . ." (42 U.S.C. 7408(a)(2)).

Section 109 [42 U.S.C. 7409] directs the Administrator to propose and promulgate "primary" and "secondary" NAAQS for pollutants for which air quality criteria are issued [42 U.S.C. 7409(a)]. Section 109(b)(1) defines primary standards as ones "the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health."¹ Under section 109(b)(2), a secondary standard must "specify a level of air quality the attainment and maintenance of which, in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of [the] pollutant in the ambient air."²

In setting primary and secondary standards that are "requisite" to protect public health and welfare, respectively, as provided in section 109(b), the EPA's task is to establish standards that are neither more nor less stringent than necessary. In so doing, the EPA may not consider the costs of implementing the standards. See generally, *Whitman v. American Trucking Ass'ns*, 531 U.S. 457, 465–472, 475–76 (2001). Likewise, "[a]ttainability and technological feasibility are not relevant considerations in the promulgation of national ambient air quality standards." See *American Petroleum Institute v. Costle*, 665 F.2d 1176, 1185 (D.C. Cir. 1981); *accord Murray Energy Corp. v. EPA*, 936 F.3d 597, 623–24 (D.C. Cir. 2019). At the same time, courts have clarified the EPA may consider "relative proximity to peak background . . . concentrations" as a factor in deciding how to revise the NAAQS in the context of considering standard levels within

¹ The legislative history of section 109 indicates that a primary standard is to be set at "the maximum permissible ambient air level . . . which will protect the health of any [sensitive] group of the population," and that for this purpose "reference should be made to a representative sample of persons comprising the sensitive group rather than to a single person in such a group." S. Rep. No. 91–1196, 91st Cong., 2d Sess. 10 (1970).

² Under CAA section 302(h) (42 U.S.C. 7602(h)), effects on welfare include, but are not limited to, "effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being."

the range of reasonable values supported by the air quality criteria and judgments of the Administrator. See *American Trucking Ass'ns, v. EPA*, 283 F.3d 355, 379 (D.C. Cir. 2002), hereafter referred to as "*ATA III*."

The requirement that primary standards provide an adequate margin of safety was intended to address uncertainties associated with inconclusive scientific and technical information available at the time of standard setting. It was also intended to provide a reasonable degree of protection against hazards that research has not yet identified. See *Lead Industries Ass'n v. EPA*, 647 F.2d 1130, 1154 (D.C. Cir. 1980); *American Petroleum Institute v. Costle*, 665 F.2d at 1186; *Coalition of Battery Recyclers Ass'n v. EPA*, 604 F.3d 613, 617–18 (D.C. Cir. 2010); *Mississippi v. EPA*, 744 F.3d 1334, 1353 (D.C. Cir. 2013). Both kinds of uncertainties are components of the risk associated with pollution at levels below those at which human health effects can be said to occur with reasonable scientific certainty. Thus, in selecting primary standards that include an adequate margin of safety, the Administrator is seeking not only to prevent pollution levels that have been demonstrated to be harmful but also to prevent lower pollutant levels that may pose an unacceptable risk of harm, even if the risk is not precisely identified as to nature or degree. The CAA does not require the Administrator to establish a primary NAAQS at a zero-risk level or at background concentration levels (see *Lead Industries Ass'n v. EPA*, 647 F.2d at 1156 n.51, *Mississippi v. EPA*, 744 F.3d at 1351), but rather at a level that reduces risk sufficiently so as to protect public health with an adequate margin of safety.

In addressing the requirement for an adequate margin of safety, the EPA considers such factors as the nature and severity of the health effects involved, the size of the sensitive population(s), and the kind and degree of uncertainties. The selection of any particular approach to providing an adequate margin of safety is a policy choice left specifically to the Administrator's judgment. See *Lead Industries Ass'n v. EPA*, 647 F.2d at 1161–62; *Mississippi v. EPA*, 744 F.3d at 1353.

Section 109(d)(1) of the Act requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge concerning the effects of the pollutant on public health and welfare. Under the same provision, the EPA is also to periodically review and, if appropriate,

revise the NAAQS, based on the revised air quality criteria.³

Section 109(d)(2) addresses the appointment and advisory functions of an independent scientific review committee. Section 109(d)(2)(A) requires the Administrator to appoint this committee, which is to be composed of “seven members including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies.” Section 109(d)(2)(B) provides that the independent scientific review committee “shall complete a review of the criteria . . . and the national primary and secondary ambient air quality standards . . . and shall recommend to the Administrator any new . . . standards and revisions of existing criteria and standards as may be appropriate. . . .” Since the early 1980s, this independent review function has been performed by the CASAC of the EPA’s Science Advisory Board. A number of other advisory functions are also identified for the committee by section 109(d)(2)(C), which reads:

Such committee shall also (i) advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards, (ii) describe the research efforts necessary to provide the required information, (iii) advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and (iv) advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.

As previously noted, the Supreme Court has held that section 109(b) “unambiguously bars cost considerations from the NAAQS-setting process,” in *Whitman v. American Trucking Ass’ns*, 531 U.S. 457, 471 (2001). Accordingly, while some of the issues listed in section 109(d)(2)(C) as those on which Congress has directed the CASAC to advise the Administrator, are ones that are relevant to the standard setting process, others are not. Issues that are not relevant to standard setting may be relevant to implementation of the NAAQS once they are established.⁴

³ This section of the Act requires the Administrator to complete these reviews and make any revisions that may be appropriate “at five-year intervals.”

⁴ Because some of these issues are not relevant to standard setting, some aspects of CASAC advice may not be relevant to EPA’s process of setting primary and secondary standards that are requisite to protect public health and welfare. Indeed, were the EPA to consider costs of implementation when

B. Related O₃ Control Programs

States are primarily responsible for ensuring attainment and maintenance of ambient air quality standards once the EPA has established them. Under sections 110 and 171 through 185 of the CAA, and related provisions and regulations, states are to submit, for the EPA’s approval, state implementation plans (SIPs) that provide for the attainment and maintenance of such standards through control programs directed to sources of the pollutants involved. The states, in conjunction with the EPA, also administer the prevention of significant deterioration of air quality program that covers these pollutants. See 42 U.S.C. 7470–7479. In addition, federal programs provide for nationwide reductions in emissions of O₃ precursors and other air pollutants under Title II of the Act, 42 U.S.C. 7521–7574, which involves controls for automobile, truck, bus, motorcycle, nonroad engine and equipment, and aircraft emissions; the new source performance standards under section 111 of the Act, 42 U.S.C. 7411; and the national emissions standards for hazardous air pollutants under section 112 of the Act, 42 U.S.C. 7412.

C. Review of the Air Quality Criteria and Standards for O₃

Primary and secondary NAAQS were first established for photochemical oxidants in 1971 (36 FR 8186, April 30, 1971) based on the air quality criteria developed in 1970 (U.S. DHEW, 1970; 35 FR 4768, March 19, 1970). The EPA set both primary and secondary standards at 0.08 parts per million (ppm), as a 1-hour average of total photochemical oxidants, not to be exceeded more than one hour per year based on the scientific information in the 1970 air quality criteria document (AQCD). Since that time, the EPA has reviewed the air quality criteria and standards a number of times, with the

reviewing and revising the standards “it would be grounds for vacating the NAAQS.” *Whitman v. American Trucking Ass’ns*, 531 U.S. 457, 471 n.4 (2001). At the same time, the CAA directs CASAC to provide advice on “any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance” of the NAAQS to the Administrator under section 109(d)(2)(C)(iv). In *Whitman*, the Court clarified that most of that advice would be relevant to implementation but not standard setting, as it “enable[s] the Administrator to assist the States in carrying out their statutory role as primary implementers of the NAAQS” (*id.* at 470 [emphasis in original]). However, the Court also noted that CASAC’s “advice concerning certain aspects of ‘adverse public health . . . effects’ from various attainment strategies is unquestionably pertinent” to the NAAQS rulemaking record and relevant to the standard setting process (*id.* at 470 n.2).

most recent review being completed in 2015.

The EPA initiated the first periodic review of the NAAQS for photochemical oxidants in 1977. Based on the 1978 AQCD (U.S. EPA, 1978), the EPA published proposed revisions to the original NAAQS in 1978 (43 FR 26962, June 22, 1978) and final revisions in 1979 (44 FR 8202, February 8, 1979). At that time, the EPA changed the indicator from photochemical oxidants to O₃, revised the level of the primary and secondary standards from 0.08 to 0.12 ppm and revised the form of both standards from a deterministic (*i.e.*, not to be exceeded more than one hour per year) to a statistical form. With these changes, attainment of the standards was defined to occur when the average number of days per calendar year (across a 3-year period) with maximum hourly average O₃ concentration greater than 0.12 ppm equaled one or less (44 FR 8202, February 8, 1979; 43 FR 26962, June 22, 1978). Several petitioners challenged the 1979 decision. Among those, one claimed natural O₃ concentrations and other physical phenomena made the standard unattainable in the Houston area. The U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) rejected this argument, holding (as noted in section I.A above) that attainability and technological feasibility are not relevant considerations in the promulgation of the NAAQS (*American Petroleum Institute v. Costle*, 665 F.2d at 1185). The court also noted that the EPA need not tailor the NAAQS to fit each region or locale, pointing out that Congress was aware of the difficulty in meeting standards in some locations and had addressed it through various compliance-related provisions in the CAA (*id.* at 1184–86).

The next periodic reviews of the criteria and standards for O₃ and other photochemical oxidants began in 1982 and 1983, respectively (47 FR 11561, March 17, 1982; 48 FR 38009, August 22, 1983). The EPA subsequently published the 1986 AQCD, 1989 Staff Paper, and a supplement to the 1986 AQCD (U.S. EPA, 1986; U.S. EPA, 1989; U.S. EPA, 1992). In August of 1992, the EPA proposed to retain the existing primary and secondary standards (57 FR 35542, August 10, 1992). In March 1993, the EPA concluded this review by finalizing its proposed decision to retain the standards, without revision (58 FR 13008, March 9, 1993).

In the 1992 decision in that review, the EPA announced its intention to proceed rapidly with the next review of the air quality criteria and standards for O₃ and other photochemical oxidants

(57 FR 35542, August 10, 1992). The EPA subsequently published the AQCD and Staff Paper for that next review (U.S. EPA, 1996a; U.S. EPA, 1996b). In December 1996, the EPA proposed revisions to both the primary and secondary standards (61 FR 65716, December 13, 1996). The EPA completed this review in 1997 by revising the primary and secondary standards to 0.08 ppm, as the annual fourth-highest daily maximum 8-hour average concentration, averaged over three years (62 FR 38856, July 18, 1997).

In response to challenges to the EPA's 1997 decision, the D.C. Circuit remanded the 1997 O₃ NAAQS to the EPA, finding that section 109 of the CAA, as interpreted by the EPA, effected an unconstitutional delegation of legislative authority. See *American Trucking Ass'ns v. EPA*, 175 F.3d 1027, 1034–1040 (D.C. Cir. 1999). The court also directed that, in responding to the remand, the EPA should consider the potential beneficial health effects of O₃ pollution in shielding the public from the effects of solar ultraviolet (UV) radiation, as well as adverse health effects (*id.* at 1051–53). See *American Trucking Ass'ns v. EPA*, 195 F.3d 4, 10 (D.C. Cir. 1999) (granting panel rehearing in part but declining to review the ruling on consideration of the potential beneficial effects of O₃ pollution). After granting petitions for *certiorari*, the U.S. Supreme Court unanimously reversed the judgment of the D.C. Circuit on the constitutional issue, holding that section 109 of the CAA does not unconstitutionally delegate legislative power to the EPA. See *Whitman v. American Trucking Ass'ns*, 531 U.S. 457, 472–74 (2001). The Court remanded the case to the D.C. Circuit to consider challenges to the 1997 O₃ NAAQS that had not yet been addressed. On remand, the D.C. Circuit found the 1997 O₃ NAAQS to be “neither arbitrary nor capricious,” and so denied the remaining petitions for review. See *ATA III*, 283 F.3d at 379.

Coincident with the continued litigation of the other issues, the EPA responded to the court's 1999 remand to consider the potential beneficial health effects of O₃ pollution in shielding the public from effects of UV radiation (66 FR 57268, Nov. 14, 2001; 68 FR 614, January 6, 2003). In 2001, the EPA proposed to leave the 1997 primary standard unchanged (66 FR 57268, Nov. 14, 2001). After considering public comment on the proposed decision, the EPA published its final response to this remand in 2003, re-affirming the 8-hour primary standard set in 1997 (68 FR 614, January 6, 2003).

The EPA initiated the fourth periodic review of the air quality criteria and standards for O₃ and other photochemical oxidants with a call for information in September 2000 (65 FR 57810, September 26, 2000). Documents developed for the review included the 2006 AQCD (U.S. EPA, 2006) and 2007 Staff Paper (U.S. EPA, 2007) and related technical support documents. In 2007, the EPA proposed revisions to the primary and secondary standards (72 FR 37818, July 11, 2007). The EPA completed the review in March 2008 by revising the levels of both the primary and secondary standards from 0.08 ppm to 0.075 ppm while retaining the other elements of the prior standards (73 FR 16436, March 27, 2008). A number of petitioners filed suit challenging this decision.

In September 2009, the EPA announced its intention to reconsider the 2008 O₃ standards,⁵ and initiated a rulemaking to do so. At the EPA's request, the court held the consolidated cases in abeyance pending the EPA's reconsideration of the 2008 decision. In January 2010, the EPA issued a notice of proposed rulemaking to reconsider the 2008 final decision (75 FR 2938, January 19, 2010). Later that year, in view of the need for further consideration and the fact that the Agency's next periodic review of the O₃ NAAQS required under CAA section 109 had already begun (as announced on September 29, 2008),⁶ the EPA consolidated the reconsideration with its statutorily required periodic review.⁷

In light of the EPA's decision to consolidate the reconsideration with the review then ongoing, the D.C. Circuit proceeded with the litigation on the 2008 O₃ NAAQS decision. On July 23, 2013, the court upheld the EPA's 2008 primary standard, but remanded the 2008 secondary standard to the EPA. See *Mississippi v. EPA*, 744 F.3d 1334 (D.C. Cir. 2013). With respect to the primary standard, the court rejected petitioners' arguments, upholding the EPA's decision. With respect to the secondary standard, the court held that the EPA's explanation for the setting of the secondary standard identical to the revised 8-hour primary standard was inadequate under the CAA because the EPA had not adequately explained how

that standard provided the required public welfare protection.

At the time of the court's decision, the EPA had already completed significant portions of its next statutorily required periodic review of the O₃ NAAQS, which had been formally initiated in 2008, as summarized above. The documents developed for this review included the ISA,⁸ Risk and Exposure Assessments (REAs) for health and welfare, and PA.⁹ In late 2014, the EPA proposed to revise the 2008 primary and secondary standards (79 FR 75234, December 17, 2014; Frey, 2014a, Frey, 2014b, Frey, 2014c, U.S. EPA, 2014a, U.S. EPA, 2014b, U.S. EPA, 2014c). The EPA's final decision in this review was published in October 2015, establishing the now-current standards (80 FR 65292, October 26, 2015). In this decision, based on consideration of the health effects evidence on respiratory effects of O₃ in at-risk populations, the EPA revised the primary standard from a level of 0.075 ppm to a level of 0.070 ppm, while retaining all other elements of the standard (80 FR 65292, October 26, 2015). The EPA's decision on the level for the standard was based on the weight of the scientific evidence and quantitative exposure/risk information. The level of the secondary standard was also revised from 0.075 ppm to 0.070 ppm based on the scientific evidence of O₃ effects on welfare, particularly the evidence of O₃ impacts on vegetation, and quantitative analyses available in the review.¹⁰ The other elements of the standard were retained. This decision on the secondary standard also incorporated the EPA's response to the D.C. Circuit's remand of the 2008 secondary standard in *Mississippi v. EPA*, 744 F.3d 1344 (D.C. Cir. 2013).¹¹

After publication of the final rule, a number of industry groups, environmental and health organizations, and certain states filed petitions for judicial review in the D.C. Circuit. The

⁸ The ISA serves the same purpose, in reviewing the air quality criteria, as the AQCD did in prior reviews.

⁹ The PA presents an evaluation, for consideration by the Administrator, of the policy implications of the currently available scientific information, assessed in the ISA; the quantitative air quality, exposure or risk analyses presented in the PA and developed in light of the ISA findings; and related limitations and uncertainties. The role of the PA is to help “bridge the gap” between the Agency's scientific assessment and quantitative technical analyses, and the judgments required of the Administrator in his decisions in the review of the O₃ NAAQS.

¹⁰ These standards, set in 2015, are specified at 40 CFR 50.19.

¹¹ The 2015 revisions to the NAAQS were accompanied by revisions to the data handling procedures, ambient air monitoring requirements, the air quality index and several provisions related to implementation (80 FR 65292, October 26, 2015).

⁵ The press release of this announcement is available at: https://archive.epa.gov/epapages/newsroom_archive/newsreleases/85f90b7711acb0c88525763300617d0d.html.

⁶ The “Call for Information” initiating the new review was announced in the *Federal Register* (73 FR 56581, September 29, 2008).

⁷ This rulemaking, completed in 2015, concluded the reconsideration process.

industry and state petitioners argued that the revised standards were too stringent, while the environmental and health petitioners argued that the revised standards were not stringent enough to protect public health and welfare as the Act requires. On August 23, 2019, the court issued an opinion that denied all the petitions for review with respect to the 2015 primary standard while also concluding that the EPA had not provided a sufficient rationale for aspects of its decision on the 2015 secondary standard and remanding that standard to the EPA. See *Murray Energy Corp. v. EPA*, 936 F.3d 597 (D.C. Cir. 2019). The court's decision on the secondary standard focused on challenges to particular aspects of EPA's decision. The court concluded that EPA's identification of particular benchmarks for evaluating the protection the standard provided against welfare effects associated with tree growth loss was reasonable and consistent with CASAC's advice. However, the court held that EPA had not adequately explained its decision to focus on a 3-year average for consideration of the cumulative exposure, in terms of W126, identified as providing requisite public welfare protection, or its decision to not identify a specific level of air quality related to visible foliar injury. The EPA's decision not to use a seasonal W126 index as the form and averaging time of the secondary standard was also challenged, but the court did not reach that issue, concluding that it lacked a basis to assess the EPA's rationale on this point because the EPA had not yet fully explained its focus on a 3-year average W126 in its consideration of the standard. See *Murray Energy Corp. v. EPA*, 936 F.3d 597, 618 (D.C. Cir. 2019). Accordingly, the court remanded the secondary standard to EPA for further justification or reconsideration. The court's remand of the secondary standard has been considered in reaching the proposed decision, and associated proposed conclusions and judgments, described in section III.D.3 below.

In the August 2019 decision, the court additionally addressed arguments regarding considerations of background O₃ concentrations, and socioeconomic and energy impacts. With regard to the former, the court rejected the argument that the EPA was required to take background O₃ concentrations into account when setting the NAAQS, holding that the text of CAA section 109(b) precluded this interpretation because it would mean that if background O₃ levels in any part of the

country exceeded the level of O₃ that is requisite to protect public health, the EPA would be obliged to set the standard at the higher nonprotective level (*id.* at 622–23). Thus, the court concluded that the EPA did not act unlawfully or arbitrarily or capriciously in setting the 2015 NAAQS without regard for background O₃ (*id.* at 624). Additionally, the court denied arguments that the EPA was required to consider adverse economic, social, and energy impacts in determining whether a revision of the NAAQS was “appropriate” under section 109(d)(1) of the CAA (*id.* at 621–22). The court reasoned that consideration of such impacts was precluded by *Whitman's* holding that the CAA “unambiguously bars cost considerations from the NAAQS-setting process” (531 U.S. at 471, summarized in section 1.2 above). Further, the court explained that section 109(d)(2)(C)'s requirement that CASAC advise the EPA “of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance” of revised NAAQS had no bearing on whether costs are to be considered in setting the NAAQS (*Murray Energy Corp. v. EPA*, 936 F.3d at 622). Rather, as described in *Whitman* and discussed further in section I.A above, most of that advice would be relevant to implementation but not standard setting (*id.*).

In May 2018, the Administrator directed his Assistant Administrators to initiate this current review of the O₃ NAAQS (Pruitt, 2018). In conveying this direction, the Administrator further directed the EPA staff to expedite the review, implementing an accelerated schedule aimed at completion of the review within the statutorily required period (Pruitt, 2018). Accordingly, the EPA took immediate steps to proceed with the review. In June 2018, the EPA announced the initiation of the current periodic review of the air quality criteria for photochemical oxidants and the O₃ NAAQS and issued a call for information in the **Federal Register** (83 FR 29785, June 26, 2018). Two types of information were called for: Information regarding significant new O₃ research to be considered for the ISA for the review, and policy-relevant issues for consideration in this NAAQS review. Based in part on the information received in response to the call for information, the EPA developed a draft IRP, which was made available for consultation with the CASAC and for public comment (83 FR 55163, November 2, 2018; 83 FR 55528, November 6, 2018). Comments from the

CASAC (Cox, 2018) and the public were considered in preparing the final IRP (U.S. EPA, 2019b).

Under the plan outlined in the IRP and consistent with revisions to the process identified by the administrator in his 2018 memo directing initiation of the review, the current review of the O₃ NAAQS is progressing on an accelerated schedule (Pruitt, 2018). The EPA is incorporating a number of efficiencies in various aspects of the review process, as summarized in the IRP, to support completion within the statutorily required period (Pruitt, 2018). As one example of such an efficiency, rather than produce two separate documents, the exposure and risk analyses for the primary standard are included as an appendix in the PA, along with a number of other technical appendices. The draft PA (including these analyses as appendices) was reviewed by the CASAC and made available for public comment while the draft ISA was also being reviewed by the CASAC and was available for public comment (84 FR 50836, September 26, 2019; 84 FR 58711, November 1, 2019).¹² The CASAC was assisted in its review by a pool of consultants with expertise in a number of fields (84 FR 38625, August 7, 2019). The approach employed by the CASAC in utilizing outside technical expertise represents an additional modification of the process from past reviews. Rather than join with some or all of the CASAC members in a CASAC review panel as has been common in other NAAQS reviews in the past, in this O₃ NAAQS review (and also in the recent CASAC review of the PA for the particulate matter NAAQS), the consultants comprised a pool of expertise that CASAC members drew on through the use of specific questions, posed in writing prior to the public meeting, regarding aspects of the documents being reviewed, obtaining subject matter expertise for its document review in a focused, efficient and transparent manner.

The CASAC discussed its review of both the draft ISA and the draft PA over three days at a public meeting in December 2019 (84 FR 58713, November 1, 2019).¹³ The CASAC discussed its

¹² The draft ISA and draft PA were released for public comment and CASAC review on September 26, 2019 and October 31, 2019, respectively. The charges for the CASAC review summarized the overarching context for the document review (including reference to Pruitt [2018], and the CASAC's role under section 109(d)(2)(C) of the Act), as well as specific charge questions for review of each of the documents.

¹³ While simultaneous review of first drafts of both documents has not been usual in past reviews, there have been occurrences of the CASAC review of a draft PA (or draft REA when the process

draft letters describing its advice and comments on the documents in a public teleconference in early February 2020 (85 FR 4656; January 27, 2020). The letters to the Administrator conveying the CASAC advice and comments on the draft PA and draft ISA were released later that month (Cox, 2020a, Cox, 2020b).

The letters from the CASAC and public comment on the draft ISA and draft PA have informed completion of the final documents and further inform development of the Administrator's proposed decision in this review. Comments from the CASAC on the draft ISA have been considered by the EPA and led to a number of revisions in developing the final document. The CASAC review and the EPA's consideration of CASAC comments are described in Appendix 10, section 10.4.5 of the final ISA. In his reply to the CASAC letter conveying its review, "Administrator Wheeler noted, 'for those comments and recommendations that are more significant or cross-cutting and which were not fully addressed, the Agency will develop a plan to incorporate these changes into future Ozone ISAs as well as ISAs for other criteria pollutant reviews'" (ISA, p. 10–28; Wheeler, 2020). The ISA was completed and made available to the public in April 2020 (85 FR 21849, April 20, 2020). Based on the rigorous scientific approach utilized in its development, summarized in Appendix 10 of the final ISA, the EPA considers the final ISA to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [O₃] in the ambient air, in varying quantities" as required by the CAA (42 U.S.C. 7408(a)(2)).

The CASAC comments additionally provided advice with regard to the primary and secondary standards, as well as a number of comments intended to improve the PA. These comments were considered in completing that document, which was completed in May 2020 (85 FR 31182, May 22, 2020). The CASAC advice to the Administrator regarding the O₃ standards has also been described and considered in the PA, and in sections II and III below. The CASAC advice on the primary standard is summarized in II.D.2 below and its advice on the secondary standard is summarized in section III.D.2.

involved a policy assessment being included within the REA document) simultaneous with review of a second (or later) draft ISA (e.g., 73 FR 19835, April 11, 2008; 73 FR 34739, June 18, 2008; 77 FR 64335, October 19, 2020; 78 FR 938, January 7, 2013).

Materials upon which this proposed decision is based, including the documents described above, are available to the public in the docket for the review.¹⁴ Following a public comment period on the proposed decision, a final decision in the review is projected for late in 2020.

D. Air Quality Information

Ground level ozone concentrations are a mix of mostly tropospheric ozone and some stratospheric ozone. Tropospheric ozone is formed due to chemical interactions involving solar radiation and precursor pollutants including volatile organic compounds (VOCs) and nitrogen oxides (NO_x). Methane (CH₄) and carbon monoxide (CO) are also important precursors, particularly at the regional to global scale. The precursor emissions leading to tropospheric O₃ formation can result from both man-made sources (e.g., motor vehicles and electric power generation) and natural sources (e.g., vegetation and wildfires). In addition, O₃ that is created naturally in the stratosphere also contributes to O₃ levels near the surface. The stratosphere routinely mixes with the troposphere high above the earth's surface and, less frequently, there are intrusions of stratospheric air that reach deep into the troposphere and even to the surface. Once formed, O₃ near the surface can be transported by winds before eventually being removed from the atmosphere via chemical reactions or deposition to surfaces. In sum, O₃ concentrations are influenced by complex interactions between precursor emissions, meteorological conditions, and topographical characteristics (PA, section 2.1; ISA, Appendix 1).

For compliance and other purposes, state and local environmental agencies operate O₃ monitors across the U.S. and submit the data to the EPA. At present, there are approximately 1,300 monitors across the U.S. reporting hourly O₃ averages during the times of the year when local O₃ pollution can be important (PA, section 2.3.1).¹⁵ Most of this monitoring is focused on urban areas where precursor emissions tend to be largest, as well as locations directly downwind of these areas. There are also over 100 routine monitoring sites in rural areas, including sites in the Clean

¹⁴ The docket for the current O₃ NAAQS review is identified as EPA–HQ–OAR–2018–0279. This docket has incorporated the ISA docket (EPA–HQ–ORD–2018–0274) by reference. Both dockets are publicly accessible at www.regulations.gov.

¹⁵ O₃ monitoring seasons vary by state from five months (May to September in Oregon and Washington) to all twelve months (in 11 states), with the most common season being March to October (in 27 states).

Air Status and Trends Network (CASTNET) which is specifically focused on characterizing conditions in rural areas. Based on the monitoring data for the most recent 3-year period (2016–2018), the EPA identified 142 counties, in which together approximately 106 million Americans reside where O₃ design values¹⁶ were above 0.070, the level of the existing NAAQS (PA, section 2.4.1). Across these areas, the highest design values are typically observed in California, Texas, and the Northeast Corridor, locations with some of the most densely populated areas in the country (e.g., PA, Figure 2–8).

From a temporal perspective, the highest daily peak O₃ concentrations generally tend to occur during the afternoon and within the warmer months of the year due to higher levels of solar radiation and other conducive meteorological conditions during these times. The exceptions to this general rule include (1) some rural sites where transport of O₃ from upwind urban areas can occasionally result in high nighttime levels of O₃, (2) high-elevation sites which can be episodically influenced by stratospheric intrusions in other months of the year, and (3) mountain basins in the western U.S. where large quantities of O₃ precursors emissions associated with oil and gas development can be trapped in a shallow inversion layer and form O₃ under clear, calm skies with snow cover during the colder months (PA, section 2.1; ISA, Appendix 1).

Monitoring data indicate long-term reductions in short-term O₃ concentrations. For example, monitoring sites operating since 1980 indicate a 32% reduction in the national average annual fourth highest daily maximum 8-hour concentration from 1980 to 2018. (PA, Figure 2–10). This has been accompanied by appreciable reductions in peak 1-hour concentrations (PA, Figure 2–17).

Concentrations of O₃ in ambient air that result from natural and non-U.S. anthropogenic sources are collectively referred to as U.S. background O₃ (USB; PA, section 2.5). As in the last review, we generally characterize O₃ concentrations that would exist in the absence of U.S. anthropogenic emissions as U.S. background (USB). Findings from modeling analyses performed for this review to investigate

¹⁶ A design value is a statistic that summarizes the air quality data for a given area in terms of the indicator, averaging time, and form of the standard. Design values can be compared to the level of the standard and are typically used to designate areas as meeting or not meeting the standard and assess progress towards meeting the NAAQS.

patterns of USB in the U.S. are largely consistent with conclusions reached in the last review (PA, section 2.5.4). The current modeling analysis indicates spatial variation in USB O₃ that is related to geography, topography and proximity to international borders and is also influenced by seasonal variation, with long-range international anthropogenic transport contributions peaking in the spring while U.S. anthropogenic contributions tend to peak in summer. The West is predicted to have higher USB concentrations than the East, with higher contributions from natural and international anthropogenic sources that exert influences in western high-elevation and near-border areas. The modeling predicts that for both the West and the East, days with the highest 8-hour concentrations of O₃ generally occur in summer and are likely to have substantially greater concentrations due to U.S. anthropogenic sources. While the USB contributions to O₃ concentrations on days with the highest 8-hour concentrations are generally predicted to come largely from natural sources, the modeling also indicates that a small area near the Mexico border may receive appreciable contributions from a combination of natural and international anthropogenic sources on these days. In such locations, the modeling suggests the potential for episodic and relatively infrequent events with substantial background contributions where daily maximum 8-hour O₃ concentrations approach or exceed the level of the current NAAQS (*i.e.*, 70 ppb). This contrasts with most monitor locations in the U.S. for which international contributions are predicted to be the lowest during the season with the most frequent occurrence of daily maximum 8-hour O₃ concentrations above 70 ppb. This is generally because, except for in near-border areas, larger international contributions are associated with long-distance transport and that is most efficient in the springtime (PA, section 2.5.4).

II. Rationale for Proposed Decision on the Primary Standard

This section presents the rationale for the Administrator's proposed decision to retain the current primary O₃ standard. This rationale is based on a thorough review of the latest scientific information generally published between January 2011 and March 2018, as well as more recent studies identified during peer review or by public comments (ISA, section IS.1.2),¹⁷

¹⁷ In addition to the review's opening "Call for Information" (83 FR 29785, June 26, 2018),

integrated with the information and conclusions from previous assessments and presented in the ISA, on human health effects associated with photochemical oxidants including O₃ and pertaining to their presence in ambient air. The Administrator's rationale also takes into account: (1) The PA evaluation of the policy-relevant information in the ISA and presentation of quantitative analyses of air quality, human exposure and health risks; (2) CASAC advice and recommendations, as reflected in discussions of drafts of the ISA and PA at public meetings and in the CASAC's letters to the Administrator; and (3) public comments received during the development of these documents.

In presenting the rationale for the Administrator's proposed decision and its foundations, section II.A provides background and introductory information for this review of the primary O₃ standard. It includes background on the establishment of the current standard in 2015 (section II.A.1) and also describes the general approach for the current review (section II.A.2). Section II.B summarizes the currently available health effects evidence, focusing on consideration of key policy-relevant aspects. Section II.C summarizes the exposure and risk information for this review, drawing on the quantitative analyses for O₃, presented in the PA. Section II.D presents the Administrator's proposed conclusions on the current standard (section II.D.3), drawing on both evidence-based and exposure/risk-based considerations (section II.D.1) and advice from the CASAC (section II.D.2).

A. General Approach

The past and current approaches described below are both based, most fundamentally, on using the EPA's assessments of the current scientific evidence and associated quantitative

systematic review methodologies were applied to identify relevant scientific findings that have emerged since the 2013 ISA, which included peer reviewed literature published through July 2011. Search techniques for the current ISA identified and evaluated studies and reports that have undergone scientific peer review and were published or accepted for publication between January 1, 2011 (providing some overlap with the cutoff date for the last ISA) and March 30, 2018. Studies published after the literature cutoff date for this ISA were also considered if they were submitted in response to the Call for Information or identified in subsequent phases of ISA development, particularly to the extent that they provide new information that affects key scientific conclusions (ISA, Appendix 10, section 10.2). References that are cited in the ISA, the references that were considered for inclusion but not cited, and electronic links to bibliographic information and abstracts can be found at: https://hero.epa.gov/hero/index.cfm/project/page/project_id/2737.

analyses to inform the Administrator's judgment regarding a primary standard for photochemical oxidants that is requisite to protect the public health with an adequate margin of safety. The EPA's assessments are primarily documented in the ISA and PA, all of which have received CASAC review and public comment (84 FR 50836, September 26, 2019; 84 FR 58711, November 1, 2019; 84 FR 58713, November 1, 2019; 85 FR 21849, April 20, 2020; 85 FR 31182, May 22, 2020). In bridging the gap between the scientific assessments of the ISA and the judgments required of the Administrator in his decisions on the current standard, the PA evaluates policy implications of the evaluation of the current evidence in ISA and the quantitative exposure and risk analyses documented in appendices of the PA. In evaluating the public health protection afforded by the current standard, the four basic elements of the NAAQS (indicator, averaging time, level, and form) are considered collectively.

The final decision on the adequacy of the current primary standard is a public health policy judgment to be made by the Administrator. In reaching conclusions with regard to the standard, the decision will draw on the scientific information and analyses about health effects, population exposure and risks, as well as judgments about how to consider the range and magnitude of uncertainties that are inherent in the scientific evidence and analyses. This approach is based on the recognition that the available health effects evidence generally reflects a continuum, consisting of levels at which scientists generally agree that health effects are likely to occur, through lower levels at which the likelihood and magnitude of the response become increasingly uncertain. This approach is consistent with the requirements of the NAAQS provisions of the Clean Air Act and with how the EPA and the courts have historically interpreted the Act (summarized in section I.A. above). These provisions require the Administrator to establish primary standards that, in the judgment of the Administrator, are requisite to protect public health with an adequate margin of safety. In so doing, the Administrator seeks to establish standards that are neither more nor less stringent than necessary for this purpose. The Act does not require that primary standards be set at a zero-risk level, but rather at a level that avoids unacceptable risks to public

health, including the health of sensitive groups.¹⁸

The subsections below provide background and introductory information. Background on the establishment of the current standard in 2015, including the rationale for that decision, is summarized in section II.A.1. This is followed, in section II.A.2, by an overview of the general approach for the current review of the 2015 standard. Following this introductory section and subsections, the subsequent sections summarize current information and analyses, including that newly available in this review. The Administrator's proposed conclusions on the standard set in 2015, based on the current information, are provided in section II.D.3.

1. Background on the Current Standard

The current primary standard was set in 2015 based on the scientific evidence and quantitative exposure and risk analyses available at that time, and on the Administrator's judgments regarding the available scientific evidence, the appropriate degree of public health protection for the revised standard, and the available exposure and risk information regarding the exposures and risk that may be allowed by such a standard (80 FR 65292, October 26, 2015). The 2015 decision revised the level of the primary standard from 0.075 to 0.070 ppm,¹⁹ in conjunction with retaining the indicator (O₃), averaging time (eight hours), and form (annual fourth-highest daily maximum 8-hour average concentration, averaged across three consecutive years). This action provided increased protection for at-risk populations,²⁰ such as children and

people with asthma, against an array of adverse health effects. The 2015 decision drew upon the available scientific evidence assessed in the 2013 ISA, the exposure and risk information presented and assessed in the 2014 health REA (HREA), the consideration of that evidence and information in the 2014 PA, the advice and recommendations of the CASAC, and public comments on the proposed decision (79 FR 75234, December 17, 2014).

The health effects evidence base available in the 2015 review included extensive evidence from previous reviews as well as the evidence that had emerged since the prior review had been completed in 2008. This evidence base, spanning several decades, documents the causal relationship between exposure to O₃ and a broad range of respiratory effects (2013 ISA, p. 1–14). Such effects range from small, reversible changes in pulmonary function and pulmonary inflammation (documented in controlled human exposure studies involving exposures ranging from 1 to 8 hours) to more serious health outcomes such as emergency department visits and hospital admissions, which have been associated with ambient air concentrations of O₃ in epidemiologic studies (2013 ISA, section 6.2). In addition to extensive controlled human exposure and epidemiologic studies, the evidence base includes experimental animal studies that provide insight into potential modes of action for these effects, contributing to the coherence and robust nature of the evidence. Based on this evidence, the 2013 ISA concluded there to be a causal relationship between short-term O₃ exposures and respiratory effects, and also concluded that the relationship between longer-term exposure and respiratory effects was likely to be causal (2013 ISA, p. 1–14).²¹

With regard to the short-term respiratory effects that were the primary focus of the 2015 decision, the controlled human exposure studies were recognized to provide the most certain evidence indicating the occurrence of health effects in humans following specific O₃ exposures (80 FR 65343, October 26, 2015; 2014 PA, section 3.4). These studies additionally

illustrate the role of ventilation rate²² and exposure duration in eliciting responses to O₃ exposure at the lowest studied concentrations. The exposure concentrations eliciting a given level of response in subjects at rest are higher than those eliciting a response in subjects exposed while at elevated ventilation, such as while exercising (2013 ISA, section 6.2.1.1).²³

The exposure and risk information available in the 2015 review included exposure and risk estimates for air quality conditions just meeting the then-existing standard, and also for air quality conditions just meeting potential alternative standards (U.S. EPA, 2014a, hereafter 2014 HREA). Estimates were derived for two exposure-based analyses, as well as for an analysis based on epidemiologic study associations. The first of the exposure-based analyses involved comparison of population exposure estimates at elevated exertion to exposure benchmark concentrations (exposures of concern).²⁴ These benchmark concentrations are based on exposure concentrations from controlled human exposure studies in which lung function changes and other effects were measured in healthy, young adult volunteers exposed to O₃ while engaging in quasi-continuous moderate physical activity for a defined period (generally 6.6 hours).²⁵ The second

²² Ventilation rate (V_E) is a specific technical term referring to breathing rate in terms of volume of air taken into the body per unit of time. The units for V_E are usually liters (L) per minute (min). Another related term is equivalent ventilation rate (EVR), which refers to V_E normalized by a person's body surface area in square meters (m²). Accordingly, the units for EVR are generally L/min-m². For different activities, a person will experience different levels of exertion and different ventilation rates.

²³ In the controlled human exposure studies, the magnitude or severity of the respiratory effects induced by O₃ is influenced by ventilation rate and exposure duration, as well as exposure concentration, with physical activity increasing ventilation and potential for effects. In studies of generally healthy adults exposed while at rest for 2 hours, 500 ppb is the lowest concentration eliciting a statistically significant O₃-induced reduction in group mean lung function measures, while a much lower concentration produces such result when the study subject ventilation rates are sufficiently increased with exercise (2013 ISA, section 6.2.1.1). The lowest exposure concentration found to elicit a statistically significant O₃-induced reduction in group mean lung function in an exposure of 2 hours or less was 120 ppb after a 1-hour exposure (continuous, very heavy exercise) of trained cyclists (2013 ISA, section 6.2.1.1; Gong et al., 1986) and after 2-hour exposure (intermittent heavy exercise) of young healthy adults (2013 ISA, section 6.2.1.1; McDonnell et al., 1983).

²⁴ The benchmark concentrations to which exposure concentrations experienced while at moderate or greater exertion were compared were 60, 70 and 80 ppb.

²⁵ The studies given primary focus were those for which O₃ exposures occurred over the course of 6.6

¹⁸ As noted in section I.A above, the legislative history describes such protection for the sensitive group of individuals and not for a single person in the sensitive group (see S. Rep. No. 91–1196, 91st Cong., 2d Sess. 10 [1970]).

¹⁹ Although ppm are the units in which the level of the standard is defined, the units, ppb, are more commonly used throughout this document for greater consistency with their use in the more recent literature. The level of the current primary standard, 0.070 ppm, is equivalent to 70 ppb.

²⁰ As used here and similarly throughout the document, the term population refers to persons having a quality or characteristic in common, such as, and including, a specific pre-existing illness or a specific age or lifestage. A lifestage refers to a distinguishable time frame in an individual's life characterized by unique and relatively stable behavioral and/or physiological characteristics that are associated with development and growth. Identifying at-risk populations includes consideration of intrinsic (e.g., genetic or developmental aspects) or acquired (e.g., disease or smoking status) factors that increase the risk of health effects occurring with exposure to a substance (such as O₃) as well as extrinsic, nonbiological factors, such as those related to socioeconomic status, reduced access to health care, or exposure.

²¹ The 2013 ISA also concluded there likely to be causal relationship between short-term exposure and mortality, as well as short-term exposure and cardiovascular effects, including related mortality, and that the evidence was suggestive of causal relationships between long-term O₃ exposures and total mortality, cardiovascular effects and reproductive and developmental effects, and between short-term and long-term O₃ exposure and nervous system effects (2013 ISA, section 2.5.2).

exposure-based analysis provided population risk estimates of the occurrence of days with O₃-attributable lung function reductions of varying magnitudes by using the exposure-response (E-R) information in the form of E-R functions or other quantitative descriptions of biological processes.²⁶ In the epidemiologic study-based analysis, risk estimates were also derived from ambient air concentrations using concentration-response (C-R) functions derived from epidemiologic studies. These latter estimates were given less weight by the Administrator in her decision on the standard in light of conclusions reached in the 2014 PA and the HREA, which reflected lower confidence in these estimates (80 FR 65316–17, October 26, 2015).

The 2014 HREA developed exposure-based estimates for several population groups including all children and all adults. The type of exposure-based estimates that involved comparison of exposures to benchmarks was also derived for children with asthma and adults with asthma. The estimates of percentages of all children with exposures at or above benchmarks were virtually indistinguishable from the corresponding estimates for children with asthma.²⁷ When considered in terms of the number of children (rather than percentages of the child populations), the estimates for all children were much higher than those for children with asthma, with the magnitude of the differences varying based on asthma prevalence in each study area (2014 HREA, sections 5.3.2, 5.4.1.5 and section 5F–1). The estimates for percent of children experiencing an exposure at or above the benchmarks were higher than percent of adults due to the greater time that children spend outdoors and engaged in activities at elevated exertion (2014 HREA, section 5.3.2). Thus, consideration of the exposure-based results in the 2015 decision focused on the results for all children and children with asthma.

In weighing the 2013 ISA conclusions with regard to the health effects evidence and making judgments

hours during which the subjects engaged in six 50-minute exercise periods separated by 10-minute rest periods, with a 35-minute lunch period occurring after the third hour (e.g., Folinsbee et al., 1988 and Schelegle et al., 2009). Responses after O₃ exposure were compared to those after filtered air exposure.

²⁶ The E-R information and quantitative models derived from it are based on controlled human exposure studies.

²⁷ This reflects use of the same time-location-activity diary pool to construct each simulated individual's time-activity series, which is based on the similarities observed in the available diary data with regard to time spent outdoors and exertion levels (2014 HREA, sections 5.3.2 and 5.4.1.5).

regarding the public health significance of the quantitative estimates of exposures and risks allowed by the then-existing standard and potential alternative standards considered, as well as judgments regarding margin of safety, the Administrator considered the currently available information and commonly accepted guidelines or criteria within the public health community, including statements of the American Thoracic Society (ATS), an organization of respiratory disease specialists,²⁸ advice from the CASAC and public comments. In so doing, she recognized that the determination of what constitutes an adequate margin of safety is expressly left to the judgment of the EPA Administrator. See *Lead Industries Ass'n v. EPA*, 647 F.2d 1130, 1161–62 (D.C. Cir. 1980); *Mississippi v. EPA*, 744 F.3d 1334, 1353 (D.C. Cir. 2013). In NAAQS reviews generally, evaluations of how particular primary standards address the requirement to provide an adequate margin of safety include consideration of such factors as the nature and severity of the health effects, the size of the sensitive population(s) at risk, and the kind and degree of the uncertainties present. Consistent with past practice and long-standing judicial precedent, the Administrator took the need for an adequate margin of safety into account as an integral part of her decision-making.

In the 2015 decision, the Administrator first addressed the adequacy of protection provided by the then-existing primary standard and decided that the standard should be revised. Considerations related to that decision are summarized in section II.A.1.a below. The considerations and decisions on the revisions to the then-existing standard in order to provide the requisite protection under the Act, including an adequate margin of safety, are summarized in section II.A.1.b.

a. Considerations Regarding Adequacy of the Prior Standard

In the decision that the primary standard that existed at the time of the last review should be revised, the Administrator at that time gave primary consideration to the evidence of respiratory effects from controlled human exposure studies, including those newly available in the review, and for which the exposure concentrations were at the lower end of those studied (80 FR 65343, October 26, 2015). This

²⁸ In this regard, the 2014 PA considered statements issued by the ATS that had also been considered in prior reviews (ATS, 2000; ATS, 1985).

emphasis was consistent with comments from the CASAC at that time on the strength of this evidence (Frey, 2014b, p. 5). In placing weight on these studies, the Administrator took note of the variety of respiratory effects reported from the studies of healthy adults engaged in six 50-minute periods of moderate exertion within a 6.6-hour exposure to O₃ concentrations of 60 ppb and higher. The lowest exposure concentration in such studies for which a combination of statistically significant reduction in lung function and increase in respiratory symptoms was reported was 72 ppb (during the exercise periods),²⁹ while reduced lung function and increased pulmonary inflammation were reported following such exposures to O₃ concentrations as low as 60 ppb. In considering these findings, the Administrator noted that the combination of O₃-induced lung function decrements and respiratory symptoms met ATS criteria for an adverse response.³⁰ She additionally noted the CASAC comments on this point and also its caution that these study findings were for healthy adults and thus indicated the potential for such effects in some groups of people, such as people with asthma, at lower exposure concentrations (Frey, 2014b, pp. 5–6; 80 FR 65343, October 26, 2015).

The 2013 ISA indicated that the pattern of effects observed across the range of exposures assessed in the controlled human exposure studies, increasing with severity at higher exposures, is coherent with (i.e., reasonably related to) the health outcomes reported to be associated with ambient air concentrations in epidemiologic studies (e.g., respiratory-related hospital admissions, emergency department visits). With regard to the available epidemiologic studies, while analyses of O₃ air quality in the 2014 PA indicated that most O₃ epidemiologic studies reported health effect associations with O₃ concentrations in ambient air that violated the then-current (75 ppb) standard, the Administrator took particular note of a study that reported associations

²⁹ For the 70 ppb target exposure, Schelegle et al. (2009) reported, based on O₃ measurements during the six 50-minute exercise periods, that the mean O₃ concentration during the exercise portion of the study protocol was 72 ppb. Based on the measurements for the six exercise periods, the time weighted average concentration across the full 6.6-hour exposure was 73 ppb (Schelegle et al., 2009).

³⁰ The most recent statement from the ATS available at the time of the 2015 decision stated that “[i]n drawing the distinction between adverse and nonadverse reversible effects, this committee recommended that reversible loss of lung function in combination with the presence of symptoms should be considered as adverse” (ATS, 2000).

between short-term O₃ concentrations and asthma emergency department visits in children and adults in a U.S. location that would have met the then-current standard over the entire 5-year study period (80 FR 65344, October 26, 2015; Mar and Koenig, 2009).³¹ While uncertainties limited the Administrator's conclusions on air quality in locations of multicity epidemiologic studies,³² in looking across the body of epidemiologic evidence, the Administrator reached the conclusion that analyses of air quality in some study locations supported the occurrence of adverse O₃-associated effects at O₃ concentrations in ambient air that met, or are likely to have met, the then-current standard (80 FR 65344, October 26, 2016). Taken together, the Administrator concluded that the scientific evidence from controlled human exposure and epidemiologic studies called into question the adequacy of the public health protection provided by the 75 ppb standard that had been set in 2008.

In considering the exposure and risk information, the Administrator gave particular attention to the exposure-based comparison-to-benchmarks analysis, focusing on the estimates of exposures of concern for children, in 15 urban study areas for air quality conditions just meeting the then-current standard. Consistent with the finding that larger percentages of children than adults were estimated to experience exposures at or above benchmarks, the Administrator focused on the results for all children and for children with asthma, noting that the results for these two groups, in terms of percent of the population group, are virtually indistinguishable (2014 HREA, sections 5.3.2, 5.4.1.5 and section 5F-1). In considering these estimates, she placed the greatest weight on estimates of two or more days with occurrences of exposures at or above the benchmarks, in light of her increased concern about the potential for adverse responses with repeated occurrences of such exposures. In particular, she noted that the types of effects shown to occur following exposures to O₃ concentrations from 60 ppb to 80 ppb, such as inflammation, if occurring repeatedly as a result of repeated exposure, could potentially

result in more severe effects based on the ISA conclusions regarding mode of action (80 FR 65343, 65345, October 26, 2015; 2013 ISA, section 6.2.3).³³ While generally placing the greatest weight on estimates of repeated exposures, the Administrator also considered estimates for single exposures at or above the higher benchmarks of 70 and 80 ppb (80 FR 65345, October 26, 2015). Further, while the Administrator recognized the effects documented in the controlled human exposure studies for exposures to 60 ppb to be less severe than those associated with exposures to higher O₃ concentrations, she also recognized there to be limitations and uncertainties in the evidence base with regard to unstudied population groups. As a result, she judged it appropriate for the standard, in providing an adequate margin of safety, to provide some control of exposures at or above the 60 ppb benchmark (80 FR 65345-65346, October 26, 2015).

In considering the exposure estimates from the 2014 HREA with regard to public health implications, the Administrator concluded that the exposures and risks projected to remain upon meeting the then-current (75 ppb) standard could reasonably be judged to be important from a public health perspective. In particular, this conclusion was based on her judgment that it is appropriate to set a standard that would be expected to eliminate, or almost eliminate, the occurrence of exposures, while at moderate exertion, at or above 70 and 80 ppb (80 FR 65346, October 26, 2015). In addition, given that the average percent of children estimated to experience two or more days with exposures at or above the 60 ppb benchmark approaches 10% in some urban study areas (on average across the analysis years), the Administrator concluded that the then-current standard did not incorporate an adequate margin of safety against the potentially adverse effects that could occur following repeated exposures at or above 60 ppb (80 FR 65345-46, October 26, 2015). Further, although the Administrator recognized increased uncertainty in and placed less weight on the HREA estimates for lung function risk and for the epidemiologic-study-based risk analyses, she found them supportive of a conclusion that the O₃-associated health effects estimated to remain upon just meeting the then-

current standard are an issue of public health importance on a broad national scale. Thus, she concluded that O₃ exposure and risk estimates, taken together, supported a conclusion that the exposures and health risks associated with just meeting the then-current standard could reasonably be judged to be of public health significance, such that the then-current standard was not sufficiently protective and did not incorporate an adequate margin of safety.

In consideration of all of the above, as well as the CASAC advice, which included the unanimous recommendation "that the Administrator revise the current primary ozone standard to protect public health" (Frey, 2014b, p. 5),³⁴ the Administrator concluded that the then-current primary O₃ standard (with its level of 75 ppb) was not requisite to protect public health with an adequate margin of safety, and that it should be revised to provide increased public health protection. This decision was based on the Administrator's conclusions that the available evidence and exposure and risk information clearly called into question the adequacy of public health protection provided by the then-current primary standard such that it was "not appropriate, within the meaning of section 109(d)(1) of the CAA, to retain the current standard" (80 FR 65346, October 26, 2015).

b. Considerations for the Revised Standard

With regard to the most appropriate indicator for a revised standard, the Administrator considered findings and assessments in the 2013 ISA and 2014 PA, as well as advice from the CASAC and public comment. These include the finding that O₃ is the only photochemical oxidant (other than nitrogen dioxide) that is routinely monitored and for which a comprehensive database exists, and the consideration that, since the precursor emissions that lead to the formation of O₃ also generally lead to the formation of other photochemical oxidants, measures leading to reductions in population exposures to O₃ can generally be expected to lead to reductions in other photochemical oxidants (2013 ISA, section 3.6; 80 FR

³¹ The design values in this location over the study period were at or somewhat below 75 ppb (Wells, 2012).

³² Compared to the single-city epidemiologic studies, the Administrator noted additional uncertainty that applied specifically to interpreting air quality analyses within the context of multicity effect estimates for short-term O₃ concentrations, where effect estimates for individual study cities are not presented (80 FR 65344; October 26, 2015).

³³ In addition to recognizing the potential for continued inflammation to evolve into other outcomes, the 2013 ISA also recognized that inflammation induced by a single exposure (or several exposures over the course of a summer) can resolve entirely (2013 ISA, p. 6-76; 80 FR 65331, October 26, 2015).

³⁴ The Administrator also noted that CASAC for the prior, 2008, review likewise recommended revision of the standard to one with a level below 75 ppb. This earlier recommendation was based entirely on the evidence and information in the record for the 2008 decision, which had been expanded in the 2015 review (Samet, 2011; Frey and Samet, 2012).

65347, October 26, 2015). The CASAC indicated its view that O₃ is the appropriate indicator “based on its causal or likely causal associations with multiple adverse health outcomes and its representation of a class of pollutants known as photochemical oxidants” (Frey, 2014c, p. ii). Based on all of these considerations and public comments, the Administrator concluded that O₃ remained the most appropriate indicator for a standard meant to provide protection against photochemical oxidants in ambient air, and she retained O₃ as the indicator for the primary standard (80 FR 65347, October 26, 2015).

The 8-hour averaging time for the primary O₃ standard was established in 1997 with the decision to replace the then-existing 1-hour standard with an 8-hour standard (62 FR 38856, July 18, 1997). The decision in that review was based on evidence from numerous controlled human exposure studies of healthy adults of adverse respiratory effects resulting from 6- to 8-hour exposures, as well as quantitative analyses indicating the control provided by an 8-hour averaging time of both 8-hour and 1-hour peak exposures and associated health risk (62 FR 38861, July 18, 1997; U.S. EPA, 1996b). The 1997 decision was also consistent with advice from the CASAC (62 FR 38861, July 18, 1997; 61 FR 65727, December 13, 1996). The EPA reached similar conclusions in the subsequent 2008 review in which the 8-hour averaging time was retained (73 FR 16436, March 27, 2008). In the review completed in 2015, the Administrator concluded, in consideration of the then-available health effects information, that an 8-hour averaging time remained appropriate for addressing health effects associated with short-term exposures to ambient air O₃ and that it could effectively limit health effects attributable to both short- and long-term O₃ exposures (80 FR 65348, October 26, 2015). Thus, she found it appropriate to retain this averaging time (80 FR 65350, October 26, 2015).

While giving foremost consideration to the adequacy of public health protection provided by the combination of all elements of the standard, including the form, the Administrator additionally considered the appropriateness of retaining the *n*th-high metric as the form for the revised standard (80 FR 65350–65352, October 26, 2015). In so doing, she considered findings from prior reviews, including the 1997 review, in which it was recognized that a concentration-based form, by giving proportionally more weight to years when 8-hour O₃

concentrations are well above the level of the standard than years when concentrations are just above the level, better reflects the continuum of health effects associated with increasing O₃ concentrations than does an expected exceedance form, which had been the form of the standard prior to 1997.³⁵ Although the subsequent 2008 review considered the potential value of a percentile-based form, the EPA concluded at that time that, because of the differing lengths of the monitoring season for O₃ across the U.S., a percentile-based statistic would not be effective in ensuring the same degree of public health protection across the country (73 FR 16474–75, March 27, 2008). The 2008 review additionally recognized the importance of a form that provides stability to ongoing control programs and insulation from the impacts of extreme meteorological events that are conducive to O₃ occurrence (73 FR 16474–16475, March 27, 2008). Based on all of these considerations, and including advice from the CASAC, which stated that this form “provides health protection while allowing for atypical meteorological conditions that can lead to abnormally high ambient ozone concentrations which, in turn, provides programmatic stability” (Frey, 2014b, p. 6), the 2015 decision was to retain the existing form (the annual fourth-highest daily maximum 8-hour O₃ average concentration, averaged over three consecutive years), without revision (80 FR 65352, October 26, 2015).

The 2015 decision to set the level of the revised primary O₃ standard at 70 ppb built upon the Administrator’s conclusion (summarized in section II.A.1.a above) that the overall body of scientific evidence and exposure/risk information called into question the adequacy of the public health protection afforded by the then-current standard, particularly for at-risk populations and lifestages (80 FR 65362, October 26, 2015). In her decision on level, the Administrator placed the greatest weight on the results of controlled human exposure studies and on quantitative analyses based on information from these studies, particularly analyses of O₃ exposures of

concern.³⁶ In so doing, the Administrator noted that controlled human exposure studies provide the most certain evidence indicating the occurrence of health effects in humans following specific O₃ exposures, noting in particular that the effects reported in the controlled human exposure studies are due solely to O₃ exposures, and are not complicated by the presence of co-occurring pollutants or pollutant mixtures (as is the case in epidemiologic studies). The Administrator’s emphasis on the information from the controlled human exposure studies was consistent with the CASAC’s advice and interpretation of the scientific evidence (80 FR 65362, October 26, 2015; Frey, 2014b). In this regard, the Administrator recognized that: (1) The largest respiratory effects, and the broadest range of effects, have been studied and reported following exposures to 80 ppb O₃ or higher (*i.e.*, decreased lung function, increased airway inflammation, increased respiratory symptoms, airway hyperresponsiveness, and decreased lung host defense); (2) exposures to O₃ concentrations somewhat above 70 ppb have been shown to both decrease lung function and to result in respiratory symptoms; and (3) exposures to O₃ concentrations as low as 60 ppb have been shown to decrease lung function and to increase airway inflammation (80 FR 65363, October 26, 2015). The Administrator also considered both ATS recommendations and CASAC advice to inform her judgments on the potential adversity to public health associated with O₃ effects reported in controlled human exposure studies (80 FR 65363, October 26, 2015).³⁷

In considering the degree of protection provided by a revised primary O₃ standard, and the extent to which that standard would be expected to limit population exposures to the broad range of O₃ exposures shown to result in health effects, the Administrator considered the exposure estimates from the HREA, focusing particularly on the estimates of two or more exposures of concern. In so doing,

³⁶ The Administrator viewed the results of the lung function risk assessment, analyses of O₃ air quality in locations of epidemiologic studies, and epidemiologic-study-based quantitative health risk assessment as being of less utility for selecting a particular standard level among a range of options (80 FR 65362, October 26, 2015).

³⁷ In so doing, the Administrator recognized that a standard level of 70 ppb would be well below the O₃ exposure concentration documented to result in the widest range of respiratory effects (*i.e.*, 80 ppb), and below the lowest O₃ exposure concentration shown to result in the adverse combination of lung function decrements and respiratory symptoms (80 FR 65363, October 26, 2015).

³⁵ With regard to a specific concentration-based form, the fourth-highest daily maximum was selected in 1997, recognizing that a less restrictive form (*e.g.*, fifth highest) would allow a larger percentage of sites to experience O₃ peaks above the level of the standard, and would allow more days on which the level of the standard may be exceeded when the site attains the standard (62 FR 38868–38873, July 18, 1997), and there was no basis identified for selection of a more restrictive form (62 FR 38856, July 18, 1997).

she placed the most emphasis on setting a standard that appropriately limits repeated occurrences of exposures at or above the 70 and 80 ppb benchmarks, while at elevated ventilation. She noted that a revised standard with a level of 70 ppb was estimated to eliminate the occurrence of two or more days with exposures at or above 80 ppb and to virtually eliminate the occurrence of two or more days with exposures at or above 70 ppb for all children and children with asthma, even in the worst-case year and location evaluated.³⁸ Given the considerable protection provided against repeated exposures of concern for all benchmarks evaluated in the HREA, the Administrator judged that a standard with a level of 70 ppb incorporated a margin of safety against the adverse O₃-induced effects shown to occur in the controlled human exposure studies (80 FR 65364, October 26, 2015).³⁹

While she was less confident that adverse effects would occur following exposures to O₃ concentrations as low as 60 ppb,⁴⁰ as discussed above, the Administrator also considered estimates of exposures (while at moderate or greater exertion) for the 60 ppb benchmark (80 FR 65363–64, October 26, 2015). In so doing, she recognized that while CASAC advice regarding the potential adversity of effects observed in studies of 60 ppb was less definitive than for effects observed at the next higher concentration studied, the CASAC did clearly advise the EPA to consider the extent to which a revised standard is estimated to limit the effects observed in studies of 60 ppb exposures (80 FR 65364, October 26, 2015; Frey, 2014b). The Administrator's consideration of exposures at or above the 60 ppb benchmark, and particularly consideration of multiple occurrences of

such exposures, was primarily in the context of considering the extent to which the health protection provided by a revised standard included a margin of safety against the occurrence of adverse O₃-induced effects (80 FR 65464, October 26, 2015). In this context, the Administrator noted that a revised standard with a level of 70 ppb was estimated to protect the vast majority of children in urban study areas (*i.e.*, about 96% to more than 99% of children in individual areas) from experiencing two or more days with exposures at or above 60 ppb (while at moderate or greater exertion). Compared to the estimates for the then-current standard (with its level of 75 ppb), this represented a reduction in repeated exposures of more than 60%. Given the considerable protection provided against repeated exposures of concern for all of the benchmarks evaluated, including the 60 ppb benchmark, the Administrator judged that a standard with a level of 70 ppb would incorporate a margin of safety against the adverse O₃-induced effects shown to occur following exposures (while at moderate or greater exertion) to a somewhat higher concentration. The Administrator also judged the HREA results for one or more exposures at or above 60 ppb to provide further support for her somewhat broader conclusion that “a standard with a level of 70 ppb would incorporate an adequate margin of safety against the occurrence of O₃ exposures that can result in effects that are adverse to public health” (80 FR 65364, October 26, 2015).⁴¹

In the context of considering a standard with a level of 70 ppb, the Administrator additionally considered the lung function risk estimates, epidemiologic evidence and quantitative estimates based on information from the epidemiologic studies. Although she placed less weight on these estimates and information in light of associated uncertainties,⁴² she judged that a

standard with a level of 70 ppb would be expected to result in important reductions in the population-level risk of endpoints on which these types of information are focused and provide associated additional public health protection, beyond that provided by the then-current standard (80 FR 65364, October 26, 2015).

In summary, given her consideration of the evidence, exposure and risk information, advice from the CASAC, and public comments, the Administrator in 2015 judged a revised primary standard of 70 ppb, in terms of the 3-year average of annual fourth-highest daily maximum 8-hour average O₃ concentrations, to be requisite to protect public health, including the health of at-risk populations, with an adequate margin of safety (80 FR 65365, October 26, 2015).

2. Approach for the Current Review

To evaluate whether it is appropriate to consider retaining the current primary O₃ standard, or whether consideration of revision is appropriate, the EPA has adopted an approach in this review that builds upon the general approach used in the last review and reflects the body of evidence and information now available. Accordingly, the approach in this review takes into consideration the approach used in the last review, addressing key policy-relevant questions in light of currently available scientific and technical information. As summarized above, the Administrator's decisions in the prior review were based on an integration of O₃ health effects information with judgments on the adversity and public health significance of key health effects, policy judgments as to when the standard is requisite to protect public health with an adequate margin of safety, consideration of CASAC advice, and consideration of public comments.

Similarly, in this review, we draw on the current evidence and quantitative assessments of exposure pertaining to

as a basis for considering the occurrence of adverse effects in the population (also recognized in the prior review) that limited her reliance on these estimates in reaching judgments on health protection of a standard level of 70 ppb versus lower levels. Additionally, with regard to epidemiologic studies, while the Administrator recognized there to be support for a standard level at least as low as 70 ppb from a single-epidemiologic study (Mar and Koenig, 2009) that reported health effect associations in a location that met the then-current standard over the entire study period but that would have violated a revised standard with a level of 70 ppb, she found these studies to be of more limited utility for distinguishing between the appropriateness of health protection estimated for a standard level of 70 ppb and that estimated for lower levels (80 FR 65364, October 26, 2015).

³⁸ Under conditions just meeting an alternative standard with a level of 70 ppb across the 15 urban study areas, the estimate for two or more days with exposures at or above 70 ppb was 0.4% of children, in the worst year and worst area (80 FR 65313, Table 1, October 26, 2015).

³⁹ In so judging, she noted that the CASAC had recognized the choice of a standard level within the range it recommended based on the scientific evidence (which is inclusive of 70 ppb) to be a policy judgment (80 FR 65355, October 26, 2015; Frey, 2014).

⁴⁰ The Administrator was “notably less confident in the adversity to public health of the respiratory effects that have been observed following exposures to O₃ concentrations as low as 60 ppb,” based on her consideration of the ATS recommendation on judging adversity from transient lung function decrements alone, the uncertainty in the potential for such decrements to increase the risk of other, more serious respiratory effects in a population (per ATS recommendations on population-level risk), and the less clear CASAC advice regarding potential adversity of effects at 60 ppb compared to higher concentrations studied (80 FR 65363, October 26, 2015).

⁴¹ While the Administrator was less concerned about single occurrences of O₃ exposures of concern, especially for the 60 ppb benchmark, she judged that estimates of one or more exposures of concern can provide further insight into the margin of safety provided by a revised standard. In this regard, she noted that “a standard with a level of 70 ppb is estimated to (1) virtually eliminate all occurrences of exposures of concern at or above 80 ppb; (2) protect the vast majority of children in urban study areas from experiencing any exposures of concern at or above 70 ppb (*i.e.*, \geq about 99%, based on mean estimates; Table 1); and (3) to achieve substantial reductions, compared to the then-current standard, in the occurrence of one or more exposures of concern at or above 60 ppb (*i.e.*, about a 50% reduction; Table 1)” (80 FR 65364, October 26, 2015).

⁴² The Administrator noted important uncertainties in using lung function risk estimates

the public health risk of O₃ in ambient air. In considering the scientific and technical information here, we consider both the information available at the time of the last review and information newly available since the last review, including that which has been critically analyzed and characterized in the current ISA. The quantitative exposure and risk analyses provide a context for interpreting the evidence of respiratory effects in people breathing at elevated rates and the potential public health significance of exposures associated with air quality conditions that just meet the current standard. The overarching purpose of these analyses is to inform the Administrator's conclusions on the public health protection afforded by the current primary standard, with an important focus on the potential for exposures and risks beyond those indicated by the information available at the time the standard was established.

B. Health Effects Information

The information summarized here is based on our scientific assessment of the health effects evidence available in this review; this assessment is documented in the ISA and its policy implications are further discussed in the PA. In this review, as in past reviews, the health effects evidence evaluated in the ISA for O₃ and related photochemical oxidants is focused on O₃ (ISA, section IS.1.1). Ozone is concluded to be the most prevalent photochemical oxidant present in the atmosphere and the one for which there is a very large, well-established evidence base of its health and welfare effects. Further, "the primary literature evaluating the health and ecological effects of photochemical oxidants includes ozone almost exclusively as an indicator of photochemical oxidants" (ISA, section IS.1.1). Thus, the current health effects evidence and the Agency's review of the evidence, including the evidence newly available in this review, continues to focus on O₃.

More than 1600 studies are newly available and considered in the ISA, including more than 1000 health studies (ISA, Appendix 10, Figure 10–2). As in the last review, the key evidence comes from the body of controlled human exposure studies that document respiratory effects in people exposed for short periods (6.6 to 8 hours) during quasi-continuous exercise. Policy implications of the currently available evidence are discussed in the PA (as summarized in section II.D.1 below). The subsections below briefly summarize the following aspects of the evidence: The nature of O₃-related

health effects (section II.B.1), the potential public health implications and populations at risk (section II.B.2), and exposure concentrations associated with health effects (section II.B.3).

1. Nature of Effects

The evidence base available in the current review includes decades of extensive evidence that clearly describes the role of O₃ in eliciting an array of respiratory effects and recent evidence suggests the potential for relationships between O₃ exposure and other effects. As was established in prior reviews, the most commonly observed effects, and those for which the evidence is strongest, are transient decrements in pulmonary function and respiratory symptoms, such as coughing and pain on deep inspiration, as a result of short-term exposures (ISA, section IS.4.3.1; 2013 ISA, p. 2–26). These effects are demonstrated in the large, long-standing evidence base of controlled human exposure studies⁴³ (1978 AQCD, 1986 AQCD, 1996 AQCD, 2006 AQCD, 2013 ISA, ISA). The lung function effects are also positively associated with ambient air O₃ concentrations in epidemiologic panel studies, available in past reviews, that describe these associations for outdoor workers and children attending summer camps in the 1980s and 1990s (2013 ISA, section 6.2.1.2; ISA, Appendix 3, section 3.1.4.1.3). The epidemiologic evidence base additionally documents associations of O₃ concentrations in ambient air with more severe health outcomes, including asthma-related emergency department visits and hospital admissions (2013 ISA, section 6.2.7; ISA, Appendix 3, sections 3.1.5.1 and 3.1.5.2). Extensive experimental animal evidence informs a detailed understanding of mechanisms underlying the respiratory effects of short-term exposures (ISA, Appendix 3, section 3.1.11), and studies in animal models also provide evidence for effects of longer-term O₃ exposure on the developing lung (ISA, Appendix 3, section 3.2.6).

The current evidence continues to support our prior conclusion that short-term O₃ exposure causes respiratory effects. Specifically, the full body of

⁴³ The vast majority of the controlled human exposure studies (and all of the studies conducted at the lowest exposures) involved young healthy adults (typically 18–13 years old) as study subjects (2013 ISA, section 6.2.1.1). There are also some controlled human exposure studies of one to eight hours duration in older adults and adults with asthma, and there are still fewer controlled human exposure studies in healthy children (*i.e.*, individuals aged younger than 18 years) or children with asthma (See, for example, PA, Appendix 3A, Table 3A–3).

evidence continues to support the conclusion of a causal relationship of respiratory effects with short-term O₃ exposures and the conclusion that the relationship of respiratory effects with longer-term exposures is likely to be causal (ISA, sections IS.4.3.1 and IS.4.3.2). The current evidence base for short-term O₃ exposure and metabolic effects,⁴⁴ which was not evaluated as a separate category of effects in the last review when less evidence was available, is expanded by evidence newly available in this review. The ISA determines the current evidence sufficient to conclude that the relationship between short-term O₃ exposure and metabolic effects is likely to be causal (ISA, section IS.4.3.3). The newly available evidence is primarily from experimental animal research. For other types of health effects, new evidence has led to different conclusions from those reached in the prior review. Specifically, the current evidence, particularly in light of the additional controlled human exposure studies, is less consistent than what was previously available and less indicative of O₃-induced cardiovascular effects. This evidence has altered conclusions from the last review with regard to relationships between short-term O₃ exposures and cardiovascular effects and mortality, such that the evidence is no longer concluded to indicate that the relationships are likely to be causal.⁴⁵ Thus, while conclusions have changed for some effects based on the new evidence, the conclusions reached in the last review on respiratory effects are supported by the current evidence, and conclusions are also newly reached for an additional category of health effects.

a. Respiratory Effects

As in the last review, the currently available evidence in this review supports the conclusion of a causal relationship between short-term O₃ exposure and respiratory effects (ISA, section IS.1.3.1). The strongest evidence for this comes from controlled human

⁴⁴ The term metabolic effects is used in the ISA to refer to metabolic syndrome (a collection of risk factors including high blood pressure, elevated triglycerides and low high density lipoprotein cholesterol), diabetes, metabolic disease mortality, and indicators of metabolic syndrome that include alterations in glucose and insulin homeostasis, peripheral inflammation, liver function, neuroendocrine signaling, and serum lipids (ISA, section IS.4.3.3).

⁴⁵ The currently available evidence for cardiovascular, reproductive and nervous system effects, as well as mortality, is "suggestive of, but not sufficient to infer" a causal relationship with short- or long-term O₃ exposures (ISA, Table IS–1). The evidence is inadequate to infer the presence or absence of a causal relationship between long-term O₃ exposure and cancer (ISA, section IS.4.3.6.6).

exposure studies, also available in the last review, demonstrating O₃-related respiratory effects in generally healthy adults.⁴⁶ Experimental studies in animals also document an array of respiratory effects resulting from short-term O₃ exposure and provide information related to underlying mechanisms (ISA, Appendix 3, section 3.1). The potential for O₃ exposure to elicit health outcomes more serious than those assessed in the controlled human exposure studies continues to be indicated by the epidemiologic evidence of associations of O₃ concentrations in ambient air with increased incidence of hospital admissions and emergency department visits for an array of health outcomes, including asthma exacerbation, COPD exacerbation, respiratory infection, and combinations of respiratory diseases (ISA, Appendix 3, sections 3.1.5 and 3.1.6). The strongest such evidence is for asthma-related outcomes and specifically asthma-related outcomes for children, indicating an increased risk for people with asthma and particularly children with asthma (ISA, Appendix 3, section 3.1.5.7).

Respiratory responses observed in human subjects exposed to O₃ for periods of 8 hours or less, while intermittently or quasi-continuously, exercising, include reduced lung function,⁴⁷ respiratory symptoms, increased airway responsiveness, mild bronchoconstriction (measured as an increase in specific airway resistance [sRaw]), and pulmonary inflammation, with associated injury and oxidative stress (ISA, Appendix 3, section 3.1.4; 2013 ISA, sections 6.2.1 through 6.2.4). The available mechanistic evidence, discussed in greater detail in the ISA, describes pathways involving the

respiratory and nervous systems by which O₃ results in pain-related respiratory symptoms and reflex inhibition of maximal inspiration (inhaling a full, deep breath), commonly quantified by decreases in forced vital capacity (FVC) and total lung capacity. This reflex inhibition of inspiration combined with mild bronchoconstriction contributes to the observed decrease in FEV₁, the most common metric used to assess O₃-related lung function effects. The evidence also indicates that the additionally observed inflammatory response is correlated with mild airway obstruction, generally measured as an increase in sRaw (ISA, Appendix 3, section 3.1.3). As described in section II.B.3 below, the prevalence and severity of respiratory effects in controlled human exposure studies, including symptoms (e.g., pain on deep inspiration, shortness of breath, and cough), increases with increasing O₃ concentration, exposure duration, and ventilation rate of exposed subjects (ISA, Appendix 3, sections 3.1.4.1 and 3.1.4.2).

Within the evidence base from controlled human exposure studies, the majority of studies involve healthy adult subjects (generally 18 to 35 years), although there are studies involving subjects with asthma, and a limited number of studies, generally of durations shorter than four hours, involving adolescents and adults older than 50 years. A summary of salient observations of O₃ effects on lung function, based on the controlled human exposure study evidence reviewed in the 1996 and 2006 AQCDs, and recognized in the 2013 ISA, continues to pertain to this evidence base as it exists today: “(1) young healthy adults exposed to ≥80 ppb ozone develop significant reversible, transient decrements in pulmonary function and symptoms of breathing discomfort if minute ventilation (V_e) or duration of exposure is increased sufficiently; (2) relative to young adults, children experience similar spirometric responses [*i.e.*, as measured by FEV₁ and/or FVC] but lower incidence of symptoms from O₃ exposure; (3) relative to young adults, ozone-induced spirometric responses are decreased in older individuals; (4) there is a large degree of inter-subject variability in physiologic and symptomatic responses to O₃, but responses tend to be reproducible within a given individual over a period of several months; and (5) subjects exposed repeatedly to O₃ for several days experience an attenuation of spirometric and symptomatic

responses on successive exposures, which is lost after about a week without exposure” (ISA, Appendix 3, section 3.1.4.1.1, p. 3–11).⁴⁸

The evidence is most well established with regard to the effects, reversible with the cessation of exposure, that are associated with short-term exposures of several hours. For example, the evidence indicates a rapid recovery from O₃-induced lung function decrements (e.g., reduced FEV₁) and respiratory symptoms (2013 ISA, section 6.2.1.1). However, in some cases, such as after exposure to higher concentrations such as 300 ppb, the recovery phase may be slower and involve a longer time period (e.g., at least 24 hours). Repeated daily exposure studies at such higher concentrations also have found FEV₁ response to be enhanced on the second day of exposure. This enhanced response is absent, however, with repeated exposure at lower concentrations, perhaps as a result of a more complete recovery or less damage to pulmonary tissues (2013 ISA, section pp. 6–13 to 6–14; Folinsbee et al., 1994).

With regard to airway inflammation and the potential for repeated occurrences to contribute to further effects, 2013 ISA indicates that O₃-induced respiratory tract inflammation “can have several potential outcomes: (1) Inflammation induced by a single exposure (or several exposures over the course of a summer) can resolve entirely; (2) continued acute inflammation can evolve into a chronic inflammatory state; (3) continued inflammation can alter the structure and function of other pulmonary tissue, leading to diseases such as fibrosis; (4) inflammation can alter the body’s host defense response to inhaled microorganisms, particularly in potentially at-risk populations such as the very young and old; and (5) inflammation can alter the lung’s response to other agents such as allergens or toxins” (2013 ISA, p. 6–76). With regard to O₃-induced increases in airway responsiveness, the controlled human exposure study evidence for healthy adults generally indicates resolution within 18 to 24 hours after exposure (ISA, Appendix 3, section 3.1.4.3.1).

The extensive evidence base for O₃ health effects, compiled over several decades, continues to indicate respiratory responses to short exposures as the most sensitive effects of O₃. Such

⁴⁶ The phrases “healthy adults” or “healthy subjects” are used to distinguish from subjects with asthma or other respiratory diseases, for which there are many fewer controlled human exposure studies. For studies of healthy subjects “the study design generally precludes inclusion of subjects with serious health conditions,” such as individuals with severe respiratory diseases (2013 ISA, p. lx).

⁴⁷ In summarizing FEV₁ responses from controlled human exposure studies, an O₃-induced change in FEV₁ is typically the difference between the change observed with O₃ exposure (post-exposure FEV₁ minus pre-exposure FEV₁) and what is generally an improvement observed with filtered air (FA) exposure (post-exposure FEV₁ minus pre-exposure FEV₁). As explained in the 2013 ISA, “[n]oting that some healthy individuals experience small improvements while others have small decrements in FEV₁ following FA exposure, investigators have used the randomized, crossover design with each subject serving as their own control (exposure to FA) to discern relatively small effects with certainty since alternative explanations for these effects are controlled for by the nature of the experimental design” (2013 ISA, pp. 6–4 to 6–5).

⁴⁸ A spirometric response refers to a change in the amount of air breathed out of the body (forced expiratory volumes) and the associated time to do so (e.g., FEV₁).

effects are well documented in controlled human exposure studies, most of which involve healthy adult study subjects. These studies have documented an array of respiratory effects, including reduced lung function, respiratory symptoms, increased airway responsiveness, and inflammation, in study subjects following 1- to 8-hour exposures, primarily while exercising. Such effects are of increased significance to people with asthma given aspects of the disease that contribute to a baseline status that includes chronic airway inflammation and greater airway responsiveness than people without asthma (ISA, section 3.1.5). For example, due to the latter characteristic, O₃ exposure of a magnitude that increases airway responsiveness may put such people at potential increased risk for prolonged bronchoconstriction in response to asthma triggers (ISA, p. IS-22; 2013 ISA, section 6.2.9; 2006 AQCD, section 8.4.2). Further, children are the age group most likely to be outdoors at activity levels corresponding to those that have been associated with respiratory effects in the human exposure studies (as recognized below in sections II.B.2 and II.C). The increased significance of effects in people with asthma and risk of increased exposure for children is illustrated by the epidemiologic findings of positive associations between O₃ exposure and asthma-related ED visits and hospital admissions for children with asthma. Thus, the evidence indicates O₃ exposure to increase the risk of asthma exacerbation, and associated outcomes, in children with asthma.

With regard to an increased susceptibility to infectious diseases, the experimental animal evidence continues to indicate, as described in the 2013 ISA and past AQCDs, the potential for O₃ exposures to increase susceptibility to infectious diseases through effects on defense mechanisms of the respiratory tract (ISA, section 3.1.7.3; 2013 ISA, section 6.2.5). The evidence base regarding respiratory infections and associated effects has been augmented in this review by a number of epidemiologic studies reporting positive associations between short-term O₃ concentrations and emergency department visits for a variety of respiratory infection endpoints (ISA, Appendix 3, section 3.1.7).

Although the long-term exposure conditions that may contribute to further respiratory effects are less well understood, the conclusion based on the current evidence base remains that the relationship for such exposure

conditions with respiratory effects is likely to be causal (ISA, section IS.4.3.2). Most notably, experimental studies, including with nonhuman infant primates, have provided evidence relating O₃ exposure to asthma-like effects, and epidemiologic cohort studies have reported associations of O₃ concentrations in ambient air with asthma development in children (ISA, Appendix 3, sections 3.2.4.1.3 and 3.2.6). The biological plausibility of such a role for O₃ has been indicated by animal toxicological evidence on biological mechanisms (ISA, Appendix 3, sections 3.2.3 and 3.2.4.1.2). Specifically, the animal evidence, including the nonhuman primate studies of early life O₃ exposure, indicates that such exposures can cause “structural and functional changes that could potentially contribute to airway obstruction and increased airway responsiveness,” which are hallmarks of asthma (ISA, Appendix 3, section 3.2.6, p. 3–113).

Overall, the respiratory effects evidence newly available in this review is generally consistent with the evidence base in the last review (ISA, Appendix 3, section 3.1.4). A few recent studies provide insights in previously unexamined areas, both with regard to human study groups and animal models for different effects, while other studies confirm and provide depth to prior findings with updated protocols and techniques (ISA, Appendix 3, sections 3.1.11 and 3.2.6). Thus, our current understanding of the respiratory effects of O₃ is similar to that in the last review.

One aspect of the evidence that has been augmented concerns pulmonary function in adults older than 50 years of age. Previously available evidence in this age group indicated smaller O₃-related decrements in middle-aged adults (35 to 60 years) than in adults 35 years of age and younger (2006 AQCD, p. 6–23; 2013 ISA, p. 6–22; ISA, Appendix 3, section 3.1.4.1.1.2). A recent multicenter study of 55- to 70-year old subjects (average age of 60 years), conducted for a 3-hour duration involving alternating 15-minute rest and exercise periods and a 120 ppb exposure concentration, reported a statistically significant O₃ FEV₁ response (ISA, Appendix 3, section 3.1.4.1.1.2; Arjomandi et al., 2018). While there is not a study in younger adults of precisely comparable design, the mean response for the 55- to 70-year olds, 1.2% O₃-related FEV₁ decrement, is lower than results for somewhat comparable exposures in adults aged 18 to 35 years, suggesting somewhat reduced responses to O₃ exposure in this older age group (ISA, Appendix 3,

section 3.1.4.1.1.2; Arjomandi et al., 2018; Adams, 2000; Adams, 2006b).⁴⁹ Such a reduced response in middle-aged and older adults compared to young adults is consistent with conclusions in previous reviews (2013 ISA, section 6.2.1.1; 2006 AQCD, section 6.4).

The strongest evidence of O₃-related health effects, as was the case in the last review, continues to be that for respiratory effects of O₃ (ISA, section ES.4.1). Among the newly available studies, there are several controlled human exposure studies that investigated lung function effects of higher exposure concentrations (*e.g.*, 100 to 300 ppb) in healthy individuals younger than 35 years old, with findings generally consistent with previous studies (ISA, Appendix 3, section 3.1.4.1.1.2, p. 3–17). No studies are newly available in this review of 6.6-hour controlled human exposures (with exercise) to O₃ concentrations below those previously studied.⁵⁰ The newly available animal toxicological studies augment the previously available information concerning mechanisms underlying the effects documented in experimental studies. Newly available epidemiologic studies of hospital admissions and emergency department visits for a variety of respiratory outcomes supplement the previously available evidence with additional findings of consistent associations with O₃ concentrations across a number of study locations (ISA, Appendix 3, sections 3.1.4.1.3, 3.1.5, 3.1.6.1.1, 3.1.7.1 and 3.1.8). These studies include a number that report positive associations for asthma-related outcomes, as well as a few for COPD-related outcomes. Together these studies in the current epidemiologic evidence base continue to indicate the potential for O₃ exposures to contribute to such serious health outcomes, particularly for people with asthma.

⁴⁹ For the same exposure concentration of 120 ppb, Adams (2006b) observed an average 3.2%, statistically significant, O₃-related FEV₁ decrement in young adults (average age 23 years) at the end of the third hour of an 8-hour protocol that alternated 30 minutes of exercise and rest, with the equivalent ventilation rate (EVR) averaging 20 L/min-m² during the exercise periods (versus 15 to 17 L/min-m² in Arjomandi et al. [2018]). For the same concentration with a lower EVR during exercise (17 L/min-m²), although with more exercise, Adams (2000) observed a 4%, statistically significant, O₃-related FEV₁ decrement in young adults (average age 22 years) after the third hour of a 6.6-hour protocol (alternating 50 minutes exercise and 10 minutes rest).

⁵⁰ The recent 3-hour study of 55- to 70-year old subjects included a target exposure of 70 ppb, as well as 120 ppb, with only the latter eliciting a statistically significant FEV₁ decrement in this age group of subjects (ISA, Appendix 3, section 3.1.4.1.1.2).

b. Other Effects

As was the case for the evidence available in the last review, the currently available evidence for health effects other than those of O₃ exposures on the respiratory system is more uncertain than that for respiratory effects. For some of these other categories of effects, the evidence now available has contributed to changes in conclusions reached in the last review. For example, the current evidence for cardiovascular effects and mortality, expanded from that in the last review, is no longer considered sufficient to conclude that the relationships of short-term exposure with these effects are likely to be causal (ISA, sections IS.4.3.4 and IS.4.3.5). These changes stem from newly available evidence in combination with the uncertainties recognized for the evidence available in the last review. Additionally, newly available evidence has also led to conclusions for another category, metabolic effects, for which formal causal determinations were previously not articulated.

The ISA finds the evidence for metabolic effects sufficient to conclude that the relationship with short-term O₃ exposures is likely to be causal (ISA, section IS.4.3.3). The evidence of metabolic effects of O₃ comes primarily from experimental animal study findings that short-term O₃ exposure can impair glucose tolerance, increase triglyceride levels and elicit fasting hyperglycemia, and increase hepatic gluconeogenesis (ISA, Appendix 5, section 5.1.8 and Table 5–3). The exposure conditions from these studies generally involve much higher O₃ concentrations than those commonly occurring in areas of the U.S. where the current standard is met. For example, the animal studies include 4-hour concentrations of 400 to 800 ppb (ISA, Appendix 5, Tables 5–8 and 5–10). The concentration in the available controlled human exposure study is similarly high, at 300 ppb; this study reported increases in two biochemicals suggestive of some liver biomarkers and no change in a number of other biochemicals associated with metabolic effects (ISA, sections 5.1.3, 5.1.5 and 5.1.8, Table 5–3). A limited number of epidemiologic studies is also available (ISA, section IS.4.3.3; Appendix 5, sections 5.1.3 and 5.1.8).

The ISA additionally concludes that the evidence is suggestive of, but not sufficient to infer, a causal relationship between long-term O₃ exposures and metabolic effects (ISA, section IS.4.3.6.2). As with metabolic effects and short-term O₃, the primary evidence

is from experimental animal studies in which the exposure concentrations are appreciably higher than those commonly occurring in the U.S. For example, the animal studies include exposures over several weeks to concentrations of 250 ppb and higher (ISA, Appendix 5, section 5.2.3.1.1). The somewhat limited epidemiologic evidence related to long-term O₃ concentrations and metabolic effects includes studies reporting increased odds of being overweight or obese or having metabolic syndrome and increased hazard ratios for diabetes incidence with increased O₃ concentrations (ISA, Appendix 5, sections 5.2.3.4.1, 5.2.5 and 5.2.9, Tables 5–12 and 5–15).

With regard to cardiovascular effects and total (nonaccidental) mortality and short-term O₃ exposures, the conclusions regarding the potential for a causal relationship have changed from what they were in the last review after integrating the previously available evidence with newly available evidence. The relationships are now characterized as suggestive of, but not sufficient to infer, a causal relationship (ISA, Appendix 4, section 4.1.17; Appendix 6, section 6.1.8). This reflects several aspects of the current evidence base: (1) A now-larger body of controlled human exposure studies providing evidence that is not consistent with a cardiovascular effect in response to short-term O₃ exposure; (2) a paucity of epidemiologic evidence indicating more severe cardiovascular morbidity endpoints (*e.g.*, emergency department visits and hospital visits for cardiovascular endpoints including myocardial infarctions, heart failure or stroke) that could connect the evidence for impaired vascular and cardiac function from animal toxicological studies with the evidence from epidemiologic studies of cardiovascular mortality; and (3) the remaining uncertainties and limitations recognized in the 2013 ISA (*e.g.*, lack of control for potential confounding by copollutants in epidemiologic studies) that still remain. Although there exists consistent or generally consistent evidence for a limited number of O₃-induced cardiovascular endpoints in animal toxicological studies and cardiovascular mortality in epidemiologic studies, there is a general lack of coherence between these results and findings in controlled human exposure and epidemiologic studies of cardiovascular health outcomes (ISA, section IS.1.3.1, Appendix 6, section 6.1.8). Related to the updated evidence for cardiovascular effects, the evidence for short-term O₃

concentrations and mortality is also updated (ISA, section 4.3.5 and Appendix 6, section 6.1.8). While epidemiologic studies show positive associations between short-term O₃ concentrations and total (nonaccidental) and cardiovascular mortality (and there are some studies reporting associations that remain after controlling for PM₁₀ and NO₂), the full evidence base does not describe a continuum of effects that could lead to cardiovascular mortality.⁵¹ The category of total mortality includes all contributions to mortality, including both respiratory and cardiovascular mortality, as well as other causes of death, such as cancer or other chronic diseases. The evidence base supporting a continuum of effects of short-term O₃ concentrations that could potentially lead to respiratory mortality is more consistent and coherent as compared to that for cardiovascular mortality (ISA, sections 3.1.11 and 4.1.17; 2013 ISA, section 6.2.8). However, because cardiovascular mortality is the largest contributor to total mortality, the relatively limited biological plausibility and coherence within and across disciplines for cardiovascular effects (including mortality) is the dominant factor which contributes to a revised causality determination for total mortality (ISA, section IS.4.3.5). The ISA concludes that the currently available evidence for cardiovascular effects and total mortality is suggestive of, but not sufficient to infer, a causal relationship with short-term (as well as long-term) O₃ exposures (ISA, sections IS.4.3.4 and IS.4.3.5).

For other health effect categories, conclusions in this review are largely unchanged from those in the last review. The available evidence for reproductive and developmental effects, as well as for effects on the nervous system, is suggestive of, but not sufficient to infer, a causal relationship, as was the case in the last review (ISA, section IS.4.3.6.5 and Table IS–1). Additionally, the evidence is inadequate to determine if a causal relationship exists between O₃ exposure and cancer (ISA, section IS.4.3.6.6 and Table IS–1).

2. Public Health Implications and At-Risk Populations

The public health implications of the evidence regarding O₃-related health

⁵¹ Due to findings from controlled human exposure studies examining clinical endpoints (*e.g.*, blood pressure) that do not indicate an O₃ effect and from epidemiologic studies examining cardiovascular-related hospital admissions and ED visits that do not find positive associations, a continuum of effects that could lead to cardiovascular mortality is not apparent (ISA, Appendices 4 and 6).

effects, as for other effects, are dependent on the type and severity of the effects, as well as the size of the population affected. Such factors are discussed here in the context of our consideration of the health effects evidence related to O₃ in ambient air. Additionally, we summarize the currently available information related to judgments or interpretative statements developed by public health experts, particularly experts in respiratory health. This section also summarizes the current information on population groups at increased risk of the effects of O₃ in ambient air.

With regard to O₃ in ambient air, the potential public health impacts relate most importantly to the role of O₃ in eliciting respiratory effects, the category of effects that the ISA concludes to be causally related to O₃ exposure (short-term). Controlled human exposure studies have documented reduced lung function, respiratory symptoms, increased airway responsiveness, and inflammation, among other effects, in healthy adults exposed while at elevated ventilation, such as while exercising. Ozone effects in individuals with compromised respiratory function, such as individuals with asthma, are plausibly related to emergency department visits and hospital admissions for asthma which have been associated with ambient air concentrations of O₃ in epidemiologic studies (as summarized in section II.B.1 above; 2013 ISA, section 6.2.7; ISA, Appendix 3, sections 3.1.5.1 and 3.1.5.2).

The clinical significance of individual responses to O₃ exposure depends on the health status of the individual, the magnitude of the changes in pulmonary function, the severity of respiratory symptoms, and the duration of the response. With regard to pulmonary function, the greater impact of larger decrements on affected individuals can be described. For example, moderate effects on pulmonary function, such as transient FEV₁ decrements smaller than 20% or transient respiratory symptoms, such as cough or discomfort on exercise or deep breath, would not be expected to interfere with normal activity for most healthy individuals, while larger effects on pulmonary function (e.g., FEV₁ decrements of 20% or larger lasting longer than 24 hours) and/or more severe respiratory symptoms are more likely to interfere with normal activity for more of such individuals (e.g., 2014 PA, p. 3–53; 2006 AQCD, Table 8–2).

In addition to the difference in severity or magnitude of specific effects in healthy people, the same reduction in

FEV₁ or increase in inflammation or airway responsiveness in a healthy group and a group with asthma may increase the risk of a more severe effect in the group with asthma. For example, the same increase in inflammation or airway responsiveness in individuals with asthma could predispose them to an asthma exacerbation event triggered by an allergen to which they may be sensitized (e.g., 2013 ISA, sections 6.2.3 and 6.2.6). Duration and frequency of documented effects is also reasonably expected to influence potential adversity and interference with normal activity. In summary, consideration of differences in magnitude or severity, and also the relative transience or persistence of such FEV₁ changes and respiratory symptoms, as well as pre-existing sensitivity to effects on the respiratory system, and other factors, are important to characterizing implications for public health effects of an air pollutant such as O₃ (ATS, 2000; Thurston et al., 2017).

Decisions made in past reviews of the O₃ primary standard and associated judgments regarding adversity or health significance of measurable physiological responses to air pollutants have been informed by guidance, criteria or interpretative statements developed within the public health community, including the ATS, an organization of respiratory disease specialists, as well as the CASAC. The ATS released its initial statement (titled *Guidelines as to What Constitutes an Adverse Respiratory Health Effect, with Special Reference to Epidemiologic Studies of Air Pollution*) in 1985 and updated it in 2000 (ATS, 1985; ATS, 2000). The ATS described its 2000 statement, considered in the last review of the O₃ standard, as being intended to “provide guidance to policy makers and others who interpret the scientific evidence on the health effects of air pollution for the purposes of risk management” (ATS, 2000). The ATS described the statement as not offering “strict rules or numerical criteria,” but rather proposing “principles to be used in weighing the evidence and setting boundaries,” and stated that “the placement of dividing lines should be a societal judgment” (ATS, 2000). Similarly, the most recent policy statement by the ATS, which once again broadens its discussion of effects, responses and biomarkers to reflect the expansion of scientific research in these areas, reiterates that concept, conveying that it does not offer “strict rules or numerical criteria, but rather proposes considerations to be weighed in setting boundaries between adverse and nonadverse health effects,” providing a

general framework for interpreting evidence that proposes a “set of considerations that can be applied in forming judgments” for this context (Thurston et al., 2017).

With regard to pulmonary function decrements, the earlier ATS statement concluded that “small transient changes in forced expiratory volume in 1 s[econd] (FEV₁) alone were not necessarily adverse in healthy individuals, but should be considered adverse when accompanied by symptoms” (ATS, 2000). The more recent ATS statement continues to support this conclusion and also gives weight to findings of such lung function changes in the absence of respiratory symptoms in individuals with pre-existing compromised function, such as that resulting from asthma (Thurston et al., 2017). More specifically, the recent ATS statement expresses the view that the occurrence of “small lung function changes” in individuals with pre-existing compromised function, such as asthma, “should be considered adverse . . . even without accompanying respiratory symptoms” (Thurston et al., 2017). In keeping with the intent of these statements to avoid specific criteria, neither statement provides more specific descriptions of such responses, such as with regard to magnitude, duration or frequency, for consideration of such conclusions. The earlier ATS statement, in addition to emphasizing clinically relevant effects, also emphasized both the need to consider changes in “the risk profile of the exposed population,” and effects on the portion of the population that may have a diminished reserve that puts its members at potentially increased risk if affected by another agent (ATS, 2000). These concepts, including the consideration of the magnitude of effects occurring in just a subset of study subjects, continue to be recognized as important in the more recent ATS statement (Thurston et al., 2017) and continue to be relevant to the evidence base for O₃.

The information newly available in this review has not altered our understanding of human populations at particular risk of health effects from O₃ exposures (ISA, section IS.4.4). For example, as recognized in prior reviews, people with asthma are the key population at risk of O₃-related effects. The respiratory effects evidence, extending decades into the past and augmented by new studies in this review, supports this conclusion (ISA, sections IS.4.3.1). For example, numerous epidemiological studies document associations with O₃ with asthma exacerbation. Such studies

indicate the associations to be strongest for populations of children which is consistent with their generally greater time outdoors while at elevated exertion. Together, these considerations indicate people with asthma, including particularly children with asthma, to be at relatively greater risk of O₃-related effects than other members of the general population (ISA, section IS.4.4.2 and Appendix 3).⁵²

With respect to people with asthma, the limited evidence from controlled human exposure studies (which are primarily in adult subjects) indicates similar magnitude of FEV₁ decrements as in people without asthma (ISA, Appendix 3, section 3.1.5.4.1). Across other respiratory effects of O₃ (e.g., increased respiratory symptoms, increased airway responsiveness and increased lung inflammation), the evidence has also found the observed responses to generally not differ due to the presence of asthma, although the evidence base is more limited with regard to study subjects with asthma (ISA, Appendix 3, section 3.1.5.7). However, the features of asthma (e.g., increased airway responsiveness) contribute to a risk of asthma-related responses, such as asthma exacerbation in response to asthma triggers, which may increase the risk of more severe health outcomes (ISA, section 3.1.5). For example, a particularly strong and consistent component of the epidemiologic evidence is the appreciable number of epidemiologic studies that demonstrate associations between ambient O₃ concentrations and hospital admissions and emergency department visits for asthma (ISA, section IS.4.4.3.1).⁵³ We additionally recognize that in these studies, the strongest associations (e.g., highest effect estimates) or associations more likely to be statistically significant are those for childhood age groups, which are recognized in section II.C.1 as age groups most likely to spend time outdoors during afternoon periods (when O₃ may be highest) and at activity levels corresponding to those that have been associated with respiratory effects in the human exposure studies (ISA,

⁵² Populations or lifestages can be at increased risk of an air pollutant-related health effect due to one or more of a number of factors. These factors can be intrinsic, such as physiological factors that may influence the internal dose or toxicity of a pollutant, or extrinsic, such as sociodemographic, or behavioral factors.

⁵³ In addition to asthma exacerbation, the epidemiologic evidence also includes findings of positive associations of increased O₃ concentrations with hospital admissions or emergency department visits for COPD exacerbation and other respiratory diseases (ISA, Appendix 3, sections 3.1.6.1.3 and 3.1.8).

Appendix 3, sections 3.1.4.1 and 3.1.4.2).⁵⁴ The epidemiologic studies of hospital admissions and emergency department visits are augmented by a large body of individual-level epidemiologic panel studies that demonstrated associations of short-term ozone concentrations with respiratory symptoms in children with asthma. Additional support comes from epidemiologic studies that observed ozone-associated increases in indicators of airway inflammation and oxidative stress in children with asthma (ISA, section IS.4.3.1). Together, this evidence continues to indicate the increased risk of population groups with asthma (ISA, Appendix 3, section 3.1.5.7).

Children, and also outdoor adult workers, are at increased risk largely due to their generally greater time spent outdoors while at elevated exertion rates (including in the summer when O₃ levels may be higher). This behavior makes them more likely to be exposed to O₃ in ambient air, under conditions contributing to increased dose due to greater air volumes taken into the lungs (2013 ISA, section 5.2.2.7). In light of the evidence summarized in the prior paragraph, children and outdoor workers with asthma may be at increased risk of more severe outcomes, such as asthma exacerbation. Further, there is experimental evidence from early life exposures of nonhuman primates that indicates potential for effects in childhood when human respiratory systems are under development (ISA, section IS.4.4.4.1). Overall, the evidence available in the current review, while not increasing our knowledge about susceptibility of these population groups, is consistent with that in the last review.

Older adults have also been identified as being at increased risk. That identification, based on the assessment in the 2013 ISA, was based largely on studies of short-term O₃ exposure and mortality, which are part of the larger evidence base that is now concluded to

⁵⁴ There is limited data on activity patterns by health status. An analysis in the 2014 HREA indicated that asthma status had little to no impact on the percent of people participating in outdoor activities during afternoon hours, the amount of time spent, and whether they performed activities at elevated exertion levels (2014 HREA, section 5.4.1.5). Based on an updated evaluation of recent activity pattern data we found children, for days having some time spent outdoors spend, on average, approximately 2¼ hours of afternoon time outdoors, 80% of which is at a moderate or greater exertion level, regardless of their asthma status (see Appendix 3D, section 3D.2.5.3). Adults, for days having some time spent outdoors, also spend approximately 2¼ hours of afternoon time outdoors regardless of their asthma status but the percent of afternoon time at moderate or greater exertion levels for adults (about 55%) is lower than that observed for children.

be suggestive, but not sufficient to infer a causal relationship (ISA, sections IS.4.3.5 and IS.4.4.4.2, Appendix 4, section 4.1.16.1 and 4.1.17).⁵⁵ Other evidence available in the current review adds little to the evidence available at the time of the last review for older adults (ISA, sections IS.4.4.2 and IS.4.4.4.2).

The ISA in the last review concluded that the information available at the time for low socioeconomic status (SES) as a factor associated with the risk of O₃-related health effects, provided suggestive evidence of potentially increased risk (2013 ISA, section 8.3.3 and p. 8–37). The 2013 ISA concluded that “[o]verall, evidence is suggestive of SES as a factor affecting risk of O₃-related health outcomes based on collective evidence from epidemiologic studies of respiratory hospital admissions but inconsistency among epidemiologic studies of mortality and reproductive outcomes,” additionally stating that “[f]urther studies are needed to confirm this relationship, especially in populations within the U.S.” (2013 ISA, p. 8–28). The evidence available in the current review adds little to the evidence available at the time of the last review in this area (ISA, section IS.4.4.2 and Table IS–10). The ISA in the last review additionally identified a role for dietary anti-oxidants such as vitamins C and E in influencing risk of O₃-related effects, such as inflammation, as well as a role for genetic factors to also confer either an increased or decreased risk (2013 ISA, sections 8.1 and 8.4.1). No newly available evidence has been evaluated that would inform or change these prior conclusions (ISA, section IS.4.4 and Table IS–10).

The magnitude and characterization of a public health impact is dependent upon the size and characteristics of the populations affected, as well as the type or severity of the effects. As summarized above, a key population most at risk of health effects associated with O₃ in ambient air is people with asthma. The National Center for Health Statistics data for 2017 indicate that approximately 7.9% of the U.S. populations has asthma (CDC, 2019; PA, Table 3–1). This is one of the principal populations that the primary O₃ NAAQS is designed to protect (80 FR 65294, October 26, 2015).

The age group for which the prevalence documented by these data is greatest is children aged five to 19 years old, with 9.7% of children aged five to

⁵⁵ As noted in the ISA, “[t]he majority of evidence for older adults being at increased risk of health effects related to ozone exposure comes from studies of short-term ozone exposure and mortality evaluated in the 2013 Ozone ISA” (ISA, p. IS–52).

14 and 9.4% of children aged 15 to 19 years old having asthma (CDC, 2019, Tables 3–1 and 4–1; PA, Table 3–1). In 2012 (the most recent year for which such an evaluation is available), asthma was the leading chronic illness affecting children (Bloom et al., 2013). The prevalence is greater for boys than girls (for those less than 18 years of age). Among populations of different races or ethnicities, black non-Hispanic children aged five to 14 have the highest prevalence, at 16.1%. Asthma prevalence is also increased among populations in poverty. For example, 11.7% of people living in households below the poverty level have asthma compared to 7.3%, on average, of those living above it (CDC, 2019, Tables 3–1 and 4–1; PA, Table 3–1). Population groups with relatively greater asthma prevalence might be expected to have a relatively greater potential for O₃-related health impacts.⁵⁶

Children under the age of 18 account for 16.7% of the total U.S. population, with 6.2% of the total population being children under 5 years of age (U.S. Census Bureau, 2019). Based on a prior analysis of data from the Consolidated Human Activity Database (CHAD)⁵⁷ in the 2014 HREA, children ages 4–18 years old, for days having some time spent outdoors, were found to more frequently spend time outdoors compared to other age groups (e.g., adults aged 19–34) spending more than 2 hours outdoors, particularly during the afternoon and early evening (e.g., 12:00 p.m. through 8:00 p.m.) (2014 HREA, section 5G–1.2). These results were confirmed by additional analyses of CHAD data reported in the ISA, noting greater participation in afternoon outdoor events for children ages 6–19 years old during the warm season months compared to other times of the day (ISA, Appendix 2, section 2.4.1, Table 2–1). The 2014 HREA also found that children ages 4–18 years old spent 79% of their outdoor time at moderate or greater exertion (2014 HREA, section 5G–1.4). Further analyses performed for this review using the most recent version of CHAD generated similar results (PA, Appendix 3D, section 3D.2.5.3 and Figure 3D–9). Each of these analyses indicate children participate more frequently and spend more

⁵⁶ As summarized in section II.A.1 above, the current standard was set to protect at-risk populations, which include people with asthma. Accordingly, populations with asthma living in areas not meeting the standard would be expected to be at increased risk of effects than others in those areas.

⁵⁷ The CHAD provides time series data on human activities through a database system of collected human diaries, or daily time location activity logs.

afternoon time outdoors than all other age groups while at elevated exertion, and consistently do so when considering the most important influential factors such as day-of-week and outdoor temperature. Given that afternoon time outdoors and elevated exertion were determined most important in understanding the fraction of the population that might experience O₃ exposures of concern (e.g., 2014 HREA, section 5.4.2), they may be at greater risk of effects due to increased exposure to O₃ in ambient air.

About one third of workers were required to perform outdoor work in 2018 (Bureau of Labor Statistics, 2019). Jobs in construction and extraction occupations and protective service occupations required more than 90% of workers to spend at least part of their workday outdoors (Bureau of Labor Statistics, 2017). Other employment sectors, including installation, maintenance and repair occupations and building and grounds cleaning and maintenance operations, also had a high percentage of employees who spent part of their workday outdoors (Bureau of Labor Statistics, 2017). These occupations often include physically demanding tasks and involve increased ventilation rates which when combined with exposure to O₃, may increase the risk of health effects.

3. Exposure Concentrations Associated With Effects

As at the time of the last review, the EPA's conclusions regarding exposure concentrations of O₃ associated with respiratory effects reflect the extensive longstanding evidence base of controlled human exposure studies of short-term O₃ exposures of people with and without asthma (ISA, Appendix 3). These studies have documented an array of respiratory effects, including reduced lung function, respiratory symptoms, increased airway responsiveness, and inflammation, in study subjects following 1- to 8-hour exposures, primarily while exercising. The severity of observed responses, the percentage of individuals responding, and strength of statistical significance at the study group level have been found to increase with increasing exposure (ISA; 2013 ISA; 2006 AQCD). Factors influencing exposure include activity level or ventilation rate, exposure concentration, and exposure duration (ISA; 2013 ISA; 2006 AQCD). For example, evidence from studies with similar duration and exercise aspects (6.6-hour duration with six 50-minute exercise periods) demonstrates an exposure-response relationship for O₃-induced reduction in lung function

(ISA, Appendix 3, Figure 3–3; PA, Figure 3–2).^{58 59}

The current evidence, including that newly available in this review, does not alter the scientific conclusions reached in the last review on exposure duration and concentrations associated with O₃-related health effects. These conclusions were largely based on the body of evidence from the controlled human exposure studies. A limited number of controlled human exposure studies are newly available in the current review, with none involving lower exposure concentrations than those previously studied or finding effects not previously reported (ISA, Appendix 3, section 3.1.4).⁶⁰

The extensive evidence base for O₃ health effects, compiled over several decades, continues to indicate respiratory responses to short-term exposures as the most sensitive effects of O₃. As summarized in section II.B.1 above, an array of respiratory effects is well documented in controlled human exposure studies of subjects exposed for 1 to 8 hours, primarily while exercising. The risk of more severe health outcomes associated with such effects is increased in people with asthma as illustrated by the epidemiologic findings of positive associations between O₃ exposure and asthma-related ED visits and hospital admissions.

The magnitude of respiratory response (e.g., size of lung function reductions and magnitude of symptom scores) documented in the controlled human exposure studies is influenced by ventilation rate, exposure duration, and exposure concentration. When performing physical activities requiring elevated exertion, ventilation rate is increased, leading to greater potential for health effects due to an increased internal dose (2013 ISA, section 6.2.1.1, pp. 6–5 to 6–11). Accordingly, the exposure concentrations eliciting a

⁵⁸ For a subset of the studies included in PA, Figure 3–2 (those with face mask rather than chamber exposures), there is no O₃ exposure during some of the 6.6-hour experiment (e.g., during the lunch break). Thus, while the exposure concentration during the exercise periods is the same for the two types of studies, the time-weighted average (TWA) concentration across the full 6.6-hour period differs slightly. For example, in the facemask studies of 120 ppb, the TWA across the full 6.6-hour experiment is 109 ppb (PA, Appendix 3A, Table 3A–2).

⁵⁹ The relationship also exists for size of FEV₁ decrement with alternative exposure or dose metrics, including total inhaled O₃ and intake volume averaged concentration.

⁶⁰ No 6.6-hour studies are newly available in this review (ISA, Appendix 3, section 3.1.4.1.1). Rather, the newly available controlled human exposure studies are generally for exposures of three hours or less, and in nearly all instances involve exposure (while at elevated exertion) to concentrations above 100 ppb (ISA, Appendix 3, section 3.1.4).

given level of response after a given exposure duration is lower for subjects exposed while at elevated ventilation, such as while exercising (2013 ISA, pp. 6–5 to 6–6). For example, in studies of healthy young adults exposed while at rest for 2 hours, 500 ppb is the lowest concentration eliciting a statistically significant O₃-induced group mean lung function decrement, while a 1- to 2-hour exposure to 120 ppb produces a statistically significant response in lung function when the ventilation rate of the group of study subjects is sufficiently increased with exercise (2013 ISA, pp. 6–5 to 6–6).

The exposure conditions (*e.g.*, duration and exercise) given primary focus in the past several reviews are those of the 6.6-hour study design, which involves six 50-minute exercise periods during which subjects maintain a moderate level of exertion to achieve a ventilation rate of approximately 20 L/min per m² body surface area while exercising. The 6.6 hours of exposure in these studies has generally occurred in an enclosed chamber and the study design includes three hours in each of which is a 50-minute exercise period and a 10-minute rest period, followed by a 35-minute lunch (rest) period, which is followed by three more hours of exercise and rest, as before lunch.⁶¹ Most of these studies performed to date involve exposure maintained at a constant (unchanging) concentration for

the full duration, although a subset of studies have concentrations that vary (generally in a stepwise manner) across the exposure period and are selected so as to achieve a specific target concentration as the exposure average.⁶² No studies of the 6.6-hour design are newly available in this review. The previously available studies of this design document statistically significant O₃-induced reduction in lung function (FEV₁) and increased pulmonary inflammation in young healthy adults exposed to O₃ concentrations as low as 60 ppb. Statistically significant group mean changes in FEV₁, also often accompanied by statistically significant increases in respiratory symptoms, become more consistent across such studies of exposures to higher O₃ concentrations, such as 70 ppb and 80 ppb (Table 1; PA, Appendix 3A, Table 3A–1). The lowest exposures concentration for which these studies document a statistically significant increase in respiratory symptoms is somewhat above 70 ppb (Schelegle et al., 2009).⁶³

In the 6.6-hour studies, the group means of O₃-induced⁶⁴ FEV₁ reductions for exposure concentrations below 80 ppb are at or below 6% (Table 1). For example, the group means of O₃-induced FEV₁ decrements reported in these studies that are statistically significantly different from the responses in filtered air are 6.1% for 70

ppb and 1.7% to 3.5% for 60 ppb (Table 1). The group mean O₃-induced FEV₁ decrements generally increase with increasing O₃ exposures, reflecting increases in both the number of the individuals experiencing FEV₁ reductions and the magnitude of the FEV₁ reduction (Table 1; ISA, Figure 3–3; PA, Figure 3–2). For example, following 6.6-hour exposures to a lower concentration (40 ppb), for which decrements were not statistically significant at the group mean level, none of 60 subjects across two separate studies experienced an O₃-induced FEV₁ reduction as large as 15% or more (Table 1; PA, Appendix 3D, Table 3D–19). Across the four experiments (with number of subjects ranging from 30 to 59) that have reported results for 60 ppb target exposure, the number of subjects experiencing this magnitude of FEV₁ reduction (at or above 15%) varied (zero of 30, one of 59, two of 31 and two of 30 exposed subjects). This response increased to three of 31 subjects for the study with a 70 ppb target concentration (PA, Appendix 3D, Table 3D–19; Schelegle et al., 2009). In addition to illustrating the E–R relationship, these findings also illustrate the considerable variability in magnitude of responses observed among study subjects (ISA, Appendix 3, section 3.1.4.1.1; 2013 ISA, p. 6–13).

TABLE 1—SUMMARY OF 6.6-HOUR CONTROLLED HUMAN EXPOSURE STUDY-FINDINGS, HEALTHY ADULTS

Endpoint	O ₃ target exposure concentration ^A	Statistically significant effect ^B	O ₃ -induced group mean response ^B	Study
FEV ₁ Reduction	120 ppb	Yes	–10.3% to –15.9% ^C	Horstman et al. (1990); Adams (2002); Folinsbee et al. (1988); Folinsbee et al. (1994); Adams, 2002; Adams (2000); Adams and Ollison (1997). ^D
	100 ppb	Yes	–8.5% to –13.9% ^C	Horstman et al., 1990; McDonnell et al., 1991. ^D
	87 ppb	Yes	–12.2%	Schelegle et al., 2009.
	80 ppb	Yes	–7.5%	Horstman et al., 1990.
			–7.7%	McDonnell et al., 1991.
			–6.5%	Adams, 2002.
			–6.2% to –5.5% ^C ..	Adams, 2003.
			–7.0% to –6.1% ^C ..	Adams, 2006a.
		–7.8%	Schelegle et al., 2009.	
		–3.5%	Kim et al., 2011. ^F	
	70 ppb	Yes	–6.1%	Schelegle et al., 2009.

⁶¹ A few studies have involved exposures by facemask rather than freely breathing in a chamber. To date, there is little research differentiating between exposures conducted with a facemask and in a chamber since the pulmonary responses of interest do not seem to be influenced by the exposure mechanism. However, similar responses have been seen in studies using both exposure methods at higher O₃ concentrations (Adams, 2002; Adams, 2003). In the facemask designs, there is a short period of zero O₃ exposure, such that the total period of exposure is closer to 6 hours than 6.6 (Adams, 2000; Adams, 2002; Adams, 2003).

⁶² In these studies, the exposure concentration changes for each of the six hours in which there is exercise and the concentration during the 35-minute lunch is the same as in the prior (third) hour with exercise. For example, in the study by Adams, 2006a), the protocol for the 6.6-hour period is as follows: 60 minutes at 40 ppb, 60 minutes at 70 ppb, 95 minutes at 90 ppb, 60 minutes at 70 ppb, 60 minutes at 50 ppb and 60 minutes at 40 ppb.

⁶³ Measurements are reported in this study for each of the six 50-minute exercise periods, for which the mean is 72 ppb (Schelegle et al., 2009). Based on these data, the time-weighted average

concentration across the full 6.6-hour duration was 73 ppb (Schelegle et al., 2009). The study design includes a 35-minute lunch period following the third exposure hour during which the exposure concentration remains the same as in the third hour.

⁶⁴ Consistent with the ISA and 2013 ISA, the phrase “O₃-induced” decrement or reduction in lung function or FEV₁ refers to the percent change from pre-exposure measurement of the O₃ exposure minus the percent change from pre-exposure measurement of the filtered air exposure (2013 ISA, p. 6–4).

TABLE 1—SUMMARY OF 6.6-HOUR CONTROLLED HUMAN EXPOSURE STUDY-FINDINGS, HEALTHY ADULTS—Continued

Endpoint	O ₃ target exposure concentration ^A	Statistically significant effect ^B	O ₃ -induced group mean response ^B	Study
Increased Respiratory Symptoms	60 ppb	Yes ^G	-2.9% -2.8% -1.7% -3.5%	Adams, 2006a; Brown et al., 2008. Kim et al., 2011. Schelegle et al., 2009.
	40 ppb	No	-1.2% -0.2%	Adams, 2002. Adams, 2006a.
	120 ppb	Yes	Increased symptom scores.	Horstman et al. (1990); Adams (2002); Folinsbee et al. (1988); Folinsbee et al. (1994); Adams, 2002; Adams (2000); Adams and Ollison (1997); Horstman et al., 1990; McDonnell et al., 1991; Schelegle et al., 2009; Adams, 2003; Adams, 2006a. ^H
	100 ppb	Yes.		
	87 ppb	Yes.		
	80 ppb	Yes.		
	70 ppb	Yes.		
	Airway Inflammation	60 ppb	No		Adams, 2006a; Kim et al., 2011; Schelegle et al., 2009; Adams, 2002.^{H}
40 ppb		No.		
Increased Airway Resistance and Responsiveness.	80 ppb	Yes	Multiple indicators ^H	Devlin et al., 1991; Alexis et al., 2010.
	60 ppb	Yes	Increased neutrophils	Kim et al., 2011.
	120 ppb	Yes	Increased	Horstman et al., 1990; Folinsbee et al., 1994 (O ₃ induced sRaw not reported).
	100 ppb	Yes		Horstman et al., 1990.
	80 ppb	Yes		Horstman et al., 1990.

^A This refers to the average concentration across the six exercise periods as targeted by authors. This differs from the time-weighted average concentration for the full exposure periods (targeted or actual). For example, as shown in Appendix 3A, Table 3A–2, in chamber studies implementing a varying concentration protocol with targets of 0.03, 0.07, 0.10, 0.15, 0.08 and 0.05 ppm, the exercise period average concentration is 0.08 ppm while the time weighted average for the full exposure period (based on targets) is 0.082 ppm due to the 0.6 hour lunchtime exposure between periods 3 and 4. In some cases this also differs from the exposure period average based on study measurements. For example, based on measurements reported in Schelegle et al (2009), the full exposure period average concentration for the 70 ppb target exposure is 73 ppb, and the average concentration during exercise is 72 ppb.

^B Statistical significance based on the O₃ compared to filtered air response at the study group mean (rounded here to decimal).

^C Ranges reflect the minimum to maximum FEV₁ decrements across multiple exposure designs and studies. Study-specific values and exposure details provided in the PA, Appendix 3A, Tables 3A–1 and 3A–2, respectively.

^D Citations for specific FEV₁ findings for exposures above 70 ppb are provided in PA, Appendix 3A, Table 3A–1.

^E ND (not determined) indicates these data have not been subjected to statistical testing.

^F The data for 30 subjects exposed to 80 ppb by Kim et al. (2011) are presented in Figure 5 of McDonnell et al. (2012).

^G Adams (2006a) reported FEV₁ data for 60 ppb exposure by both constant and varying concentration designs. Subsequent analysis of the FEV₁ data from the former found the group mean O₃ response to be statistically significant (p <0.002) (Brown et al., 2008; 2013 ISA, section 6.2.1.1). The varying-concentration design data were not analyzed by Brown et al., 2008.

^H Citations for study-specific respiratory symptoms findings are provided in the PA, Appendix 3A, Table 3A–1.

^I Increased numbers of bronchoalveolar neutrophils, permeability of respiratory tract epithelial lining, cell damage, production of proinflammatory cytokines and prostaglandins (ISA, Appendix 3, section 3.1.4.4.1; 2013 ISA, section 6.2.3.1).

For shorter exposure periods, ranging from one to two hours, higher exposure concentrations, ranging up from 80 ppb up to 400 ppb, have been studied (ISA, section 3.1; 2013 ISA, section 6.2.1.1; 2006 AQCD; PA, Appendix 3A, Table 3A–3). In these studies, some exposure protocols have included heavy intermittent or very heavy continuous exercise, which results in 2–3 times greater ventilation rate than in the prolonged (6.6- or 8-hour) exposure studies, which only incorporate moderate quasi-continuous exercise.⁶⁵ Across these shorter-duration studies, the lowest exposure concentration for which statistically significant respiratory effects were reported is 120 ppb, for a 1-hour exposure combined with continuous very heavy exercise

and a 2-hour exposure with intermittent heavy exercise. As recognized above, the increased ventilation rate associated with increased exertion increases the amount of O₃ entering the lung, where depending on dose and the individual’s susceptibility, it may cause respiratory effects (2013 ISA, section 6.2.1.1). Thus, for exposures involving a lower exertion level, a comparable response would not be expected to occur without a longer duration at this concentration (120 ppb), as is illustrated by the 6.6-hour study results for this concentration (ISA, Appendix 3, Figure 33; PA, Appendix 3A, Table 3A–1).

With regard to the epidemiologic studies reporting associations between O₃ and respiratory health outcomes such as asthma-related emergency department visits and hospitalizations, these studies are generally focused on investigating the existence of a relationship between O₃ occurring in ambient air and specific health outcomes. Accordingly, while as a

whole, this evidence base of epidemiologic studies provides strong support for the conclusions of causality, as summarized in section II.B.1 above,⁶⁶ these studies provide less information on details of the specific O₃ exposure circumstances that may be eliciting health effects associated with such outcomes, and whether these occur under conditions that meet the current standard. For example, these studies generally do not measure personal exposures of the study population or track individuals in the population with a defined exposure to O₃ alone. Further, the vast majority of these studies were conducted in locations and during time periods that would not have met the current standard.⁶⁷ While this does not

⁶⁵ A quasi-continuous exercise protocol is common to the prolonged exposure studies where study subjects complete six 50-minute periods of exercise, each followed by 10-minute periods of rest (e.g., ISA, Appendix 3, section 3.1.4.1.1, and p. 3–11; 2013 ISA, section 6.2.1.1).

⁶⁶ Combined with the coherent evidence from experimental studies, the epidemiologic studies “can support and strengthen determinations of the causal nature of the relationship between health effects and exposure to ozone at relevant ambient air concentrations” (ISA, p. ES–17).

⁶⁷ Consistent with the evaluation of the epidemiologic evidence of associations between O₃

lessen their importance in the evidence base documenting the causal relationship between O₃ and respiratory effects, it means they are less informative in considering O₃ exposure concentrations occurring under air quality conditions allowed by the current standard.

Among the epidemiologic studies finding a statistically significant positive relationship of short- or long-term O₃ concentrations with respiratory effects, there are no single-city studies conducted in the U.S. in locations with ambient air O₃ concentrations that would have met the current standard for the entire duration of the study (ISA, Appendix 3, Tables 3–13, 3–14, 3–39, 3–41, 3–42 and Appendix 6, Tables 6–5 and 6–8; PA, Appendix 3B, Table 3B–1). There are (among this large group of studies) two single city studies conducted in western Canada that include locations for which the highest-monitor design values calculated in the PA fell below 70 ppb, at 65 and 69 ppb (PA, Appendix 3B, Table 3B–1; Kousha and Rowe, 2014; Villeneuve et al., 2007). These studies did not include analysis of correlations with other co-occurring pollutants or of the strength of the associations when accounting for effects of copollutants in copollutant models (ISA, Tables 3–14 and 3–39). Thus, the studies pose significant limitations with regard to informing conclusions regarding specific O₃ exposure concentrations and elicitation of such effects. There is also a handful of multicity studies conducted in the U.S. or Canada in which the O₃ concentrations in a subset of the study locations and for a portion of the study period appear to have met the current standard (PA, Appendix 3B). Concentrations in other portions of the study area or study period, however, do not meet the standard, or data were not available in some cities for the earlier years of the study period when design values for other cities in the study were well above 70 ppb. The extent to which reported associations with health outcomes in the resident populations in these studies are influenced by the periods of higher concentrations during times that did not meet the current standard is unknown. Additionally, with regard to multicity studies, the reported associations were based on the combined dataset from all cities, complicating interpretations regarding the contribution of concentrations in the

exposure and respiratory health effects in the ISA, this summary focuses on those studies conducted in the U.S. and Canada to provide a focus on study populations and air quality characteristics that may be most relevant to circumstances in the U.S. (ISA, Appendix 3, section 3.1.2).

small subset of locations that would have met the current standard compared to that from the larger number of locations that would have violated the standard (Appendix 3B).⁶⁸ Further, given that populations in the single city or multicity studies may have also experienced longer-term, variable and uncharacterized exposure to O₃ (as well as to other ambient air pollutants), “disentangling the effects of short-term ozone exposure from those of long-term ozone exposure (and vice-versa) is an inherent uncertainty in the evidence base” (ISA, p. IS–87 [section IS.6.1]). While given the depth and breadth of the evidence base for O₃ respiratory effects, such uncertainties do not change our conclusions regarding the causal relationship between O₃ and respiratory effects, they affect the extent to which the two studies mentioned here (conducted in conditions that may have met the current standard) can inform our conclusions regarding the potential for O₃ concentrations allowed by the current standard to contribute to health effects.

With regard to the experimental animal evidence and exposure conditions associated with respiratory effects, concentrations are generally much greater than those examined in the controlled human exposure studies, summarized in section II.B.1 above, and higher than concentrations commonly occurring in ambient air in areas of the U.S. where the current standard is met. In addition to being true for the various rodent studies, this is also true for the small number of early life studies in nonhuman primates that reported O₃ to contribute to asthma-like effects in infant primates. The exposures eliciting the effects in these studies included multiple 5-day periods with O₃ concentrations of 500 ppb over 8-hours per day (ISA, Appendix 3, section 3.2.4.1.2).

With regard to short-term O₃ and metabolic effects, the category of effects for which the ISA concludes there likely to be a causal relationship with O₃, the evidence base is comprised primarily of experimental animal studies, as summarized in section II.B.1 above (ISA, Appendix 5, section 5.1). The exposure conditions from these animal studies generally involve much higher O₃ concentrations than those examined in the controlled human exposure

⁶⁸ As recognized in the last review, “multicity studies do not provide a basis for considering the extent to which reported O₃ health effects associations are influenced by individual locations with ambient [air] O₃ concentrations low enough to meet the current O₃ standard versus locations with O₃ concentrations that violate this standard” (80 FR 64344, October 26, 2015).

studies of respiratory effects (and much higher than concentrations commonly occurring in ambient air in areas of the U.S. where the current standard is met). For example, the animal studies include 4-hour concentrations of 400 to 800 ppb (ISA, Appendix 5, Table 5–87).⁶⁹ The two epidemiologic studies reporting statistically significant positive associations of O₃ with metabolic effects (e.g., changes in glucose, insulin, metabolic clearance) are based in Taiwan and South Korea, respectively.⁷⁰ Given the potential for appreciable differences in air quality patterns between Taiwan and South Korea and the U.S., as well as differences in other factors that might affect exposure (e.g., activity patterns), those studies are of limited usefulness for informing our understanding of exposure concentrations and conditions eliciting such effects in the U.S. (ISA, Appendix 5, section 5.1).

C. Summary of Exposure and Risk Information

Our consideration of the scientific evidence available in the current review, as at the time of the last review, is informed by results from quantitative analyses of estimated population exposure and consequent risk of respiratory effects. These analyses in this review have focused on exposure-based risk analyses. Estimates from such analyses, particularly the comparison of daily maximum exposures to benchmark concentrations reflecting exposures at which respiratory effects have been observed in controlled human exposure studies, were most informative to the Administrator’s decision in the last review (as summarized in section II.A.1 above). This largely reflected the conclusion that “controlled human exposure studies provide the most certain evidence indicating the occurrence of health effects in humans following specific O₃ exposures,” and recognition that “effects reported in controlled human exposure studies are due solely to O₃ exposures, and interpretation of

⁶⁹ Resting rats and resting human subjects exposed to the same concentration receive similar O₃ doses (ISA, section 3.1.4.1.2; Hatch et al., 2013). Further, the exposure concentration in the single controlled human exposure study of metabolic effects (e.g., 300 ppb for two hours of intermittent moderate to heavy exercise [Miller et al., 2016]) is also well above exposures examined in the 6.6- to 8-hour respiratory effect studies (ISA, Appendix 5, Table 5–7).

⁷⁰ Of the epidemiologic studies discussed in the ISA that investigate associations between short-term O₃ exposure and metabolic effects, two are conducted in the U.S. and they report either a null or negative association of metabolic markers with O₃ concentration (ISA, Appendix 5, Tables 5–6 and 5–9).

study results is not complicated by the presence of co-occurring pollutants or pollutant mixtures (as is the case in epidemiologic studies)” (80 FR 65343, October 26, 2015).⁷¹ The focus in this review on exposure-based analyses reflects both the emphasis given to these types of analyses and the characterization of their uncertainties in the last review, and also the availability of new or updated information, models, and tools that address those uncertainties (IRP, Appendix 5A).

The longstanding evidence continues to demonstrate a causal relationship between short-term O₃ exposures and respiratory effects, with the current evidence base for respiratory effects is largely consistent with that for the last review, as summarized in section II.B above. Accordingly, the exposure-based analyses performed in this review, summarized below, are conceptually similar to those in the last review. Section II.C.1 summarizes key aspects of the assessment design, including the study areas, populations simulated, the conceptual approach, modeling tools, benchmark concentrations and exposure and risk metrics derived. Key limitations and uncertainties associated with the assessment are identified in section II.C.2 and the exposure and risk estimates are summarized in section II.C.3. An overarching focus of these analyses is whether the current exposure and risk information alters overall conclusions reached in the last review regarding health risk estimated to result from exposure to O₃ in ambient air, and particularly for air quality conditions that just meet the current standard.

1. Key Design Aspects

The analyses of O₃ exposures and risk summarized here inform our understanding of the protection provided by the current standard from effects that the health effects evidence indicates to be elicited in some portion of exercising people exposed for several hours to elevated O₃ concentrations. The analyses estimated population exposure and risk for simulated

⁷¹ In the last review, the Administrator placed relatively less weight on the air quality epidemiologic-based risk estimates, in recognition of an array of uncertainties, including, for example, those related to exposure measurement error (80 FR 65316, 65346, October 26, 2015; 79 FR 75277–75279, December 17, 2014; 2014 HREA, sections 3.2.3.2 and 9.6). Further, importantly in this review, the causal determinations for short-term O₃ with mortality in the current ISA differ from the 2013 ISA. The current determinations for both short-term and long-term O₃ exposure (as summarized in section II.B.1 above) are that the evidence is “suggestive” but not sufficient to infer causal relationships for O₃ with mortality (ISA, Table IS–1).

populations in eight urban study areas: Atlanta, Boston, Dallas, Detroit, Philadelphia, Phoenix, Sacramento and St. Louis. In addition to deriving exposure and risk estimates for air quality conditions just meeting the current primary O₃ standard, estimates were also derived for two additional scenarios reflecting conditions just meeting design values just lower and just higher than the level of the current standard (65 and 75 ppb).⁷²

The eight study areas represent a variety of circumstances with regard to population exposure to short-term concentrations of O₃ in ambient air. The areas range in total population size from approximately two to eight million and are distributed across seven of the nine climate regions of the U.S.: Northeast, Southeast, Central, East North Central, South, Southwest and West (PA, Appendix 3D, Table 3D–1). The set of eight study areas is streamlined compared to the 15-area set in the last review and was chosen to ensure it reflects the full range of air quality and exposure variation expected in major urban areas in the U.S. with air quality that just meets the current standard (2014 HREA, section 3.5). Accordingly, while seven of the eight study areas were also included in the 2014 HREA, the eighth study area is newly added in the current assessment to insure representation of a large city in the southwest. Additionally, the years simulated reflect more recent emissions and atmospheric conditions subsequent to data used in the 2014 HREA, and therefore represent O₃ concentrations somewhat nearer the current standard than was the case for study areas included in the 2014 HREA (Appendix 3C, Table 3C and 2014 HREA, Table 4–1). This contributes to a reduction in the uncertainty associated with development of the air quality scenarios of interest, particularly the one reflecting air quality conditions that just meet the current standard. Study-area-specific characteristics contribute to variation in the estimated magnitude of exposure and associated risk across the urban study areas (*e.g.*, combined statistical areas that include urban and suburban populations) that reflect an array of air quality, meteorological, and population exposure conditions.

With regard to the objectives for the analysis approach, the analyses and the use of a case study approach are intended to provide assessments of an air quality scenario just meeting the current standard for a diverse set of areas and associated exposed

⁷² All analyses are summarized more fully in the PA section 3.4 and Appendices 3C and 3D.

populations. These analyses are not intended to provide a comprehensive national assessment (PA, section 3.4.1). Nor is the objective to present an exhaustive analysis of exposure and risk in the areas that currently just meet the current standard and/or of exposure and risk associated with air quality adjusted to just meet the current standard in areas that currently do not meet the standard. Rather, the purpose is to assess, based on current tools and information, the potential for exposures and risks beyond those indicated by the information available at the time the standard was established. Accordingly, use of this approach recognizes that capturing an appropriate diversity in study areas and air quality conditions (that reflect the current standard scenario)⁷³ is an important aspect of the role of the exposure and risk analyses in informing the Administrator’s conclusions on the public health protection afforded by the current standard.

Consistent with the health effects evidence in this review (summarized in section II.B.1 above), the focus of the quantitative assessment is on short-term exposures of individuals in the population during times when they are breathing at an elevated rate. Exposure and risk are characterized for four population groups. Two are populations of school-aged children, aged 5 to 18 years;⁷⁴ All children and children with asthma; two are populations of adults: All adults and adults with asthma. Asthma prevalence in each study area is estimated using regional, national, and state level prevalence information, as well as U.S. census tract-level population data and demographic information related to age, sex, and family income to represent expected spatial variability in asthma prevalence within and across the eight study areas. Asthma prevalence estimates for the full populations in the eight study areas

⁷³ A broad variety of spatial and temporal patterns of O₃ concentrations can exist when ambient air concentrations just meet the current standard. These patterns will vary due to many factors including the types, magnitude, and timing of emissions in a study area, as well as local factors, such as meteorology and topography. We focused our current assessment on specific study areas having ambient air concentrations close to conditions that reflect air quality that just meets the current standard. Accordingly, assessment of these study areas is more informative to evaluating the health protection provided by the current standard than would be an assessment that included areas with much higher and much lower concentrations.

⁷⁴ The child population group focuses on ages 5 to 18 in recognition of data limitations and uncertainties, including those related to accurately simulating activities performed and estimating physiological attributes, as well as challenges in asthma diagnoses for children younger than 5 years old.

range from 7.7 to 11.2%; the rates for children in these areas range from 9.2 to 12.3% (PA, Appendix 3D, section 3D.3.1).

The approach for this analysis incorporates an array of models and data (PA, section 3.4.1). Ambient air O₃ concentrations were estimated using an approach that relies on a combination of ambient air monitoring data, atmospheric photochemical modeling, and statistical methods (PA, Appendix 3C). Population exposure and risk modeling is employed to estimate exposures and related lung function risk resulting from the estimated ambient air O₃ concentrations (PA, Appendix 3D). While the lung function risk analysis focuses only on the specific O₃ effect of FEV₁ reduction, the comparison-to-benchmark approach, with its use of multiple benchmark concentrations, provides for risk characterization of the array of respiratory effects elicited by O₃ exposure, the type and severity of which increase with increased exposure concentration.

Ambient air O₃ concentrations were estimated in each study area for the air quality conditions of interest by adjusting hourly ambient air concentrations, from monitoring data for the years 2015–2017, using a photochemical model-based approach and then applying a spatial interpolation technique to produce air quality surfaces with high spatial and temporal resolution (PA, Appendix 3C).⁷⁵ The final product were datasets of ambient air O₃ concentration estimates with high temporal and spatial resolution (hourly concentrations in 500 to 1,700 census tracts) for each of the eight study areas (PA, section 3.4.1 and Appendix 3C, section 3C.7) representing the three air quality scenarios (just meeting the current standard, and the 65 ppb and 75 ppb scenarios).

Population exposures were estimated using the EPA's Air Pollutant Exposure model (APEX) version 5, which probabilistically generates a large sample of hypothetical individuals from population demographic and activity pattern databases and simulates each individual's movements through time and space to estimate their time series of O₃ exposures occurring within indoor, outdoor, and in-vehicle microenvironments (PA, Appendix 3D, section 3D.2).⁷⁶ The APEX model

accounts for the most important factors that contribute to human exposure to O₃ from ambient air, including the temporal and spatial distributions of people and ambient air O₃ concentrations throughout a study area, the variation of ambient air-related O₃ concentrations within various microenvironments in which people conduct their daily activities, and the effects of activities involving different levels of exertion on breathing rate (or ventilation rate) for the exposed individuals of different sex, age, and body mass in the study area (PA, Appendix 3D, section 3D.2). The APEX model generates each simulated person or profile by probabilistically selecting values for a set of profile variables, including demographic variables, health status and physical attributes (e.g., residence with air conditioning, height, weight, body surface area), and activity-specific ventilation rate (PA, Appendix 3D, section 3D.2).

The activity patterns of individuals are an important determinant of their exposure (2013 ISA, section 4.4.1). By incorporating individual activity patterns,⁷⁷ the model estimates physical exertion associated with each exposure event. This aspect of the exposure modeling is critical in estimating exposure, ventilation rate, O₃ intake (dose), and health risk resulting from ambient air concentrations of O₃.⁷⁸ Because of variation in O₃ concentrations among the different microenvironments in which individuals are active, the amount of time spent in each location, as well as the exertion level of the activity performed, will influence an individual's exposure to O₃ from ambient air and potential for adverse health effects. Activity patterns vary both among and within individuals, resulting in corresponding variations in exposure across a population and over time (2013 ISA, section 4.4.1; 2020 ISA, Appendix 2, section 2.4). For each

pollutants, including the last review of the O₃ NAAQS (U.S. EPA, 2008; U.S. EPA, 2009; U.S. EPA, 2010; U.S. EPA, 2014a; U.S. EPA, 2018).

⁷⁷ To represent personal time-location-activity patterns of simulated individuals, the APEX model draws from the consolidated human activity database (CHAD) developed and maintained by the EPA (McCurdy, 2000; U.S. EPA, 2019a). The CHAD is comprised of data from several surveys that collected activity pattern data at city, state, and national levels. Included are personal attributes of survey participants (e.g., age, sex), along with the locations they visited, activities performed throughout a day, time-of-day the activities occurred and activity duration (PA, Appendix 3D, section 3D.2.5.1).

⁷⁸ Indoor sources are generally minor in comparison to O₃ from ambient air (ISA, Appendix 2, section 2.1) and are not accounted for by the exposure modeling in this assessment.

exposure event, the APEX model tracks activity performed, ventilation rate, exposure concentration, and duration for all simulated individuals throughout the assessment period. The time-series of exposure events serves as the basis for calculating exposure and risk metrics of interest.

As in the last review, the quantitative analyses for this review uses the APEX model estimates of population exposures for simulated individuals breathing at elevated rates⁷⁹ to characterize health risk based on information from the controlled human exposure studies on the incidence of lung function decrements in study subjects who are exposed over multiple hours while intermittently or quasi-continuously exercising (PA, Appendix 3D, section 3D.2.8). In drawing on this evidence base for this purpose, the assessment has given primary focus to the well-documented controlled human exposure studies for 6.6-hour average exposure concentrations ranging from 40 ppb to 120 ppb (ISA, Appendix 3, Figure 3–3; PA, Figure 3–2 and Appendix 3A, Table 3A–1). Health risk is characterized in two ways, producing two types of risk metrics: One that compares population exposures involving elevated exertion to benchmark concentrations (that are specific to elevated exertion exposures), and the second that estimates population occurrences of ambient air O₃-related lung function decrements. The first risk metric is based on comparison of estimated daily maximum 7-hour average exposure concentrations for individuals breathing at elevated rates to concentrations of potential concern (benchmark concentrations). The second metric (lung function risk) uses E–R information for O₃ exposures and FEV₁ decrements to estimate the portion of the simulated at-risk population expected to experience one or more days with an O₃-related FEV₁ decrement of at least 10%, 15% and 20%. Both of these metrics are used to characterize health risk associated with O₃ exposures among the simulated population during periods of elevated breathing rates. Similar risk metrics were also derived in the 2014 HREA for the last review and the associated estimates informed the Administrator's 2015 decision on the current standard (80 FR 65292, October 26, 2015).

⁷⁹ Based on minute-by-minute activity levels, and physiological characteristics of the simulated person, APEX estimates an equivalent ventilation rate, by normalizing the simulated individuals' activity-specific ventilation rate to their body surface area (PA, Appendix 3D, section 3D.2.2.3.3).

⁷⁵ A similar approach was used to develop the air quality scenarios for the 2014 HREA.

⁷⁶ The APEX model estimates population exposure using a stochastic, event-based microenvironmental approach. This model has a history of application, evaluation, and progressive model development in estimating human exposure, dose, and risk for reviews of NAAQS for gaseous

The general approach and methodology for the exposure-based assessment used in this review is similar to that used in the last review. However, a number of updates and improvements, related to the air quality, exposure, and risk aspects of the assessment, have been implemented in this review which result in differences from the analyses in the prior review (Appendices 3C and 3D). These include (1) a more recent period (2015–2017) of ambient air monitoring data in which O₃ concentrations in the eight study areas are at or near the current standard; (2) the most recent CAMx model, with updates to the treatment of atmospheric chemistry and physics within the model; (3) a significantly expanded CHAD, that now has nearly 180,000 diaries, with over 25,000 school aged children; (4) updated National Health and Nutrition Examination Survey data (2009–2014), which are the basis for the age- and sex-specific body weight distributions used to specify the individuals in the modeled populations; (5) updated algorithms used to estimate age- and sex-specific resting metabolic rate, a key input to estimating a simulated individual's activity-specific ventilation (or breathing) rate; (6) updates to the ventilation rate algorithm itself; and (7) an approach that better matches the simulated exposure estimates with the 6.6-hour duration of the controlled human exposure studies and with the study subject ventilation rates. Further, the current APEX model uses the most recent U.S. Census demographic and commuting data (2010), NOAA Integrated Surface Hourly meteorological data to reflect the assessment years studied (2015–2017), and updated estimates of asthma prevalence for all census tracts in all study areas based on 2013–2017 National Health Interview Survey and Behavioral Risk Factor Surveillance System data. Additional details are described in the PA (e.g., PA, section 3.4.1, Appendices 3C and 3D).

The exposure-to-benchmark comparison characterizes the extent to which individuals in at-risk populations could experience O₃ exposures, while engaging in their daily activities, with the potential to elicit the effects reported in controlled human exposure studies for concentrations at or above specific benchmark concentrations. Results are characterized using three benchmark concentrations of O₃: 60, 70, and 80 ppb. These are based on the three lowest concentrations targeted in studies of 6- to 6.6-hour exposures, with quasi-continuous exercise, and that yielded different occurrences, of

statistical significance, and severity of respiratory effects (PA, section 3.3.3; PA, Appendix 3A, section 3A.1; PA, Appendix 3D, section 3D.2.8.1). The lowest benchmark, 60 ppb, represents the lowest exposure concentration for which controlled human exposure studies have reported statistically significant respiratory effects. At this concentration, there is evidence of a statistically significant decrease in lung function and increase in markers of airway inflammation (ISA, Appendix 3, section 3.1.4.1.1; Brown et al., 2008; Adams, 2006a). Exposure to approximately 70 ppb⁸⁰ averaged over 6.6 hours resulted in a larger group mean lung function decrement, as well as an increase in prevalence of respiratory symptoms over what was observed for 60 ppb (Table 1; ISA, Appendix 3, Figure 3–3 and section 3.1.4.1.1; Schelegle et al., 2009). Studies of exposures to approximately 80 ppb have reported larger lung function decrements at the study group mean than following exposures to 60 or 70 ppb, in addition to an increase in airway inflammation, increased respiratory symptoms, increased airway responsiveness, and decreased resistance to other respiratory effects (Table 1; ISA, Appendix 3, sections 3.1.4.1 through 3.1.4.4; PA, Figure 3–2 and section 3.3.3;). The APEX-generated exposure concentrations for comparison to these benchmark concentrations is the average of concentrations encountered by an individual while at an activity level that elicits the specified elevated ventilation rate.⁸¹ The

⁸⁰The design for the study on which the 70 ppb benchmark concentration is based, Schelegle et al. (2009), involved varying concentrations across the full exposure period. The study reported the average O₃ concentration measured during each of the six exercise periods. The mean concentration across these six values is 72 ppb. The 6.6-hour time weighted average based on the six reported measurements and the study design is 73 ppb (Schelegle et al., 2009). Other 6.6-hour studies have not reported measured concentrations for each exposure, but have generally reported an exposure concentration precision at or tighter than 3 ppb (e.g., Adams, 2006a).

⁸¹For this assessment, the APEX model averages the ventilation rate (\dot{V}_E) and simultaneously occurring exposure concentration for every simulated individual (based on the activities performed) over 7-hour periods using their time-series of exposure events. To reasonably extrapolate the \dot{V}_E of the controlled human study subjects (i.e., adults having a specified body size and related lung capacity), who were engaging in quasi-continuous exercise during the study period, to individuals having varying body sizes (e.g., children with smaller size and related lung capacity), an equivalent ventilation rate (EVR) was calculated by normalizing the \dot{V}_E (L/min) by body surface area (m²). Then, daily maximum 7-hour exposure concentrations associated with 7-hour average EVR at or above the target of 17.3 ± 1.2 L/min-m² (i.e., the value corresponding to average EVR across the 6.6-hour study duration in the controlled human

incidence of such exposures above the benchmark concentrations are summarized for each simulated population, study area, and air quality scenario as discussed in section II.C.3 below.

The lung function risk analysis provides estimates of the extent to which individuals in the populations could experience decrements in lung function. Estimates were derived for risk of experiencing a day with a lung function decrement at or above three different magnitudes, i.e., FEV₁ reductions of at least 10%, 15%, and 20%. Lung function decrement risk was estimated by two different approaches, which utilize the evidence from the 6.6-hour controlled human exposure studies in different ways.⁸² One, the population-based E–R function risk approach, uses quantitative descriptions of the E–R relationships for study group incidence of the different magnitudes of lung function decrements based on the individual study subject observations (PA, Appendix 3D, section 3D.2.8.2.1). The second, the individual-based McDonnell-Smith-Stewart model (MSS; McDonnell et al., 2013), uses quantitative descriptions of biological processes identified as important in eliciting the different sizes of decrements at the individual level, with a factor that also provides a representation of intra- and inter-individual response variability (PA, Appendix 3D, section 3D.2.8.2.2). These two approaches involve different uses of the health effects evidence, with each accordingly, differing in their strengths, limitations and uncertainties.

The E–R functions used for estimating the risk of lung function decrements at or above three sizes were developed from the individual study subject measurements of O₃-related FEV₁ decrements from the 6.6-hour controlled human exposure studies targeting mean exposure concentrations from 120 ppb down to 40 ppb (PA, Appendix 3D, Table 3D–19; PA, Appendix 3A, Figure 3A–1). Functions were developed from the study results in terms of percent of study subjects experiencing O₃-related decrements equal to at least 10%, 15% or 20%.⁸³ The functions indicate the

exposure studies) are compared to the benchmark concentrations (PA, Appendix 3D, section 3D.2.8.1).

⁸²In so doing, the approaches also estimate responses associated with unstudied exposure circumstances and population groups in different ways.

⁸³Across the exposure range from 40 to 120 ppb, the percentage of exercising study subjects with asthma estimated to have at least a 10% O₃ related FEV₁ decrement increases from 0 to 7% (a statistically non-significant response at exposures of 40 ppb) up to approximately 50 to 70% at

fraction of the population experiencing a particular decrement as a function of the exposure concentration experienced while at the target ventilation rate. This type of risk model, which has been used in risk assessments since the 1997 O₃ NAAQS review, was last updated with the recently available study data (PA, Appendix 3D, section 3D.2.8.2.1). In this review, the E–R functions are applied to the APEX estimates of daily maximum 7-hour average exposure concentrations concomitant with the target ventilation level estimated by APEX, with the results presented in terms of number of individuals in the simulated populations (and percent of the population) estimated to experience a day (or more) with a lung function decrement at or above 10%, 15% or 20%.

The MSS model, also used for estimating the risk of lung function decrements, was developed using the extensive database from controlled human exposure studies that has been compiled over the past several decades, and biological concepts based on that evidence (McDonnell et al., 2012; McDonnell et al., 2013). The model mathematically estimates the magnitude of FEV1 decrement as a function of inhaled O₃ dose (based on concentration & ventilation rate) over the time period of interest (PA, Appendix 3D, section 3D.2.8.2.2). The simulation of decrements is dynamic, based on a balance between predicted development of the decrement in response to inhaled dose and predicted recovery (using a decay factor). This model was first applied in combination with the APEX model to generate lung function risk estimates in the last review (80 FR 65314, October 26, 2015) and has been updated since then based on the most recent study by its developers (McDonnell et al., 2013). In this review, the model is applied to the APEX estimates of exposure concentration and ventilation for every exposure event experienced by each simulated individual. The model then utilizes its mathematical predictions of lung function response to inhaled dose and predicted recovery to estimate the magnitude of O₃ response across the sequence of exposure events in each individual's day. Each occurrence of decrements reaching magnitudes of interest (e.g., 10%, 15% and 20%) is tallied. Thus, results are reported using the same metrics as for the E–R function, i.e., number of individuals in the simulated populations (and percent of the population) estimated to

experience a day (or more) per simulation period with a lung function decrement at or above 10%, 15% and 20%.

The comparison-to-benchmark analysis (involving comparison of daily maximum 7-hour average exposure concentrations that coincide with 7-hour average elevated ventilation rates at or above the target to benchmark concentrations) provides perspective on the extent to which the air quality being assessed could be associated with discrete exposures to O₃ concentrations reported to result in respiratory effects. For example, estimates of such exposures can indicate the potential for O₃-related effects in the exposed population, including effects for which we do not have E–R functions that could be used in quantitative risk analyses (e.g., airway inflammation). Thus, the comparison-to-benchmark analysis provides for a broader risk characterization with consideration of the array of O₃-related respiratory effects. For this reason, as well as the uncertainties associated with the lung function risk estimates, as summarized below, the summary of estimates in section II.C.3 below focuses primarily on results for the comparison-to-benchmark analysis.

2. Key Limitations and Uncertainties

Uncertainty in the current exposure and risk analyses was characterized using a largely qualitative approach adapted from the World Health Organization (WHO) approach for characterizing uncertainty in exposure assessment (WHO, 2008) augmented by several quantitative sensitivity analyses for key aspects of the assessment approach (described in detail in Appendix 3D of the PA).⁸⁴ This characterization and associated analyses builds on information generated from a previously conducted quantitative uncertainty analysis of population-based O₃ exposure modeling (Langstaff, 2007). In so doing, the characterization considers the various types of data, algorithms, and models that together yield exposure and risk estimates for the eight study areas. In this way, the limitations and uncertainties underlying these data, algorithms, and models and the extent of their influence on the resultant exposure/risk estimates are considered. Consistent with the WHO (2008) uncertainty guidance, the overall impact of the uncertainty is scaled by qualitatively assessing the extent or

magnitude of the impact of the uncertainty as implied by the relationship between the source of the uncertainty and the exposure and risk output. The characterization in the current assessment also evaluates the direction of influence, indicating how the source of uncertainty was judged to affect the exposure and risk estimates, e.g., likely to over- or under-estimate (PA, Appendix 3D, section 3D.3.4.1).

Several areas of uncertainty are identified as particularly important to considering the exposure and risk estimates. There are also several areas where new or updated information have reduced uncertainties since the last review. Some of these areas pertain to estimates for both types of risk metrics, and some pertain more to one type of estimate *versus* the other. There are also differences in the uncertainties that pertain to each of the two approaches used for the lung function risk metric.

An overarching and important area of uncertainty, which remains from the last review, and is important to our consideration of the exposure and risk analysis results relates to the underlying health effects evidence base. This analysis focuses on the evidence base described as providing the “strongest evidence” of O₃ respiratory effects (ISA, p. IS–1), the controlled human exposure studies, and on the array of respiratory responses documented in those studies (e.g., lung function decrements, respiratory symptoms, increased airway responsiveness and inflammation). However, we recognize the lack of evidence from controlled human exposure studies at the lower concentrations of greatest interest (e.g., 60, 70 and 80 ppb) for children and for people of any age with asthma. While the limited evidence that informs our understanding of potential risk to people with asthma is uncertain, it indicates some potential for them to have lesser reserve to protect against such effects than other population groups under similar exposure circumstances, as summarized in section II.B above. Thus, the health effects reported in controlled human exposure studies of healthy adults may be contribute to more severe outcomes in people with asthma. Such a conclusion is consistent with the epidemiologic study findings of positive associations of O₃ concentrations with asthma-related ED visits and hospital admissions (and the higher effect estimates from these studies), as referenced in section II.B. above and presented in detail in the ISA. Further, with regard to lung function decrements, information is lacking on the factors contributing to increased

exposures of 120 ppb (PA, Appendix 3D, Section 3D.2.8.2.1, Table 3D–19).

⁸⁴ The approach used has been applied in REAs for past NAAQS reviews for O₃, NO_x, CO and sulfur oxides (U.S. EPA, 2008; U.S. EPA, 2010; U.S. EPA, 2014a; U.S. EPA, 2018).

susceptibility to O₃-induced lung function decrements among some people. Thus, there is uncertainty regarding the interpretation of the exposure and risk estimates and the extent to which they represent the populations at greatest risk of O₃-related respiratory effects.

Aspects of the analytical design that pertain to both exposure-based risk metrics include the estimation of ambient air O₃ concentrations for the assessed air quality scenarios, as well as the main components of the exposure modeling. Key uncertainties include the modeling approach used to adjust ambient air concentrations to meet the air quality scenarios of interest and the method used to interpolate monitor concentrations to census tracts. While the adjustment to conditions near, just above, or just below the current standard is an important area of uncertainty, the approach used has taken into account the currently available information and selected study areas having design values near the level of the current standard to minimize the size of the adjustment needed to meet a given air quality scenario. The approach also uses more recent data as inputs for the air quality modeling, such as more recent O₃ concentration data (2015–2017), meteorological data (2016) and emissions data (2016), as well as a recently updated air quality photochemical model which includes state-of-the-science atmospheric chemistry and physics (PA, Appendix 3C). Further, the number of ambient monitors sited in each of the eight study areas provides a reasonable representation of spatial and temporal variability in those areas for the air quality conditions simulated. Among other key aspects, there is uncertainty associated with the simulation of study area populations (and at-risk populations), including those with particular physical and personal attributes. As also recognized in the 2014 HREA, exposures could be underestimated for some population groups that are frequently and routinely outdoors during the summer (*e.g.*, outdoor workers, children). In addition, longitudinal activity patterns do not exist for these and other potentially important population groups (*e.g.*, those having respiratory conditions other than asthma), thus limiting the extent to which the exposure model outputs reflect information that may be particular to these groups. Important uncertainties in the approach used to estimate energy expenditure (*i.e.*, metabolic equivalents of work or METs),

which are ultimately used to estimate ventilation rates, include the use of longer-term average MET distributions to derive short-term estimates, along with extrapolating adult observations to children. Both of these approaches are reasonable based on the availability of relevant data and appropriate evaluations conducted to date, and uncertainties associated with these steps are somewhat reduced in the current analyses (compared to the 2014 HREA) because of the added specificity and redevelopment of METs distributions, based on information newly available in this review, is expected to more realistically estimate activity-specific energy expenditure.

With regard to the aspects of the two risk metrics, there are some uncertainties that apply to the estimation of lung function risk and not to the comparison-to-benchmarks analysis. Both lung function risk approaches utilized in the risk analyses incorporate some degree of extrapolation beyond the exposure circumstances evaluated in the controlled human exposure studies. This is the case in different ways and with differing impacts for the two approaches. One way in which both approaches extrapolate beyond the exposure studies concerns estimates of lung function risk derived for exposure concentrations below those represented in the evidence base. The approaches provide this in recognition of the potential for lung function decrements to be greater in unstudied at-risk population groups than is evident from the available studies. Accordingly, the uncertainty in the lung function risk estimates increases with decreasing exposure concentration and is particularly increased for concentrations below those evaluated in controlled human exposure studies.

There are differences between the two lung function risk approaches in how they extrapolate beyond the controlled human exposure study conditions and in the impact on the estimates (with somewhat smaller differences for multiple day estimates).⁸⁵ The E–R function approach generates nonzero predictions from the full range of nonzero concentrations for 7-hour average durations in which the average exertion levels meets or exceeds the

⁸⁵ This is largely because the percent contribution to low-concentration risk for two or more decrement days predicted by the E–R approach is, by design, greater than the corresponding contribution to low-concentration risk for one or more days. This also occurs because the MSS model estimates risk from a larger variety of exposure and ventilation conditions (PA, Tables 3–6 and 3–7, Appendix 3D, sections 3D.3.4.2.3 and 3D.3.4.2.4).

target. The MSS model, which draws on evidence-based concepts of how human physiological processes respond to O₃, extrapolates beyond the controlled experimental conditions with regard to exposure concentration, duration and ventilation rate (both magnitude and duration). The difference between the two models in the impact of the differing extents of extrapolation is illustrated by differences in the percent of the risk estimates for days for which the highest 7-hour average concentration is below the lowest 6.6-hour exposure concentration tested (PA, Tables 3–6 and 3–7). For example, with the E–R model, 3 to 6% of the risk to children of experiencing at least one day with decrements greater than 20% (for single years in three study areas) is associated with exposure concentrations below 40 ppb (the lowest concentration studied in the controlled human exposure studies, and at which no decrements of this severity occurred in any study subjects). This is in comparison to 25% to nearly 40% of MSS model estimates of decrements greater than 20% deriving from exposures below 40 ppb. The MSS model also used ventilation rates lower than those used for the E–R function risk approach (which are based on the controlled human exposure study conditions), contributing to relatively greater risks estimated by the MSS model.⁸⁶

Many of the uncertainties previously identified as part of the 2014 HREA as unique to the MSS model also remain as important uncertainties in the current assessment. For example, the extrapolation of the MSS model age parameter down to age 5 (from the age range of the 18- to 35-year old study subjects to which the model was fit) is an important uncertainty given that children are an at-risk population in this assessment. There is also uncertainty in estimating the frequency and magnitude of lung function decrements as a result of the statistical form and parameters used for the MSS model inter- and intra-individual variability terms (PA, Appendix 3D, section 3D.3.4). As a whole, the differences between the two lung function risk approaches and the estimates generated by these approaches indicate appreciably greater uncertainty for the MSS model estimates than the E–R function estimates (PA, section 3.4.4

⁸⁶ Limiting the MSS model results to estimates for individuals with at least the same exertion level achieved by study subjects (≥ 17.3 L/min-m²), reduces the risks of experiencing at least one lung function decrement by an amount between 24 to 42%. (PA, Appendix 3D, Table 3D–69).

and Tables 3–6 and 3–7).⁸⁷ In light of the uncertainties summarized here for the MSS model (and discussed in detail in Appendix 3D, section 3D.3.4 of the PA), the lung function risk estimates summarized in section II.C.3 below are those derived using the E–R approach.

Two updates to the analysis approach since the 2014 HREA reduce uncertainty in the results. The first is related to the approach to identifying when simulated individuals may be at moderate or greater exertion. The approach used in the current review reduces the potential for overestimation of the number of people achieving the associated ventilation rate, an important uncertainty identified in the 2014 HREA. Additionally, the current analysis focuses on exposures of 7 hours duration to better represent the 6.6-hour exposures from the controlled human exposure studies (than the 8-hour exposure durations used for the 2014 HREA and prior assessments).

In summary, among the multiple uncertainties and limitations in data and tools that affect the quantitative estimates of exposure and risk and their interpretation in the context of considering the current standard, several are particularly important, some of which are similar to those recognized in the last review. These include uncertainty related to estimation of the concentrations in ambient air for the current standard and the additional air quality scenarios; lung function risk approaches that rely, to varying extents, on extrapolating from controlled human exposure study conditions to lower exposure concentrations, lower ventilation rates, and shorter durations; and characterization of risk for

particular population groups that may be at greatest risk, particularly for people with asthma, and particularly for children. Areas in which uncertainty has been reduced by new or updated information or methods include the use of more refined air quality modeling based on selection of study areas with design values near the current standard and a more recent model and model inputs, as well as updates to several inputs to the exposure model including changes to the exposure duration to better match those in the controlled human exposure studies and an alternate approach to characterizing periods of activity while at moderate or greater exertion for simulated individuals.

3. Summary of Exposure and Risk Estimates

Exposure and risk estimates for the eight urban study areas are summarized here, with a focus on the estimates for air quality conditions adjusted to just meet the current standard. The analyses in this review include two types of risk estimates for the 3-year simulation in each study area: (1) The number and percent of simulated people experiencing exposures at or above the particular benchmark concentrations of interest in a year, while breathing at elevated rates; and (2) the number and percent of people estimated to experience at least one O₃-related lung function decrement (specifically, FEV₁ reductions of a magnitude at or above 10%, 15% or 20%) in a year and the number and percent of people estimated to experience multiple lung function decrements associated with O₃ exposures.

The benchmark-based risk metric results are summarized in terms of the percent of the simulated populations of all children and children with asthma estimated to experience at least one day per year⁸⁸ with a 7-hour average exposure concentration at or above the different benchmark concentrations while breathing at elevated rates under air quality conditions just meeting the current standard (Table 2). Estimates for adults, in terms of percentages, are generally lower due to the lesser amount and frequency of time spent outdoors at elevated exertion (PA, Appendix 3D, section 3D.3.2). The exception is outdoor workers who, due to the requirements of their job, spend more

time outdoors. Targeted analyses of outdoor workers in the 2014 HREA (single study area, single year) estimated an appreciably greater portion of this population to experience exposures at or above benchmark concentration than the full adult or child populations (2014 HREA, section 5.4.3.2) although there are a number of uncertainties associated with these estimates due to appreciable limitations in the data underlying the analyses. For a number of reasons, including the appreciable data limitations (*e.g.*, related to specific durations of time spent outdoors and activity data), and associated uncertainties summarized in Table 3D–64 of Appendix 3D of the PA, the group was not simulated in the current analyses.⁸⁹

Given the recognition of people with asthma as an at-risk population and the relatively greater amount and frequency of time spent outdoors at elevated exertion of children, we focus here on the estimates for children, including children with asthma. Under air quality conditions just meeting the current standard, approximately less than 0.1% of any area's children with asthma, on average, were estimated to experience any days per year with a 7-hour average exposure at or above 80 ppb, while breathing at elevated rates (Table 2). With regard to the 70 ppb benchmark, the study areas' estimates for children with asthma are as high as 0.7 percent (0.6% for all children), on average across the 3-year period, and range up to 1.0% in a single year. Approximately 3% to nearly 9% of each study area's simulated children with asthma, on average across the 3-year period, are estimated to experience one or more days per year with a 7-hour average exposure at or above 60 ppb. This range is very similar for the populations of all children.

Regarding multiday occurrences, the analyses indicate that no children would be expected to experience more than a single day with a 7-hour average exposure at or above 80 ppb in any year simulated in any location (Table 2). For the 70 ppb benchmark, the estimate is less than 0.1% of any area's children (on average across 3-year period), both those with asthma and all children. The estimates for the 60 ppb benchmark are slightly higher, with up to 3% of

⁸⁷ The E–R function risk approach conforms more closely to the circumstances of the 6.6-hour controlled human exposure studies, such that the 7-hour duration and moderate or greater exertion level are necessary for nonzero risk. This approach does, however, use a continuous function which predicts responses for exposure concentrations below those studied down to zero. As a result, exposures below those studied in the controlled human exposures will result in a fraction of the population being estimated by the E–R function to experience a lung function decrement (albeit to an increasingly small degree with decreasing exposures). The MSS model, which has been developed based on a conceptualization intended to reflect a broader set of controlled human exposure studies (*e.g.*, including studies of exposures to higher concentrations for shorter durations), does not require a 7-hour duration for estimation of a response, and lung function decrements are estimated for exertion below moderate or greater levels, as well as for exposure concentrations below those studied (PA, Appendix 3D, section 3D.3.4.2; 2014 HREA section 6.3.3). These differences in the models, accordingly, result in differences in the extent to which they reflect the particular conditions of the available controlled human exposure studies and the frequency and magnitude of the measured responses.

⁸⁸ While the duration of an O₃ season for each year may vary across the study areas, for the purposes of the exposure and risk analyses, the O₃ season in each study area is considered synonymous with a year. These seasons capture the times during the year when concentrations are elevated (80 FR 65419–65420, October 26, 2015).

⁸⁹ It is expected that if an approach similar to that used in the 2014 HREA were used for this assessment the distribution of exposures (single day and multiday) would be similar to that estimated in the 2014 HREA (*e.g.*, 2014 HREA, Figure 5–14), although with slightly lower overall percentages (and based on the comparison of current estimates with estimates from the 2014 HREA) (PA, Appendix 3D, section 3D.3.2.4).

children estimated to experience more than a single day with a 7-hour average exposure at or above 60 ppb, on average (and more than 4% in the highest year across all eight study area locations).

These estimates for the analyses in the current review, while based on conceptually similar approaches to those used in the 2014 HREA, also reflect the updates and revisions to those approaches that have been implemented since that time. The range of estimates across the study areas from the current assessment for air quality

conditions simulated to just meet the current standard are similar, although the upper end of the ranges is slightly lower in some cases, to the estimates for these same populations in the 2014 HREA. For example, for air quality conditions just meeting the now-current standard, the 2014 HREA estimated 0.1 to 1.2% of all children across the study areas to experience, on average, at least one day with exposure at or above 70 ppb, while at elevated ventilation, compared to the comparable estimates of 0.2 to 0.6% from the current analyses

(PA, Appendix 3D, section 3D.3.2.4, Table 3D–38). There are a number of differences between the quantitative modeling and analyses performed in the current assessment and the 2014 HREA that likely contribute to the small differences in estimates between the two assessments (e.g., 2015–2017 vs. 2006–2010 distribution of ambient air O₃ concentrations, better matching of simulated exposure estimates with the 6.6-hour duration of the controlled human exposure studies and with the study subject ventilation rates).

TABLE 2—PERCENT AND NUMBER OF SIMULATED CHILDREN AND CHILDREN WITH ASTHMA ESTIMATED TO EXPERIENCE AT LEAST ONE OR MORE DAYS PER YEAR WITH A 7-HOUR AVERAGE EXPOSURE AT OR ABOVE INDICATED CONCENTRATION WHILE BREATHING AT AN ELEVATED RATE IN AREAS JUST MEETING THE CURRENT STANDARD

Exposure concentration (ppb)	One or more days		Two or more days		Four or more days	
	Average per year	Highest in a single year	Average per year	Highest in a single year	Average per year	Highest in a single year
Children With Asthma—Percent of Simulated Population ^A						
≥80	0 ^B –<0.1 ^C	0.1%	0	0	0	0
≥70	0.2–0.7	1.0%	<0.1	0.1	0	0
≥60	3.3–8.8	11.2	0.6–3.2	4.9	<0.1–0.8	1.3
Children With Asthma—Number of Individuals ^A						
≥80	0–67	202	0	0	0	0
≥70	93–1,145	1,616	3–39	118	0	0
≥60	1,517–8,544	11,776	282–2,609	3,977	23–637	1,033
All Children—Percent of Simulated Population ^A						
≥80	0 ^B –<0.1	0.1	0	0	0	0
≥70	0.2–0.6	0.9	<0.1	0.1	0–<0.1	<0.1
≥60	3.2–8.2	10.6	0.6–2.9	4.3	<0.1–0.7	1.1
All Children—Number of Individuals ^A						
≥80	0–464	1,211	0	0	0	0
≥70	727–8,305	11,923	16–341	660	0–5	14
≥60	14,928–69,794	96,261	2,601–24,952	36,643	158–5,997	9,554

^A Estimates for each study area were averaged across the 3-year assessment period. Ranges reflect the ranges of averages.

^B A value of zero (0) means that there were no individuals estimated to have the selected exposure in any year.

^C An entry of <0.1 is used to represent small, non-zero values that do not round upwards to 0.1 (i.e., <0.05).

In framing these same exposure estimates from the perspective of estimated protection provided by the current standard, these results indicate that, in the single year with the highest concentrations across the 3-year period, 99% of the population of children with asthma would not be expected to experience such a day with an exposure at or above the 70 ppb benchmark; 99.9% would not be expected to experience such a day with exposure at or above the 80 ppb benchmark. The estimates, on average across the 3-year period, indicate that over 99.9%, 99.3% and 91.2% of the population of children with asthma would not be expected to experience a day with a 7-hour average exposure while at elevated ventilation that is at or above 80 ppb, 70 ppb and

60 ppb, respectively (Table 2, above). Further, more than approximately 97% of all children or children with asthma are estimated to be protected against multiple days of exposures at or above 60 ppb. These estimates are of a magnitude roughly consistent with the level of protection that was described in establishing the current standard in 2015 (PA, section 3.1).

With regard to lung function risk estimated using the population-based E–R function approach, the estimates for children with asthma are similar to those for all children, but with the higher end of the ranges for the eight study areas being just slightly higher in some cases (Table 3). For example, on average between 0.5 to 0.9% (and at most 1.0%) of children with asthma are

estimated to have at least one day per year with a 15% (or larger) FEV₁ decrement. When considering the same decrement for all children, on average the estimate is between 0.5 to 0.8% (and at most 0.9%). Somewhat larger differences are seen when comparing single-day occurrences of 10% (or larger) FEV₁ decrements for the two population groups, but again, differing by only a few tenths of a percent (e.g., at most, 3.6% percent of children with asthma versus 3.3% of all children).

Regarding multi-day occurrences, the analyses find that very few children are estimated to experience 15% (or larger) FEV₁ decrements (i.e., on the order of a few tenths of a percent). For example, at most 0.6% and 0.2% of all children (and children with asthma) are estimated to

experience 15% (or larger) and 20% (or larger) FEV₁ decrements, respectively, for two or more days, and at most, about 2.5% of children are estimated to experience two or more days with a 10% FEV₁ decrement.

TABLE 3—PERCENT OF SIMULATED CHILDREN AND CHILDREN WITH ASTHMA ESTIMATED TO EXPERIENCE AT LEAST ONE OR MORE DAYS PER YEAR WITH A LUNG FUNCTION DECREMENT AT OR ABOVE 10, 15 OR 20% WHILE BREATHING AT AN ELEVATED RATE IN AREAS JUST MEETING THE CURRENT STANDARD

Lung function decrement ^A	One or more days		Two or more days		Four or more days	
	Average per year	Highest in a single year	Average per year	Highest in a single year	Average per year	Highest in a single year
E-R Function						
Percent of Simulated Children With Asthma^A						
≥20%	0.2–0.3	0.4	0.1–0.2	0.2	<0.1 ^B –0.1	0.1
≥15%	0.5–0.9	1.0	0.3–0.6	0.6	0.2–0.4	0.4
≥10%	2.3–3.3	3.6	1.5–2.4	2.6	0.9–1.7	1.8
Percent of All Simulated Children^A						
≥20%	0.2–0.3	0.4	0.1–0.2	0.2	<0.1–0.1	0.1
≥15%	0.5–0.8	0.9	0.3–0.5	0.6	0.2–0.4	0.4
≥10%	2.2–3.1	3.3	1.3–2.2	2.4	0.8–1.6	1.7

^A Estimates for each urban case study area were averaged across the 3-year assessment period. Ranges reflect the ranges across urban study area averages.

^B An entry of <0.1 is used to represent small, non-zero values that do not round upwards to 0.1 (*i.e.*, <0.05).

D. Proposed Conclusions on the Primary Standard

In reaching proposed conclusions on the current O₃ primary standard (presented in section II.D.3), the Administrator has taken into account the current evidence and associated conclusions in the ISA, in light of the policy-relevant evidence-based and exposure- and risk-based considerations discussed in the PA (summarized in section II.D.1), as well as advice from the CASAC, and public comment received on the standard thus far in the review (section II.D.2). In general, the role of the PA is to help “bridge the gap” between the Agency’s assessment of the current evidence and quantitative analyses (of air quality, exposure and risk), and the judgments required of the Administrator in determining whether it is appropriate to retain or revise the NAAQS. Evidence-based considerations draw upon the EPA’s integrated assessment of the scientific evidence of health effects related to O₃ exposure presented in the ISA (summarized in section II.B above) to address key policy-relevant questions in the review. Similarly, the exposure- and risk-based considerations draw upon our assessment of population exposure and associated risk (summarized in section II.C above) in addressing policy-relevant questions focused on the potential for O₃ exposures associated with respiratory effects under air quality conditions meeting the current standard.

The approach to reviewing the primary standard is consistent with requirements of the provisions of the CAA related to the review of the NAAQS and with how the EPA and the courts have historically interpreted the CAA. As discussed in section I.A above, these provisions require the Administrator to establish primary standards that, in the Administrator’s judgment, are requisite (*i.e.*, neither more nor less stringent than necessary) to protect public health with an adequate margin of safety. Consistent with the Agency’s approach across all NAAQS reviews, the EPA’s approach to informing these judgments is based on a recognition that the available health effects evidence generally reflects a continuum that includes ambient air exposures for which scientists generally agree that health effects are likely to occur through lower levels at which the likelihood and magnitude of response become increasingly uncertain. The CAA does not require the Administrator to establish a primary standard at a zero-risk level or at background concentration levels, but rather at a level that reduces risk sufficiently so as to protect public health, including the health of sensitive groups, with an adequate margin of safety.

The proposed decision on the adequacy of the current primary standard described below is a public health policy judgment by the Administrator that draws on the scientific evidence for health effects, quantitative analyses of population exposures and/or health risks, and

judgments about how to consider the uncertainties and limitations that are inherent in the scientific evidence and quantitative analyses. The four basic elements of the NAAQS (*i.e.*, indicator, averaging time, form, and level) have been considered collectively in evaluating the health protection afforded by the current standard. The Administrator’s final decision will additionally consider public comments received on this proposed decision.

1. Evidence- and Exposure/Risk-Based Considerations in the Policy Assessment

The main focus of the policy-relevant considerations in the PA is consideration of the question: Does the currently available scientific evidence- and exposure/risk-based information support or call into question the adequacy of the protection afforded by the current primary O₃ standard? The PA response to this overarching question takes into account discussions that address the specific policy-relevant questions for this review, focusing first on consideration of the evidence, as evaluated in the ISA, including that newly available in this review, and the extent to which it alters key conclusions supporting the current standard. The PA also considers the quantitative exposure and risk estimates drawn from the exposure/risk analyses (presented in detail in Appendices 3C and 3D of the PA), including associated limitations and uncertainties, and the extent to which they may indicate different conclusions from those in the last review regarding the magnitude of risk,

as well as level of protection from adverse effects, associated with the current standard. The PA additionally considers the key aspects of the evidence and exposure/risk estimates that were emphasized in establishing the current standard, as well as the associated public health policy judgments and judgments about the uncertainties inherent in the scientific evidence and quantitative analyses that are integral to consideration of whether the currently available information supports or calls into question the adequacy of the current primary O₃ standard (PA, section 3.5).

With regard to the support in the current evidence for O₃ as the indicator for photochemical oxidants, no newly available evidence has been identified in this review regarding the importance of photochemical oxidants other than O₃ with regard to abundance in ambient air, and potential for health effects.⁹⁰ As summarized in section 2.1 of the PA, O₃ is one of a group of photochemical oxidants formed by atmospheric photochemical reactions of hydrocarbons with NO_x in the presence of sunlight, with O₃ being the only photochemical oxidant other than nitrogen dioxide that is routinely monitored in ambient air. Data for other photochemical oxidants are generally derived from a few focused field studies such that national-scale data for these other oxidants are scarce (ISA, Appendix 1, section 1.1; 2013 ISA, sections 3.1 and 3.6). Moreover, few studies of the health impacts of other photochemical oxidants beyond O₃ have been identified by literature searches conducted for the 2013 ISA or 2006 AQCD (ISA, Appendix 1, section 1.1). As stated in the ISA, “the primary literature evaluating the health . . . effects of photochemical oxidants includes ozone almost exclusively as an indicator of photochemical oxidants” (ISA, section IS.1.1.1, p. IS-3). Thus, as was the case for previous reviews, the PA finds that the evidence base for health effects of photochemical oxidants does not indicate an importance of any other photochemical oxidants such that O₃ continues to be appropriately considered for the primary standard’s indicator.

The currently available evidence on the health effects of O₃, including that newly available in this review, is largely consistent with the conclusions reached in the last review regarding health effects causally related to O₃ exposures

(*i.e.*, respiratory effects). Specifically, as in the last review, respiratory effects are concluded to be causally related to short-term exposures to O₃. Also, as in the last review, the evidence is sufficient to conclude that the relationship between longer-term O₃ exposures and respiratory effects is likely to be causal (ISA, section IS.1.3.1, Appendix 3). Further, while a causal determination was not made in the last review regarding metabolic effects, the ISA for this review finds there to be sufficient evidence to conclude there to likely be a causal relationship of short-term O₃ exposures and metabolic effects and finds the evidence to be suggestive of, but not sufficient to infer, such a relationship between long-term O₃ exposure and metabolic effects (ISA, section IS.1.3.1). These new determinations are based on evidence on this category of effects, largely from experimental animal studies, that is newly available in this review (ISA, Appendix 5). Additionally, conclusions reached in the current review differ with regard to cardiovascular effects and mortality, based on newly available evidence in combination with uncertainties in the previously available evidence that had been identified in the last review (ISA, Appendix 4, section 4.1.17 and Appendix 6, section 6.1.8). The current evidence base is concluded to be suggestive of, but not sufficient to infer, causal relationships between O₃ exposures (short- and long-term) and cardiovascular effects, mortality, reproductive and developmental effects, and nervous system effects (ISA, section IS.1.3.1). As in the last review, the strongest evidence, including with regard to characterization of relationships between O₃ exposure and occurrence and magnitude of effects, is for respiratory effects, and particularly for effects such as lung function decrements, respiratory symptoms, airway responsiveness, and respiratory inflammation.

The current evidence does not alter our understanding of populations at increased risk from health effects of O₃ exposures. As in the last review, people with asthma, and particularly children, are the at-risk population groups for which the evidence is strongest. In addition to populations with asthma, groups with relatively greater exposures, particularly those who spend more time outdoors during times when ambient air concentrations of O₃ are highest and while engaged in activities that result in elevated ventilation, are recognized as at increased risk. Such groups include outdoor workers and children. Other groups identified as at risk, and for

which the recent evidence is less clear, include older adults (in light of changes in causality determinations, as discussed in section II.B.2 above), and recent evidence regarding individuals with reduced intake of certain nutrients and individuals with certain genetic variants does not provide additional information for these groups beyond the evidence available at the time of the last review (ISA, section IS.4.4).

As in the last review, the most certain evidence of health effects in humans elicited by specific O₃ exposure concentrations is provided by controlled human exposure studies (largely with generally healthy adults). This category of short-term studies includes an extensive evidence base of 1- to 3-hour studies, conducted with continuous or intermittent exercise and generally involving relatively higher exposure concentrations, *e.g.*, greater than 120 ppb (as summarized in the PA, Appendix 3A, Table 3A-3, based on assessments of the studies in the 1996 and 2006 AQCDs, as well as the 2013 and current ISA). Given the lack of ambient air concentrations of this magnitude in areas meeting the current standard (as documented in section 2.4.1 of the PA), the focus in reviewing the current standard continues to primarily be on a second group of somewhat longer-duration studies of much lower exposure concentrations. These studies employ a 6.6-hour protocol that includes six 50-minute periods of exercise at moderate or greater exertion.

Respiratory effects continue to be the effects for which the experimental information regarding exposure concentrations eliciting effects is well established, as summarized here and in section II.B.3 above. Such information allows for characterization of potential population risk associated with O₃ in ambient air under conditions allowed by the current standard. The respiratory effects evidence includes support from a large number of epidemiologic studies that report positive associations of O₃ with severe respiratory health outcomes, such as asthma-related hospital admissions and emergency department visits, coherent with findings from the controlled human exposure and experimental animal studies. However, as summarized in section II.B.3 above, all but a few of these short- and long-term studies (and all U.S. studies) include areas and periods in which O₃ exceeds the current standard, making them less useful with regard to indication of effects of exposures that would occur with air quality allowed by the current standard.

⁹⁰ Close agreement between past O₃ measurements and photochemical oxidant measurements indicated the very minor contribution of other oxidant species in comparison to O₃ (U.S. DHEW, 1970).

Within the evidence base for the newly identified category of metabolic effects, the evidence derives largely from experimental animal studies of exposures appreciably higher than those for the 6.6-hour human exposure studies along with a small number of epidemiologic studies. The PA notes that, as discussed in section II.B.3 above, these studies do not prove to be informative to our consideration of exposure circumstances likely to elicit health effects.

Thus, the PA finds that the currently available evidence regarding O₃ exposures associated with health effects is largely similar to that available at the time of the last review and does not indicate effects attributable to exposures of shorter duration or lower concentrations than previously understood. The 6.6-hour controlled human exposure studies of respiratory effects remain the focus for our consideration of exposure circumstances associated with O₃ health effects. Based on these studies, the exposure concentrations investigated range from as low as approximately 40 ppb to 120 ppb. This information on concentrations that have been found to elicit effects for 6.6-hour exposures while exercising is unchanged from what was available in the last review. The lowest concentration for which lung function decrements have been found to be statistically significantly increased over responses to filtered air remains approximately 60 ppb⁹¹ (target concentration, as average across exercise periods), at which group mean O₃-related FEV₁ decrements on the order of 2% to 3.5% have been reported (with decrements on the order of 2% to 3% of statistical significance), with associated individual study subject variability in decrement size; these results were not accompanied by a statistically significant increase in respiratory symptoms (Table 1).⁹² In the single study assessing the next highest exposure concentration (73 ppb as the 6.6-hour average based on study-reported measurements), the group mean FEV₁ decrement was higher (6%) and was also statistically significant, as were respiratory symptom scores, as summarized in section II.B.3 above. At

⁹¹ Two studies have assessed exposure concentrations at the lower concentration of 40 ppb, with no statistically significant finding of O₃-related FEV₁ decrement for the group mean in either study, which is just above 1% in one study and well below 1% in the second (Table 1).

⁹² A statistically significant, small increase in a marker of airway inflammation was observed in one controlled human exposure study following 6.6-hour exposures to 60 ppb (Table 1). An increase in respiratory symptoms has not been reported with this exposure level.

still higher exposure concentrations (80 ppb and above), the reported incidence of both respiratory symptom scores and O₃-related lung function decrements in the study subjects is increased and the incidence of decrements at or above 15% is larger. Other respiratory effects, such as inflammatory response and airway resistance, are also increased at higher exposures (ISA; 2013 ISA).

The PA concludes that important uncertainties identified in the health effects evidence at the time of the last review generally remain in the current evidence. Although the evidence clearly demonstrates that short-term O₃ exposures cause respiratory effects, as was the case in the last review, uncertainties remain in several aspects of our understanding of these effects. These include uncertainties related to exposures likely to elicit effects (and the associated severity and extent) in population groups not studied, or less well studied (including individuals with asthma and children) and also the severity and prevalence of responses to short (*e.g.*, 6.6- to 8-hour) O₃ exposures at and below 60 ppb. The PA additionally recognizes uncertainties associated with the epidemiologic studies concerning the potential influence of exposure history and co-exposure to other pollutants (including complications of prior population exposures) on the relationship between short-term O₃ exposure and respiratory effects. In so doing, however, the PA notes the appreciably greater strength in the epidemiologic evidence in its support for determination of a causal relationship for respiratory effects than that related to other categories, such as metabolic effects, for the current ISA newly determines there likely to be a causal relationship with short-term O₃ exposures (as summarized in section II.B.3 above), and recognizes the greater uncertainty with regard relationships between O₃ exposures and health effects other than respiratory effects. The array of important areas of uncertainty related to the current health evidence, including the evidence newly available in this review, is summarized below.

With regard to less well studied population groups, the PA notes that the majority of the available studies have generally involved healthy young adult subjects, although there are some studies involving subjects with asthma, and a limited number of studies, generally of very short durations (*i.e.*, less than four hours), involving adolescents and adults older than 50 years. For example, the only controlled human exposure study of 6.6- to 8-hour duration (7.6 hours with quasi-continuous light exercise) conducted in

people with asthma was for an exposure concentration of 160 ppb (PA, Appendix 3A, Table 3A–2). Given a general lack of studies using subjects that have asthma, particularly those at exposure concentrations likely to occur under conditions meeting the current standard, uncertainties remain with regard to characterizing the response in people with asthma while at elevated ventilation to lower exposure concentrations, *e.g.*, below 80 ppb. The extent to which the epidemiologic evidence, including that newly available, can inform this specific area of uncertainty also may be limited.⁹³ As discussed in section II.B.2 above, given the effects of asthma on the respiratory system, exposures associated with significant respiratory responses in healthy people may pose an increased risk of more severe responses, including asthma exacerbation, in people with asthma. Thus, uncertainty remains with regard to the responses of the populations, such as children with asthma, that may be most at risk of O₃-related respiratory effects (*e.g.*, through an increased likelihood of severe responses, or greatest likelihood of response) to short-term (*e.g.*, 6.6 hr) exposures with exercise to concentrations at or below 80 ppb.

Other areas of uncertainty concerning the potential influence of O₃ exposure history and co-exposure to other pollutants on the relationship between O₃ exposures and respiratory effects in epidemiologic studies also remain from the last review. As in the epidemiologic evidence in the last review, there is a limited number of studies that include copollutant analyses for a small set of pollutants (*e.g.*, PM or NO₂). Recent studies with such analyses suggest that observed associations between O₃ concentrations and respiratory effects are independent of co-exposures to correlated pollutants or aeroallergens (ISA, sections IS.4.3.1 and IS.6.1; Appendix 3, sections 3.1.10.1 and 3.1.10.2). Despite the increased prevalence of copollutant modeling in recent epidemiologic studies, uncertainty still exists with regard to the independent effect of O₃ given the high correlations observed for some copollutants in some studies and the small fraction of all atmospheric

⁹³ Associations of health effects with O₃ that are reported in the epidemiologic analyses are based on air quality concentration metrics used as surrogates for the actual pattern of O₃ exposures experienced by study population individuals over the period of a particular study. Accordingly, the studies are limited in what they can convey regarding the specific patterns of exposure circumstances (*e.g.*, magnitude of concentrations over specific duration and frequency) that might be eliciting reported health outcomes.

pollutants included in these analyses (ISA, section IS.4.3.1; Appendix 2, section 2.5).

Further, although there remains uncertainty in the evidence with regard to the potential role of exposures to O₃ in eliciting health effects other than respiratory effects, the evidence has been strengthened since the last review with regard to metabolic effects. As noted in section II.B.1 above, the ISA newly identifies metabolic effects as likely to be causally related to short-term O₃ exposures. The evidence supporting this relationship is limited and not without its own uncertainties, such as the fact that the conclusion for this relationship is based primarily on animal toxicological studies conducted at much higher O₃ concentrations than those common in ambient air in the U.S. Only a handful of epidemiologic studies of short-term O₃ exposure and metabolic effects, with some inconsistencies, are available, “many of these did not control for copollutant confounding,” and the two U.S. studies in the group did not find a statistically significant association (ISA, p. 5–29 and Appendix 5, section 5.1; PA, section 3.3).

With regard to the evidence for other categories of health effects, its support for a causal relationship with O₃ in ambient air is appreciably more uncertain. For example, as noted in section II.B.1 above, the ISA has determined the evidence to be suggestive of, but not sufficient to infer, a causal relationship between long-term O₃ exposures and metabolic effects, and between O₃ exposures and several other categories of health effects, including effects on the cardiovascular, reproductive and nervous systems, and mortality (ISA, section IS.4.3).⁹⁴ Additionally, the ISA finds the evidence to be inadequate to determine if a causal relationship exists with O₃ and cancer (ISA, section IS.4.3).

As at the time of the last review, consideration of the scientific evidence in the current review is informed by results from a newly performed quantitative analysis of estimated population exposure and associated risk. The overarching PA consideration regarding these results is whether they alter the overall conclusions from the previous review regarding health risk associated with exposure to O₃ in ambient air and associated judgments on the adequacy of public health protection provided by the now-current standard. The quantitative exposure and

risk analyses completed in this review update and in many ways improve upon analyses completed in the last review (as summarized in section II.C.1 above).

The exposure and risk analyses conducted for this review, as was true for those conducted for the last review, develop exposure and risk estimates for study area populations of children with asthma, as well as the populations of all children in each study area. The primary analyses focus on exposure and risk associated with air quality that might occur in an area under conditions that just meet the current standard. These study areas reflect different combinations of different types of sources of O₃ precursor emissions, and also illustrate different patterns of exposure to O₃ concentrations in a populated area in the U.S. (PA, Appendix 3C, section 3C.2). While the same conceptual air quality scenario is simulated in all eight study areas (*i.e.*, conditions that just meet the existing standard), variability in emissions patterns of O₃ precursors, meteorological conditions, and population characteristics in the study areas contribute to variability in the estimated magnitude of exposure and associated risk across study areas. In this way, the eight areas provide a variety of examples of exposure patterns that can be informative to the Administrator’s consideration of potential exposures and risks that may be associated with air quality conditions occurring under the current O₃ standard.

In considering the exposure and risk analyses available in this review, the PA notes that there are a number of ways in which the current analyses update and improve upon those available in the last review. These include a number of improvements to input data and modeling approaches summarized in section II.C.1 above. As in prior reviews, exposure and risk are estimated from air quality scenarios designed to just meet an O₃ standard in all its elements. That is, the air quality scenarios are defined by the highest design value in the study area, which is the monitor location with the highest 3-year average of annual fourth highest daily maximum 8-hour O₃ concentrations (*e.g.*, equal to 70 ppb for the current standard scenario). The current risk and exposure analyses include air quality simulations based on more recent ambient air quality data that include O₃ concentrations closer to the current standard than was the case for the development of the air quality scenarios in the last review. As a result of this and the use of updated photochemical modeling, there is reduced uncertainty associated with the

spatial and temporal patterns of O₃ concentrations that define these scenarios across all eight study areas. Additionally, the approach for deriving population exposure estimates, both for comparison to benchmark concentrations and for use in deriving lung function risk using the E–R function approach, has been modified to provide for a better match of the simulated population exposure estimates with the 6.6-hour duration of the controlled human exposure studies and with the study subject ventilation rates. Together, these differences, as well as a variety of updates to model inputs, are believed to reduce uncertainty associated with interpretation of the analysis results.

The PA also notes the array of air quality and exposure circumstances represented by the eight study areas. As summarized in section II.C.1 above, the areas fall into seven of the nine climate regions in the continental U.S. The population sizes of the associated metropolitan areas range in size from approximately 2.4 to 8 million and vary in population demographic characteristics. While there are uncertainties and limitations associated with the exposure and risk estimates, as noted in II.C.2, the PA considers the factors recognized here to contribute to their usefulness in informing the current review.

The PA gives primary attention to results for the comparison-to-benchmarks analysis in recognition of the relatively lesser uncertainty of these results (than the lung function risk estimates), and also of the broader characterization of respiratory effects that they can inform, as noted in section II.C above. Similarly, the results for this risk metric also received greater emphasis in the last review and were a focus in establishing the current standard in 2015. The estimates across all study areas from the current review are generally similar to those reported across all study areas assessed in the last review, particularly for estimates for two or more occurrences at or above a benchmark, and for the 80 ppb benchmark (Table 4). For consistency with the estimates highlighted in the 2015 review (*e.g.*, 80 FR 65313–65315, October 26, 2015), the PA comparison, summarized in Table 4 below, focuses on the simulated population of all children. We additionally note, however, the similarity of the estimates for all children to the estimates for the simulated population of children with asthma (Table 2). For example, for urban study areas with air quality that just meets the current standard, as many as 0.7% of children with asthma, on

⁹⁴ An evidence base determined to be “suggestive of, but not sufficient to infer, a causal relationship” is described as “limited, and chance, confounding, and other biases cannot be ruled out” (U.S. EPA, 2015, p. 23).

average across the 3-year period, and up to 1.0% in a single year might be expected to experience, while at elevated exertion, at least one day with a 7-hour average O₃ exposure concentration at or above 70 ppb (Table 2). The corresponding estimates for the simulated population of all children are as many as 0.6% of all children, on average across the 3-year period, and up to 0.9% in a single year (Table 2). For the benchmark concentration of 80 ppb (which reflects the potential for more severe effects), a much lower percentage (0.1%) of children with asthma, on average across the 3-year period or in any single year (compared to less than 0.1% on average and as many as 0.1% in a single year for all children), might be expected to experience, while at elevated exertion, at least one day with such a concentration (Table 2). Regarding estimates for multiple days, the percent of children with asthma (as well as the percent of all children) estimated to experience two or more days with an exposure at or above 70 ppb is less than 0.1%, on average across three years, and up to 0.1% in a single year period. There are no children estimated to experience more than a single day per year with a 7-hour average O₃ concentration at or above 80 ppb. With regard to the lowest

benchmark concentration of 60 ppb, the percentages for the simulated population of children with asthma for more than a single day occurrence are 3%, on average across the three years, and just below 5% in a single year period, with just slightly lower percentages (2.9 and 4.3%) for the population of all children (Table 2).

The PA additionally compares the estimates derived in the current analyses with those from the 2014 HREA in the last review, finding them to be quite similar.⁹⁵ For example, with regard to the 80 ppb benchmark and air quality conditions just meeting the current standard, the percentage of children estimated to experience a day or more with such an exposure, ranges from zero (in both assessments) up to 0.1% (2014 HREA) and a nonzero value less than 0.1% (current assessment), on average across the three year period (Table 4). The estimates for the highest year (0.2 and 0.1%, for the 2014 and current assessments, respectively) are within 0.1% of each other. Both assessments estimate zero children to experience two or more days with an exposure at or above 80 ppb. The differences observed, which are particularly evident for the lower benchmarks and in the estimates for the highest year, are generally slight. Much

larger differences are seen in comparing different air quality scenario results for the same benchmark. For example, for the 70 ppb benchmark, the differences between the 75 ppb scenario and the current standard (or between the 65 ppb scenario and the current standard) in either assessment are appreciably larger than are the slight differences observed between the two assessments for any air quality scenario. The factors likely contributing to the slight differences, e.g., for the lowest benchmark, include greater variation in ambient air concentrations in some of the study areas in the 2014 HREA, as well as the lesser air quality adjustments required in study areas for the current assessment due to closer proximity of conditions to meeting the current standard (70 ppb).⁹⁶ Other important differences between the two assessments are the updates made to the ventilation rates used for identifying when a simulated individual is at moderate or greater exertion and the use of 7 hours for the exposure duration. Both of these changes were made to provide closer linkages to the conditions of the controlled human exposure studies which are the basis for the benchmark concentrations. Thus, the PA recognizes there to be reduced uncertainty associated with the current estimates.

TABLE 4—COMPARISON OF CURRENT ASSESSMENT AND 2014 HREA (ALL STUDY AREAS) FOR PERCENT OF CHILDREN ESTIMATED TO EXPERIENCE AT LEAST ONE, OR TWO, DAYS WITH AN EXPOSURE AT OR ABOVE BENCHMARKS WHILE AT MODERATE OR GREATER EXERTION

Air quality scenario (DV, ppb)	Estimated average % of simulated children with at least one day per year at or above benchmark (highest in single season)		Estimated average % of simulated children with at least two days per year at or above benchmark (highest in single season)	
	Current PA ^A	2014 HREA ^B	Current PA ^A	2014 HREA ^B
Benchmark Exposure Concentration of 80 ppb				
75	<0.1 ^A –0.3 (0.6)	0–0.3 (1.1)	0–<0.1 (<0.1)	0 (0.1)
70	0–<0.1 (0.1)	0–0.1 (0.2)	0 (0)	0 (0)
65	0–<0.1 (<0.1)	0 (0)	0 (0)	0 (0)
Benchmark Exposure Concentration of 70 ppb				
75	1.1–2.0 (3.4)	0.6–3.3 (8.1)	0.1–0.3 (0.7)	0.1–0.6 (2.2)
70	0.2–0.6 (0.9)	0.1–1.2 (3.2)	<0.1 (0.1)	0–0.1 (0.4)
65	0–0.2 (0.2)	0–0.2 (0.5)	0–<0.1 (<0.1)	0 (0)
Benchmark Exposure Concentration of 60 ppb				
75	6.6–15.7 (17.9)	9.5–17.0 (25.8)	1.7–8.0 (9.9)	3.1–7.6 (14.4)
70	3.2–8.2 (10.6)	3.3–10.2 (18.9)	0.6–2.9 (4.3)	0.5–3.5 (9.2)

⁹⁵ In this comparison, the PA focuses on the full array of study areas assessed in each analysis given the purpose of each in providing estimates across a range of study areas to inform decision making with regard to the exposures and risks that may

occur across the U.S. in areas that just meet the current standard.

⁹⁶ The 2014 HREA air quality scenarios involved adjusting 2006–2010 ambient air concentrations, and some study areas had design values in that time period that were well above the then-existing

standard (and more so for the current standard). Study areas included the current exposure analysis had 2015–2017 design values close to the current standard, requiring less of an adjustment for the current standard (70 ppb) air quality scenario.

TABLE 4—COMPARISON OF CURRENT ASSESSMENT AND 2014 HREA (ALL STUDY AREAS) FOR PERCENT OF CHILDREN ESTIMATED TO EXPERIENCE AT LEAST ONE, OR TWO, DAYS WITH AN EXPOSURE AT OR ABOVE BENCHMARKS WHILE AT MODERATE OR GREATER EXERTION—Continued

Air quality scenario (DV, ppb)	Estimated average % of simulated children with at least one day per year at or above benchmark (highest in single season)		Estimated average % of simulated children with at least two days per year at or above benchmark (highest in single season)	
	Current PA ^A	2014 HREA ^B	Current PA ^A	2014 HREA ^B
65	0.4–2.3 (3.7)	0–4.2 (9.5)	<0.1–0.3 (0.5)	0–0.8 (2.8)

^AFor the current analysis, calculated percent is rounded to the nearest tenth decimal using conventional rounding. Values equal to zero are designated by “0” (there are no individuals exposed at that level). Small, non-zero values that do not round upwards to 0.1 (*i.e.*, <0.05) are given a value of “<0.1”.

^BFor the 2014 HREA, calculated percent was rounded to the nearest tenth decimal using conventional rounding. Values that did not round upwards to 0.1 (*i.e.*, <0.05) were given a value of “0”.

Overall, the comparison-to-benchmarks estimates are generally similar to those which were the focus in the 2015 decision on establishing the current standard. For example, in the 2015 decision to set the standard level at 70 ppb, the Administrator took note of several findings for the air quality scenarios for this level, noting that “a revised standard with a level of 70 ppb is estimated to eliminate the occurrence of two or more exposures of concern to O₃ concentrations at or above 80 ppb and to virtually eliminate the occurrence of two or more exposures of concern to O₃ concentrations at or above 70 ppb for all children and children with asthma, even in the worst-case year and location evaluated” (80 FR 65363, October 26, 2015). This statement remains true for the results of the current assessment (Table 4). With regard to the 60 ppb benchmark, for which the 2015 decision placed relatively greater weight on multiple (versus single) occurrences of exposures at or above it, the Administrator at that time noted the 2014 HREA estimates for the 70 ppb air quality scenario that estimated 0.5 to 3.5% of children to experience multiple such occurrences on average across the study areas, stating that the now-current standard “is estimated to protect the vast majority of children in urban study areas . . . from experiencing two or more exposures of concern at or above 60 ppb” (80 FR 65364, October 26, 2015). The corresponding estimates, on average across the 3-year period in the current assessments, are remarkably similar at 0.6 to 2.9% (Table 4).

In considering the public health implications of the estimated occurrence of exposures of different magnitudes, the PA considers the magnitude or severity of the effects associated with the estimated exposures as well as their adversity, the size of the population estimated to experience

exposures associated with such effects, as well as consideration for such implications in previous NAAQS decisions and ATS policy statements (as summarized in section II.B.2 above). As an initial matter, the PA considers the severity of responses associated with the exposure and risk estimates, taking note of the health effects evidence for the different benchmark concentrations and judgments made with regard to the severity of these effects in the last review. As in the last review, the PA recognizes the greater prevalence of more severe lung function decrements among study subjects exposed to 80 ppb or higher concentrations compared to 60 or 70 ppb exposure concentrations, as well as the prevalence of other effects such as respiratory symptoms. In so doing, the PA notes that such exposures are appropriately considered to be associated with adverse respiratory effects consistent with past and recent ATS position statements. Studies of 6.6-hour controlled human exposures, with quasi-continuous exercise, to the lowest benchmark concentration of 60 ppb have found small but statistically significant O₃-related decrements in lung function (specifically reduced FEV₁) and airway inflammation. Somewhat above 70 ppb,⁹⁷ statistically significant increases in lung function decrements, of a somewhat greater magnitude (*e.g.*, approximately 6% increase, as study group average, versus 2 to 3% [Table 1]), and respiratory symptoms have been reported, which has led to characterization of these exposure conditions as also being

⁹⁷ As noted in sections II.A.1 and II.B.3 above, the 70 ppb target exposure concentration comes from Schelegle et al. (2009). That study reported, based on O₃ measurements during the six 50-minute exercise periods, that the mean O₃ concentration during the exercise portion of the study protocol was 72 ppb. Based on the measurements for the six exercise periods, the time weighted average concentration across the full 6.6-hour exposure was 73 ppb (Schelegle et al., 2009).

associated with adverse responses, consistent with past ATS statements as summarized in section II.B.1 above (*e.g.*, 80 FR 65343, 65345, October 26, 2015).

The PA additionally takes note of the greater significance of estimates for multiple occurrences of exposures at or above these benchmarks consistent with the evidence, as has been recognized in multiple past O₃ NAAQS reviews. The role of such a consideration has also differed across the three benchmarks. More specifically, while estimates of one or more exposures at or above the higher benchmark concentrations (70 ppb and 80 ppb) was an important consideration in the decision on the current standard, estimates of multiple exposures at or above the lowest benchmark concentration of 60 ppb were given greater weight than estimates for one or more such exposures. More specifically, in the 2015 decision leading to establishment of the current standard, a greater emphasis on protection against multiple (*versus* single) occurrences of exposures at or above 60 ppb last was based in part on a recognition of the lesser severity of the effects at this exposure level in combination with the recognition that for effects such as inflammation (even when occurring to a small extent). This greater emphasis reflected a recognition that, while isolated occurrences can resolve entirely, repeated occurrences from repeated exposure could potentially result in more severe effects (2013 ISA, section 6.2.3 and p. 6–76). Additionally, while even multiple occurrences of such effects of lesser severity to otherwise healthy individuals may not result in severe effects, they may contribute to more important effects in individuals with compromised respiratory function, such as those with asthma. The ascribing of greater significance to repeated occurrences of exposures of potential concern is also consistent with public

health judgments in NAAQS reviews for other pollutants, such as sulfur oxides and CO (84 FR 9900, March 18, 2019; 76 FR 54307, August 31, 2011).

As in the last review, while the exposure-based analyses include two types of metrics, the quantitative exposure and risk analyses results in which the PA expresses the greatest confidence are estimates from the comparison-to-benchmarks analysis, as discussed in section II.C above. In light of the conclusions that people with asthma and children are at-risk populations for O₃-related health effects (summarized in section II.B.2 above) and the exposure and risk analysis findings of higher exposures and risks for children (in terms of percent of that population), the PA focused its consideration of the analysis results on children (and also specifically children with asthma). The exposure and risk estimates indicate that in some areas of the U.S. where O₃ concentrations just meet the current standard, on average across the 3-year period simulated, less than 1%, and less than 0.1% of the simulated population of children with asthma might be expected to experience a single day per year with a maximum 7-hour exposure at or above 70 ppb and 80 ppb, respectively, while breathing at an elevated rate (Table 2). With regard to the lowest benchmark considered (60 ppb), the corresponding percentage is less than approximately 9%, on average across the 3-year period (Table 2). The corresponding estimates for the 75 ppb air quality scenario are notably higher, e.g., 1.1 to 2.1% of children with asthma, on average across the 3-year design period, for the 70 ppb benchmark, with as many as 3.9% in a single year (PA, Table 3–5). The estimates for the 65 ppb scenario are appreciably lower (PA, Table 3–5).

While recognizing greater uncertainty and accordingly less confidence in the lung function risk estimates, the PA noted the results based on the E–R model that estimated 0.2 to 0.3% of children with asthma, on average across the 3-year design period are estimated to experience one or more days with a lung function decrement at or above 20%, and 0.5 to 0.9% to experience one or more days with a decrement at or above 15% (Table 3). In a single year, the highest estimate is 1.0% of this at-risk population expected to experience one or more days with a decrement at or above 15%. The corresponding estimate for two or more days is 0.6% (Table 3).

As summarized in section II.B.2 above, the size of the at-risk population (people with asthma, particularly children) in the U.S. is substantial. Nearly 8% of the total U.S. population

and 8.4% of U.S. children have asthma.⁹⁸ The asthma prevalence in U.S. child populations (younger than 18 years) of different races or ethnicities ranges from 6.2% for Hispanic, Mexican or Mexican-American children to 12.6% for black non-Hispanic children (PA, Table 3–1). This is well reflected in the exposure and risk analysis study areas in which the asthma prevalence ranged from 7.7% to 11.2% of the total populations and 9.2% to 12.3% of the children. In each study area, the prevalence varies among census tracts, with the highest tract having a prevalence in boys of 25.5% and a prevalence in girls of 17.1% (PA, Appendix 3D, Table 3D–3).

The exposure and risk analyses inherently recognize that variability in human activity patterns (where people go and what they do) is key to understanding the magnitude, duration, pattern, and frequency of population exposures. For O₃ in particular, the amount and frequency of afternoon time outdoors at moderate or greater exertion is an important factor for understanding the fraction of the population that might experience O₃ exposures that have elicited respiratory effects in experimental studies (2014 HREA, section 5.4.2). In considering the available information regarding prevalence of behavior (time outdoors and exertion levels) and daily temporal pattern of O₃ concentrations, the PA notes the findings of evaluations of the data in the CHAD. Based on these evaluations of human activity pattern data, it appears that children and adults both, for days having some time spent outdoors spend, on average, about 2 hours of afternoon time outdoors per day, but differ substantially in their participation in these events at elevated exertion levels (rates of about 80% versus 60%, respectively) (2014 HREA, section 5.4.1.5), indicating children are more likely to experience exposures that may be of concern. This is one basis for their identification as an at-risk population for O₃-related health effects. The human activity pattern evaluations have also shown there is little to no difference in the amount or frequency of afternoon time outdoors at moderate or greater exertion for people with asthma compared with those who do not have asthma (2014 HREA, section 5.4.1.5).

⁹⁸ The number of people in the US with asthma is estimated to be about 25 million. As shown in the PA, Table 3–1 the estimated number of people with asthma was 25,191,000 in 2017. The updated estimate from the 2018 National Health Interview Survey is 24,753,000 (CDC, 2020). For children (younger than 18 years), the 2017 estimate is approximately 6,182,000, while the estimate for 2018 is slightly lower at 5,530,131 (PA, Table 3–1).

Further, recent CHAD analyses indicate that while 46–73% of people do not spend any afternoon time outdoors at moderate or greater exertion, a fraction of the population (i.e., between 5.5–6.8% of children) spend more than 4 hours per day outdoors at moderate or greater exertion and may have greater potential to experience exposure events of concern than adults (PA, Appendix 3D, section 3D.2.5.3 and Figure 3D–9). It is this potential that contributes importance to consideration of the exposure and risk estimates.

In considering the public health implications of the exposure and risk estimates across the eight study areas, the PA notes that the purpose for the study areas is to illustrate exposure circumstances that may occur in areas that just meet the current standard, and not to estimate exposure and risk associated with conditions occurring in those specific locations today. To the extent that concentrations in the specific areas simulated may differ from others across the U.S., the exposure and risk estimates for these areas are informative to consideration of potential exposures and risks in areas existing across the U.S. that have air quality and population characteristics similar to the study areas assessed, and that have ambient concentrations of O₃ that just meet the current standard today or that will be reduced to do so at some period in the future. We note that numerous areas across the U.S. have air quality for O₃ that is near or above the existing standard.⁹⁹ Thus, the air quality and exposure circumstances assessed in the eight study areas are of particular importance in considering whether the currently available information calls into question the adequacy of public health protection afforded by the current standard.

The exposure and risk estimates for the study areas assessed for this review reflect differences in exposure circumstances among those areas and illustrate the exposures and risks that might be expected to occur in other areas with such circumstances under air quality conditions that just meet the current standard (or the alternate

⁹⁹ Based on the most recently available data from 2016–2018, 142 counties have O₃ concentrations that exceed the current standard. Population size in these counties ranges from approximately 20,000 to more than ten million, with a total population of over 112 million living in counties that exceed the current standard. Air quality data are from Table 4. Monitor Status in the Excel file named ozone_designvalues_20162018_final_06_28_19.xlsx downloaded from <https://www.epa.gov/air-trends/air-quality-design-values>. Population sizes are based on 2017 estimates from the U.S. Census Bureau (<https://www.census.gov/programs-surveys/popest.html>).

conditions assessed). Thus, the exposure and risk estimates indicate the magnitude of exposure and risk that might be expected in many areas of the U.S. with O₃ concentrations at or near the current standard. Although the methodologies and data used to estimate population exposure and lung function risk in this review differ in several ways from what was used in the last review, the findings and considerations summarized here present a pattern of exposure and risk that is generally similar to that considered in the last review (as described above), and indicate a level of protection from respiratory effects that is generally consistent with that described in the 2015 decision.

Collectively, the PA finds that the evidence and exposure and risk-based considerations provide the basis for its conclusion that consideration should be given to retaining the current primary standard, without revision (PA, section 3.5.4). Accordingly, and in light of this conclusion that it is appropriate to consider the current primary standard to be adequate, the PA did not identify any potential alternative primary standards for consideration in this review (PA, section 3.5.4). In reaching these conclusions, the PA additionally notes that considerations raised in the PA are important to conclusions and judgments to be made by the Administrator concerning the public health significance of the evidence and of the exposure and risk estimates. Such judgments that are common to NAAQS decisions include those related to public health implications of effects of differing severity (75 FR 355260 and 35536, June 22, 2010; 76 FR 54308, August 31, 2011; 80 FR 65292, October 26, 2015). Such judgments also include those concerning the public health significance of effects at exposures for which evidence is limited or lacking, such as effects at the lower benchmark concentrations considered and lung function risk estimates associated with exposure concentrations lower than those tested or for population groups not included in the controlled exposure studies. The PA recognizes that such public health policy judgments will weigh in the Administrator's decision in this review with regard to the adequacy of protection afforded by the current standard.

2. CASAC Advice

The CASAC has provided advice on the adequacy of the current primary O₃ standard in the context of its review of

the draft PA.¹⁰⁰ In this context, the CASAC agreed with the draft PA findings that the evidence newly available in this review does not substantially differ from that available in the 2015 review, stating that, “[t]he CASAC agrees that the evidence newly available in this review that is relevant to setting the ozone standard does not substantially differ from that of the 2015 Ozone NAAQS review” (Cox, 2020a, p. 12 of the Consensus Responses). With regard to the adequacy of the current standard, views of individual CASAC members differed. Part of the CASAC “agree with the EPA that the available evidence does not call into question the adequacy of protection provided by the current standard, and thus support retaining the current primary standard” (Cox, 2020a, p. 1 of letter). Another part of the CASAC indicated its agreement with the previous CASAC's advice, based on review of the 2014 draft PA, that a primary standard with a level of 70 ppb may not be protective of public health with an adequate margin of safety, including for children with asthma (Cox, 2020a, p. 1 of letter and p. 12 of the enclosed Consensus Responses).¹⁰¹ Additional comments from the CASAC in the “Consensus Responses to Charge Questions” on the draft PA attached to the CASAC letter provide recommendations on improving the presentation of the information on health effects and exposure and risk estimates in completing the final PA. The EPA considered these comments in

¹⁰⁰ A limited number of public comments have also been received in this review to date, including comments focused on the draft IRP or draft PA. Of the public comment that addressed adequacy of the current primary O₃ standard, some expressed agreement with staff conclusions in the draft PA, while others expressed the view that the standard should be more restrictive. In support of this latter view, commenters largely cited advice from, and considerations raised by, the previous CASAC in the last review regarding adequacy of the margin of safety.

¹⁰¹ In the last review, the advice from the prior CASAC included a range of recommended levels for the standard, with the CASAC concluding that “there is adequate scientific evidence to recommend a range of levels for a revised primary ozone standard from 70 ppb to 60 ppb” (Frey, 2014, p. ii). In so doing, the prior CASAC noted that “[i]n reaching its scientific judgment regarding a recommended range of levels for a revised ozone primary standard, the CASAC focused on the scientific evidence that identifies the type and extent of adverse effects on public health” and further acknowledged “that the choice of a level within the range recommended based on scientific evidence is a policy judgment under the statutory mandate of the Clean Air Act” (Frey, 2014, p. ii). The prior CASAC then described that its “*policy advice* [emphasis added] is to set the level of the standard lower than 70 ppb within a range down to 60 ppb, taking into account [the Administrator's] judgment regarding the desired margin of safety to protect public health, and taking into account that lower levels will provide incrementally greater margins of safety” (Frey, 2014, p. ii).

completing the PA and in presentations of the information in prior sections of this proposal document.

The comments from the CASAC also took note of uncertainties that remain in this review of the primary standard and identified a number of additional areas for future research and data gathering that would inform the next review of the primary O₃ NAAQS (Cox, 2020a, p. 14 of the Consensus Responses).

3. Administrator's Proposed Conclusions

Based on the large body of evidence concerning the health effects and potential public health impacts of exposure to O₃ in ambient air, and taking into consideration the attendant uncertainties and limitations of the evidence, the Administrator proposes to conclude that the current primary O₃ standard provides the requisite protection of public health, including an adequate margin of safety, and should therefore be retained, without revision. In reaching these proposed conclusions, the Administrator has carefully considered the assessment of the available health effects evidence and conclusions contained in the ISA; the evaluation of policy-relevant aspects of the evidence and quantitative analyses in the PA (summarized in section II.D.1 above); the advice and recommendations from the CASAC (summarized in section II.D.2 above); and public comments received to date in this review.

In the discussion below, the Administrator considers first the evidence base on health effects associated with exposure to photochemical oxidants, including O₃, in ambient air. In so doing, he considers that health effects evidence newly available in this review, and the extent to which it alters key scientific conclusions in the last review. The Administrator additionally considers the quantitative exposure and risk estimates developed in this review, including associated limitations and uncertainties, and what they indicate regarding the magnitude of risk, as well as level of protection from adverse effects, associated with the current standard. Further, the Administrator considers the key aspects of the evidence and exposure/risk estimates emphasized in establishing the current standard. He additionally considers uncertainties in the evidence and the exposure/risk information, as a part of public health judgments that are essential and integral to his decision on the adequacy of protection provided by the standard, similar to the judgments made in establishing the current

standard. Such judgments include public health policy judgments and judgments about the uncertainties inherent in the scientific evidence and quantitative analyses. The Administrator draws on the PA considerations, and PA conclusions in the current review, taking note of key aspects of the rationale presented for those conclusions. Further, the Administrator considers the advice and conclusions of the CASAC, including particularly its overall agreement that the currently available evidence does not substantially differ from that which was available in the 2015 review when the current standard was established. With attention to such factors as these, the Administrator considers the information currently available in this review with regard to the adequacy and appropriateness of the protection provided by the current standard.

As an initial matter, the Administrator recognizes the continued support in the current evidence for O₃ as the indicator for photochemical oxidants (as recognized in section II.D.1 above). He takes note of the PA conclusion that no newly available evidence has been identified in this review regarding the importance of photochemical oxidants other than O₃ with regard to abundance in ambient air, and potential for health effects, and of the ISA observation that “the primary literature evaluating the health and ecological effects of photochemical oxidants includes ozone almost exclusively as an indicator of photochemical oxidants” (ISA, p. IS-3). Accordingly, the information relating health effects to photochemical oxidants in ambient air is also focused on O₃. Thus, he proposes to conclude it is appropriate for O₃ to continue to be the indicator for the primary standard for photochemical oxidants.

With regard to the extensive evidence base for health effects of O₃, the Administrator gives particular attention to the longstanding evidence of respiratory effects causally related to short-term O₃ exposures. This array of effects, and the underlying evidence base, was integral to the basis for setting the current standard. The Administrator takes note of the ISA conclusion that this evidence base of studies on O₃ exposure and respiratory health is the “strongest evidence for health effects due to ozone exposure” (ISA p. IS-8). While the overall health effects evidence base has been augmented somewhat since the time of the last review, the Administrator notes that, as summarized in section II.B.1 above, the newly available evidence does not lead to different conclusions regarding the respiratory effects of O₃ in ambient air

or regarding exposure concentrations associated with those effects; nor does it identify different populations at risk of O₃-related effects, than in the last review.

The Administrator recognizes that this strong evidence base continues to demonstrate a causal relationship between short-term O₃ exposures and respiratory effects, including in people with asthma. He also recognizes that the strongest and most certain evidence for this conclusion, as in the last review, is that from controlled human exposure studies that report an array of respiratory effects in study subjects (largely generally healthy adults) engaged in quasi-continuous or intermittent exercise. He additionally notes the supporting experimental animal and epidemiologic evidence, including the epidemiologic studies reporting positive associations for asthma-related hospital admissions and emergency department visits, which are strongest for children, with short-term O₃ exposures. The Administrator also notes the ISA conclusion that the relationship between long-term exposures and respiratory effects is likely to be causal, a conclusion that is consistent with the conclusion in the last review and that reflects a general similarity in the underlying evidence base.

With regard to populations at increased risk of O₃-related health effects, the Administrator notes the populations and lifestages identified in the ISA and summarized in section II.B.2 above. In so doing, he takes note of the longstanding and robust evidence that supports identification of people with asthma as being at increased risk of O₃ related respiratory effects, including specifically asthma exacerbation and associated health outcomes, and also children, particularly due to their generally greater time outdoors while at elevated exertion (PA, section 3.3.2; ISA, sections IS.4.3.1, IS.4.4.3.1, and IS.4.4.4.1, Appendix 3, section 3.1.11). This tendency of children to spend more time outdoors while at elevated exertion than other age groups, including in the summer when O₃ levels may be higher, makes them more likely to be exposed to O₃ in ambient air under conditions contributing to increased dose due to greater air volumes taken into the lungs (2013 ISA, section 5.2.2.7). These factors and the strong evidence (briefly summarized in section II.B.2 above, and section 3.3.2 of the PA, based on evidence described in detail in the ISA), indicate people with asthma, including children, to be at increased risk of O₃ related respiratory effects, including

specifically asthma exacerbation and associated health outcomes. Based on these considerations, the Administrator proposes to conclude it is appropriate to give particular focus to people with asthma and children, population groups for which the evidence of increased risk is strongest, in evaluating whether the current standard provides requisite protection. He proposes to judge that such a focus will also provide protection of other population groups, identified in the ISA, for which the current evidence is less robust and clear as to the extent and type of any increased risk, and the exposure circumstances that may contribute to it.

With regard to ISA conclusions that differ from those in the last review, the Administrator recognizes the new conclusions regarding metabolic effects, cardiovascular effects and mortality (as summarized in section II.B.1 above; ISA, Table ES-1). As an initial matter, he takes note of the fact that while the 2013 ISA considered the evidence available in the last review sufficient to conclude that the relationships for short-term O₃ exposure with cardiovascular effects and mortality were likely to be causal, that conclusion is not supported by the now more expansive evidence base which the ISA now determines to be suggestive of, but not sufficient to infer, a causal relationship for these health effect categories. Further, the Administrator recognizes the new ISA determination that the relationship between short-term O₃ exposure and metabolic effects is likely to be causal. In so doing, he takes note that the basis for this conclusion is largely experimental animal studies in which the exposure concentrations were well above those in the controlled human exposure studies for respiratory effects as well as above those likely to occur in areas of the U.S. that meet the current standard (as summarized in section II.B.3 and II.D.1 above). Thus, while recognizing the ISA’s conclusion regarding this potential hazard of O₃, he also recognizes that the evidence base is largely focused on circumstances of elevated concentrations above those occurring in areas that meet the current standard. In light of these considerations, he proposes to judge the current standard to be protective of such circumstances leading him to continue to focus on respiratory effects in evaluating whether the current standard provides requisite protection.

With regard to exposures of interest for respiratory effects, the Administrator notes the 6.6 hour controlled human exposure studies involving exposure,

with quasi-continuous exercise,¹⁰² to concentrations ranging from as low as approximately 40 ppb to 120 ppb (as considered in the PA, and summarized in sections II.B.3 and II.D.1 above). He also notes that, as in the last review, these studies, and particularly those that examine exposures from 60 to 80 ppb, are the primary focus of the PA consideration of exposure circumstances associated with O₃ health effects important to Administrator judgments regarding the adequacy of the current standard. The Administrator further recognizes that this information on exposure concentrations that have been found to elicit effects in exercising study subjects is unchanged from what was available in the last review. With regard to the epidemiologic studies, the Administrator recognizes that while, as a whole, these investigations of associations between O₃ and respiratory effects and health outcomes (*e.g.*, asthma-related hospital admission and emergency department visits) provide strong support for the conclusions of causality (as summarized in section II.B.1 above), these studies are less useful for his consideration of the potential for O₃ exposures associated with air quality conditions allowed by the current standard to contribute to such health outcomes. The Administrator takes note of the PA conclusions in this regard, including the scarcity of U.S. studies conducted in locations in which and during time periods when the current standard would have been met (as summarized in sections II.B.3 and II.D.1 above).¹⁰³ He also recognizes the additional considerations raised in the PA and summarized in section II.B.3 above regarding information on exposure concentrations in these studies during times and locations that would not have met the current standard, and also including considerations such as complications in disentangling specific O₃ exposures that may be eliciting effects (PA, section 3.3.3; ISA, p. IS–86

¹⁰² These studies employ a 6.6-hour protocol that includes six 50-minute periods of exercise at moderate or greater exertion.

¹⁰³ Among the epidemiologic studies finding a statistically significant positive relationship of short- or long-term O₃ concentrations with respiratory effects, there are no single-city studies conducted in the U.S. in locations with ambient air O₃ concentrations that would have met the current standard for the entire duration of the study. Nor is there a U.S. multicity study for which all cities met the standard for the entire study period. The extent to which reported associations with health outcomes in the resident populations in these studies are influenced by the periods of higher concentrations during times that did not meet the current standard is unknown. These and additional considerations are summarized in section II.B.3 above and in the PA.

to IS–88). While he notes that such considerations do not lessen their importance in the evidence base documenting the causal relationship between O₃ and respiratory effects, he concurs with the PA that these studies are less informative in considering O₃ exposure concentrations occurring under air quality conditions allowed by the current standard. Thus, the Administrator does not find the available epidemiologic studies to provide insights regarding exposure concentrations associated with health outcomes that might be expected under air quality conditions that meet the current standard. In consideration of this evidence from controlled human exposure and epidemiologic studies, as assessed in the ISA and summarized in the PA, the Administrator notes that the evidence base in this review does not include new evidence of respiratory effects associated with appreciably different exposure circumstances than the evidence available in the last review, including particularly any circumstances that would also be expected to be associated with air quality conditions likely to occur under the current standard. In light of these considerations, he finds it appropriate to give particular focus to the studies of 6.6-hour exposures with quasi-continuous exercise to concentrations generally ranging from 60 to 80 ppb.

With regard to these 6.6-hour controlled human exposure studies, although two such studies have assessed exposures at the lower concentration of 40 ppb, statistically significant responses have not been reported from those exposures. Studies at the next highest concentration studied (a 60 ppb target) have reported decrements in lung function (assessed by FEV₁) that are statistically significantly increased over the decrements occurring with filtered air, with group mean O₃-related decrements on the order of 2 to 3% (and associated individual study subject variability in decrement size). A statistically significant, small increase in a marker of airway inflammation has also been reported in one of these 60 ppb studies. Exposure with the same study protocol to a concentration slightly above 70 ppb (73 ppb as the 6.6-hour average and 72 ppb as the exercise period average, based on study-reported measurements) has been reported to elicit statistically significant increases in both lung function decrements (group mean of 6%) and respiratory symptom scores, as summarized in section II.B.3 above. Further increases in O₃-related lung function decrements and respiratory symptom scores, as well as

inflammatory response and airway responsiveness, are reported for exposure concentrations of 80 ppb and higher (ISA; 2013 ISA; 2006 AQCD).

In this review, as in the last review, the Administrator recognizes some uncertainty, reflecting limitations in the evidence base, with regard to the exposure levels eliciting effects (as well as the severity of the effects) in some population groups not included in the available controlled human exposure studies, such as children and individuals with asthma. In so doing, the Administrator recognizes that the controlled human exposure studies, primarily conducted in healthy adults, on which the depth of our understanding of O₃-related health effects is based, provide limited, but nonetheless important information with regard to responses in people with asthma or in children. Additionally, some aspects of our understanding continue to be limited; among these aspects are the risk posed to these less studied population groups by 7-hour exposures with exercise to concentrations as low as 60 ppb that are estimated in the exposure analyses. Collectively, these aspects of the evidence and associated uncertainties contribute to a recognition that for O₃, as for other pollutants, the available evidence base in a NAAQS review generally reflects a continuum, consisting of ambient levels at which scientists generally agree that health effects are likely to occur, through lower levels at which the likelihood and magnitude of the response become increasingly uncertain.

In light of these uncertainties, as well as those associated with the exposure and risk analyses, the Administrator notes that, as is the case in NAAQS reviews in general, the extent to which the current primary O₃ standard is judged to be adequate will depend on a variety of factors, including his science policy judgments and public health policy judgments. These factors include judgments regarding aspects of the evidence and exposure/risk estimates, such as judgments concerning the appropriate benchmark concentrations on which to place weight, in light of the available evidence and of associated uncertainties, as well as judgments on the public health significance of the effects that have been observed at the exposures evaluated in the health effects evidence. The factors relevant to judging the adequacy of the standards also include the interpretation of, and decisions as to the weight to place on, different aspects of the results of the exposure and risk assessment for the eight areas studied and the associated

uncertainties. Together, these and related factors will inform the Administrator's judgment about the degree of protection that is requisite to protect public health with an adequate margin of safety, and, accordingly, his conclusion regarding the adequacy of the current standard.

As at the time of the last review, the exposure and risk estimates developed from modeling exposures to O₃ in ambient air are critically important to consideration of the potential for exposures and risks of concern under air quality conditions of interest, and consequently are critically important to judgments on the adequacy of public health protection provided by the current standard. In considering the public health implications of estimated occurrences of exposures, while at increased exertion, to the three benchmark concentrations, the Administrator considers the effects reported in controlled human exposure studies of this range of concentrations during quasi-continuous exercise. In so doing, he notes the statements from the ATS, as well as judgments made by the EPA in considering similar effects in previous NAAQS reviews and the extent to which they may be adverse to health (80 FR 65343, October 26, 2015). In considering the ATS statements, including the most recent one which is newly available in the current review (Thurston et al., 2017), the Administrator recognizes the role of such statements, as described by the ATS, and as summarized in section II.B.2 above, as providing principles or considerations for weighing the evidence rather than offering "strict rules or numerical criteria" (ATS, 2000, Thurston et al., 2017). The more recent statement is generally consistent with the prior statement (that was considered in the last O₃ NAAQS review) and the attention of that statement to at-risk or vulnerable population groups, while also broadening the discussion of effects, responses and biomarkers to reflect the expansion of scientific research in these areas, as summarized in section II.B.2 above. In this way, the most recent statement updates the prior statement, while retaining previously identified considerations, including, for example, its emphasis on consideration of vulnerable populations, thus expanding upon (e.g., with some increased specificity), while retaining core consistency with, the earlier ATS statement. In considering these statements, the Administrator notes that, in keeping with the intent of avoiding specific criteria, the statements do not provide specific descriptions of

responses, such as with regard to magnitude, duration or frequency of small pollutant-related changes in lung function, and also takes note of the broader ATS emphasis on consideration of individuals with pre-existing compromised function, such as that resulting from asthma, recognizing such a focus to be important in his judgment on the adequacy of protection provided by the current standard for at-risk populations.

In this review of the 2015 standard, the Administrator takes note of several aspects of the rationale by which it was established. As summarized in section II.A.1 above, the decision in the last review considered the breadth of the O₃ respiratory effects evidence, recognizing the relatively greater significance of effects reported for exposures while at elevated exertion to average O₃ concentrations at and above 80 ppb, as well as to the greater array of effects elicited. The decision also recognized the significance of effects observed at the next lower studied exposures (slightly above 70 ppb) that included both lung function decrements and respiratory symptoms. The standard level was set to provide a high level of protection from such exposures. The decision additionally emphasized consideration of lower exposures down to 60 ppb, particularly with regard to consideration of a margin of safety in setting the standard. In this context, the decision identified the appropriateness of a standard that provided a degree of control of multiple or repeated occurrences of exposures, while at elevated exertion, at or above 60 ppb (80 FR 65365, October 26, 2015).¹⁰⁴ The controlled human exposure study evidence as a whole provided context

¹⁰⁴ With the 2015 decision, the prior Administrator judged there to be uncertainty in the adversity of the effects shown to occur following exposures to 60 ppb O₃, including the inflammation reported by the single study at the level, and accordingly placed greater weight on estimates of multiple exposures for the 60 ppb benchmark, particularly when considering the extent to which the current and revised standards incorporate a margin of safety (80 FR 65344–45, October 26, 2015). She based this, at least in part, on consideration of effects at this exposure level, the evidence for which remains the same in the current review. In one such consideration in 2015, the EPA noted that "inflammation induced by a single exposure (or several exposures over the course of a summer) can resolve entirely. Thus, the inflammatory response observed following the single exposure to 60 ppb in the study by Kim et al. (2011) is not necessarily a concern. However, the EPA notes that it is also important to consider the potential for continued acute inflammatory responses to evolve into a chronic inflammatory state and to affect the structure and function of the lung" (80 FR 65344, October 26, 2015; 2013 ISA, p. 6–76). The prior Administrator considered this information in judgments regarding the 2014 HREA estimates for the 60 ppb benchmark.

for consideration of the 2014 HREA results for the exposures of concern, *i.e.*, the comparison-to-benchmarks analysis (80 FR 65363, October 26, 2015). The Administrator proposes to similarly consider the exposure and risk analyses for this review.

As recognized above, people with asthma, and children, are key populations at increased risk of respiratory effects related to O₃ in ambient air. Children with asthma, which number approximately six million in the U.S., may be particularly at risk. While there are more adults in the U.S. with asthma than children with asthma, the exposure and risk analysis results in terms of percent of the simulated at-risk populations, indicate higher frequency of exposures of potential concern and risks for children as compared to adults. This finding relates to children's greater frequency and duration of outdoor activity, as well as their greater activity level while outdoors (PA, section 3.4.3). In light of these factors and those recognized above, the Administrator is focusing his consideration of the exposure and risk analyses here on children and children with asthma.

In considering the exposure and risk analyses available in this review, the Administrator first notes that there are a number of ways in which the current analyses update and improve upon those available in the last review (as summarized in sections II.C.1 and II.D.1 above). For example, the Administrator notes that the air quality scenarios in the current assessment are based on the combination of updated photochemical modeling with more recent air quality data that include O₃ concentrations closer to the current standard than was the case for the development of the air quality scenarios in the last review. As a result of this and the use of updated photochemical modeling, there is reduced uncertainty with the resulting exposure and risk estimates. Additionally, two modifications have been made to the exposure and risk analysis in light of comments received in past reviews that provide for a better match of the exposure modeling estimates with the 6.6-hour duration of the controlled human exposure studies and with the study subject ventilation rates. The Administrator notes, as summarized in section II.C.2 above, that these and other updates have reduced the uncertainty associated with interpretation of the analysis results from that associated with results in the last review (PA, sections 3.4 through 3.6).

While the Administrator notes reduced uncertainty in several aspects

of the exposure and risk analysis approach as compared to the analyses in the last review, he recognizes the relatively greater uncertainty associated with the lung function risk estimates compared to the results of the comparison-to-benchmarks analysis. In so doing, he notes the PA analyses of uncertainty associated with the lung function risk estimates (and relatively greater uncertainty with estimates derived using the MSS model, versus the E-R models approach), as summarized in section II.C.2 above. In light of these uncertainties, as well as the recognition that the comparison-to-benchmarks analysis provides for characterization of risk for the broad array of respiratory effects compared to a narrower focus limited to lung function decrements, the Administrator focuses primarily on the estimates of exposures at or above different benchmark concentrations that represent different levels of significance of O₃-related effects, both with regard to the array of effects and severity of individual effects.

In considering the exposure and risk estimates, the Administrator also notes that the eight study areas assessed represent an array of air quality and exposure circumstances reflecting such variation that occurs across the U.S. The areas fall into seven of the nine climate regions represented in the continental U.S., with populations of the associated metropolitan areas ranging in size from approximately 2.4 to 8 million and varying in demographic characteristics. The Administrator considers such factors as those identified here to contribute to their usefulness in informing the current review. As a result of such variation in exposure-related factors, the eight study areas represent an array of exposure circumstances, and accordingly, illustrate the magnitude of exposures and risks that may be expected in areas of the U.S. that just meet the current standard but that may differ in ways affecting population exposures of interest. The Administrator finds the estimates from these analyses to be informative to consideration of potential exposures and risks associated with the current standard and to his judgment on the adequacy of protection provided by the current standard.

Taking into consideration related information, limitations and uncertainties, such as those recognized above, the Administrator considers the exposure estimates across the eight study areas (with their array of exposure conditions) for air quality conditions just meeting the current standard. Given the greater severity of responses

reported in controlled human exposures, with quasi-continuous exercise, at and above 73 ppb, the Administrator finds it appropriate to focus first on the higher two benchmark concentrations (which at 70 and 80 ppb are, respectively, slightly below and above this level) and the estimates for one-or-more-day occurrences. In so doing, he notes that across all eight study areas, less than 1% of children with asthma (and also of all children) are estimated to experience, while breathing at an elevated rate, a daily maximum 7-hour exposure per year at or above 70 ppb, on average across the 3-year period, with a maximum of about 1% for the study area with the highest estimates in the highest single year (Table 2). Further, the percentage (for both population groups) for at least one day with such an exposure at or above 80 ppb is less than 0.1%, as an average across the 3-year period (and 0.1% or less in each of the three years simulated across the eight study areas). No simulated children were estimated to experience more than a single such day with an exposure at or above the 80 ppb benchmark (Table 2). The Administrator recognizes these estimates to indicate a very high level of protection from exposures that been found in controlled human exposure studies to elicit lung function decrements of notable magnitude (e.g., 6% at the study group mean for exposure to 73 ppb) accompanied by increases in respiratory symptom scores, as summarized in section II.B.3.

The Administrator additionally considers the estimated occurrences of days that include lower 7-hour exposures, while at elevated exertion (i.e., daily maximum exposures at or above 60 ppb). In so doing, the Administrator takes note of the lesser severity of effects observed in controlled human exposure studies to 60 ppb (while at increased exertion) compared to the effects at the higher concentrations that have been studied (e.g., statistically significant O₃-related decrements on the order of 2 to 3% at the study group mean compared to 6%). He notes the finding of statistically significant increased respiratory symptom scores with exposures targeted at an exposure concentration of 70 ppb (and averaging 73 ppb across the exposure period), and the lack of such finding for any lower exposure concentrations that have been studied. In light of these considerations, he finds occurrences of exposures at or above the lowest benchmark of 60 ppb to be of lesser concern than occurrences for the next higher benchmark of 70 ppb. As

described above for the higher exposure concentrations, he additionally recognizes that the studies of 60 ppb were of generally healthy adults. While he notes the uncertainty regarding the risk that may be posed by this exposure concentration to at-risk populations, such as people with asthma, he additionally notes that the limited evidence available at higher exposure concentrations indicates lung function responses for this group that are similar to those for the generally healthy subjects, as well as the evidence of the transience of the responses in controlled human exposure studies. Further, he considers that due to the inherent characteristics of asthma as a disease, there is a potential, as summarized in section II.B.2 above, for O₃ exposures to trigger asthmatic responses, such as through causing an increase in airway responsiveness. In this context, he additionally recognizes the potential for such a response to be greater, in general, at relatively higher, versus lower, exposure concentrations, noting 80 ppb to be the lowest exposure concentration at which increased airway responsiveness has been reported in generally healthy adults. In recognizing that the finding for this exposure concentration is for generally healthy adults and does not directly relate to people with asthma, he finds it appropriate to give additional consideration to the two lower benchmarks. In so doing, he judges that a high level of protection is desirable against one or more occurrences of days with exposures while breathing at an elevated rate to concentrations at or above 70 ppb. Additionally, he takes note of the lesser severity of responses observed in studies of the lowest benchmark concentration of 60 ppb, while considering the exposure analysis estimates of occurrences of daily maximum exposures at or above this benchmark, while also recognizing there to be greater risk for occurrence of a more serious effect with greater frequency of such exposure occurrence. Thus, based on the considerations recognized here, including potential risks for at-risk populations, the Administrator considers it appropriate to give greater weight to the exposure analysis estimates of occurrences of two or more days (rather than one or more) with an exposure at or above the 60 ppb benchmark.

The exposure analysis estimates indicate fewer than 1% to just over 3% of children with asthma (just under 3% of all children), on average across the 3-year period to be expected to experience two or more days with an exposure at

or above 60 ppb, while at elevated ventilation. The Administrator notes this to indicate that some 97% to more than 99% of children, on average, and more than 95% in the single highest year, are protected from experiencing two or more days with exposures at or above 60 ppb while at elevated exertion. He also considers this in combination with the high level of protection indicated by the exposure estimates for the higher benchmark concentration of 70 ppb, which is slightly below the exposure level at which increases in FEV₁ decrement (6% at the study group mean) accompanied by respiratory symptoms have been demonstrated. The current exposure analysis, with reduced uncertainty compared to the analysis available in the last review for air quality conditions in areas that just meet the current standard, indicates more than 99% of children with asthma (and of all children), on average per year, to be protected from a day or more with an exposure at or above 70 ppb. In light of all of the considerations summarized above, the Administrator proposes to judge that protection from these exposures, as described here, provides a strong degree of protection to at-risk populations such as children with asthma. In light of all of the above, the Administrator finds the updated exposure and risk analyses based on updated and improved information, including air quality concentrations closer to the current standard, to continue to support a conclusion of a high level of protection, including for at-risk populations, from O₃-related effects of exposures that might be expected with air quality conditions that just meet the current standard.

In reaching his proposed conclusion, the Administrator additionally takes note of the comments and advice from the CASAC, including the CASAC conclusion that the newly available evidence does not substantially differ from that available in the last review, and the associated conclusion expressed by part of the CASAC, that the current evidence supports retaining the current standard. He also notes that another part of the CASAC indicated its agreement with the prior CASAC comments on the 2014 draft PA, in which the prior CASAC opined that a standard set at 70 ppb may not provide an adequate margin of safety (Cox, 2020, p. 1). With regard to the latter view (that referenced 2014 comments from the prior CASAC), the Administrator additionally notes that the 2014 advice from the prior CASAC also concluded that the scientific evidence supported a range of standard levels that included 70 ppb

and recognized the choice of a level within its recommended range to be “a policy judgment under the statutory mandate of the Clean Air Act” (Frey, 2014, p. ii). The Administrator considers these points to provide additional context for the comments of the prior CASAC that were cited by part of the current CASAC in its review of the draft PA in this review, as noted above.¹⁰⁵

In reflecting on all of the information currently available, the Administrator considers the extent to which the currently available information might indicate support for a less stringent standard. He recognizes the advice from the CASAC, which generally indicates support for retaining the current standard without revision or for revision to a more stringent level based on additional consideration of the margin of safety for at-risk populations. He notes that the CASAC advice did not convey support for a less stringent standard. He additionally considers the current exposure and risk estimates for the air quality scenario for a design value just above the level of the current standard (at 75 ppb), in comparison to the scenario for the current standard, as summarized in section II.D.1 above. In so doing, he finds the markedly increased estimates of exposures to the higher benchmarks under air quality for a higher standard level to be of concern and indicative of less than the requisite protection (Table 2). Thus, in light of the considerations raised here, including the need for an adequate margin of safety, the Administrator proposes to judge that a less stringent standard would not be appropriate to consider.

The Administrator additionally considers whether it would be appropriate to consider a more stringent standard that might be expected to result in reduced O₃ exposures. As an initial matter, he considers the advice from the CASAC. With regard to the CASAC advice, while part of the Committee concluded the evidence supported retaining the current standard without revision, another part of the Committee reiterated advice from the prior CASAC, which while including the current standard level among the range of recommended standard levels, also provided policy advice to set the standard at a lower level. In considering this advice now in this review, the Administrator notes the slight differences of the current exposure and

risk estimates from the 2014 HREA estimates for the lowest benchmark, which were those considered by the prior CASAC (Table 4). For example, while the 2014 HREA estimated 3.3 to 10.2% of children, on average, to experience one or more days with an exposures at or above 60 ppb (and as many as 18.9% in a single year), the comparable estimates for the current analyses are lower, particularly at the upper end (3.2 to 8.2% and 10.6%). While the estimates for two or more days with occurrences at or above 60 ppb, on average across the assessment period, are more similar between the two assessments, the current estimate for the single highest year is much lower (9.2 *versus* 4.3%). The Administrator additionally recognizes the PA finding (summarized in section II.D.1 above) that the factors contributing to these differences, which includes the use of air quality data reflecting concentrations much closer to the now-current standard than was the case in the 2015 review, also contribute to a reduced uncertainty in the estimates. Thus, he notes that the current exposure analysis estimates indicate the current standard to provide appreciable protection against multiple days with a maximum exposure at or above 60 ppb. He considers this in the context of his consideration of the adequacy of protection provided by the standard and of the CAA requirement that the standard protect public health, including the health of at-risk populations, with an adequate margin of safety, and proposes to conclude, in light of all of the considerations raised here, that the current standard provides an adequate margin of safety, and that a more stringent standard is not needed.

In light of all of the above, including advice from the CASAC, the Administrator finds the current exposure and risk analysis results to describe appropriately strong protection of at-risk populations from O₃-related health effects. Thus, based on his consideration of the evidence and exposure/risk information, including that related to the lowest exposures studied and the associated uncertainties, the Administrator proposes to judge that the current standard provides the requisite protection, including an adequate margin of safety, and thus should be retained, without revision.

As recognized above, the protection afforded by the current standard can only be assessed by considering its elements collectively, including the standard level of 70 ppb, the averaging time of eight hours and the form of the annual fourth-highest daily maximum

¹⁰⁵ This 2014 advice was considered in the last review's decision to establish the current standard with a level of 70 ppb (80 FR 65362, October 26, 2015).

concentration averaged across three years. The Administrator finds that the current evidence presented in the ISA and considered in the PA, as well as the current air quality, exposure and risk information presented and considered in the PA provide continued support to these elements, as well as to the current indicator, as discussed above. In summary, the Administrator recognizes the newly available health effects evidence, critically assessed in the ISA as part of the full body of evidence, to reaffirm conclusions on the respiratory effects recognized for O₃ in the last review. He additionally notes that the evidence newly available in this review, such as that related to metabolic effects, does not include information indicating a basis for concern for exposure conditions associated with air quality conditions meeting the current standard. Further, the Administrator notes the quantitative exposure and risk estimates for conditions just meeting the current standard that indicate a high level of protection for at-risk populations from respiratory effects. Collectively, these considerations (including those discussed above) provide the basis for the Administrator's judgments regarding the public health protection provided by the current primary standard of 0.070 ppm O₃, as the fourth-highest daily maximum 8-hour concentration averaged across three years. On this basis, the Administrator proposes to conclude that the current standard is requisite to protect the public health with an adequate margin of safety, and that it is appropriate to retain the standard without revision. The Administrator solicits comment on these proposed conclusions.

Having reached the proposed decision described here based on interpretation of the health effects evidence, as assessed in the ISA, and the quantitative analyses presented in the PA; the evaluation of policy-relevant aspects of the evidence and quantitative analyses in the PA; the advice and recommendations from the CASAC; public comments received to date in this review; and the public health policy judgments described above, the Administrator recognizes that other interpretations, assessments and judgments might be possible. Therefore, the Administrator solicits comment on the array of issues associated with review of this standard, including public health and science policy judgments inherent in the proposed decision, as described above, and the rationales upon which such views are based.

III. Rationale for Proposed Decision on the Secondary Standard

This section presents the rationale for the Administrator's proposed decision to retain the current secondary O₃ standard. This rationale is based on a thorough review of the latest scientific information generally published between January 2011 and March 2018, as well as more recent studies identified during peer review or by public comments (ISA, section IS.1.2),¹⁰⁶ integrated with the information and conclusions from previous assessments and presented in the ISA on welfare effects associated with photochemical oxidants including O₃ and pertaining to their presence in ambient air. The Administrator's rationale also takes into account: (1) The PA evaluation of the policy-relevant information in the ISA and presentation of quantitative analyses of air quality, exposure, and risk; (2) CASAC advice and recommendations, as reflected in discussions of drafts of the ISA and PA at public meetings and in the CASAC's letters to the Administrator; (3) public comments received during the development of these documents; and also (4) the August 2019 decision of the D.C. Circuit remanding the secondary standard established in the last review to the EPA for further justification or reconsideration. See *Murray Energy Corp. v. EPA*, 936 F.3d 597 (D.C. Cir. 2019).

In presenting the rationale for the Administrator's proposed decision and its foundations, section III.A provides background and introductory information for this review of the secondary O₃ standard. It includes background on the establishment of the current standard in 2015 (section III.A.1) and also describes the general approach for its current review (section III.A.2). Section III.B summarizes the

¹⁰⁶ In addition to the review's opening "Call for Information" (83 FR 29785, June 26, 2018), systematic review methodologies were applied to identify relevant scientific findings that have emerged since the 2013 ISA, which included peer reviewed literature published through July 2011. Search techniques for the current ISA identified and evaluated studies and reports that have undergone scientific peer review and were published or accepted for publication between January 1, 2011 (providing some overlap with the cutoff date for the last ISA) and March 30, 2018. Studies published after the literature cutoff date for this ISA were also considered if they were submitted in response to the Call for Information or identified in subsequent phases of ISA development, particularly to the extent that they provide new information that affects key scientific conclusions (ISA, Appendix 10, section 10.2). References that are cited in the ISA, the references that were considered for inclusion but not cited, and electronic links to bibliographic information and abstracts can be found at: https://hero.epa.gov/hero/index.cfm/project/page/project_id/2737.

currently available welfare effects evidence, focusing on consideration of key policy-relevant aspects. Section III.C summarizes current air quality and environmental exposure information, drawing on the quantitative analyses presented in the PA. Section III.D presents the Administrator's proposed conclusions on the current standard (section III.D.3), drawing on both evidence-based and air quality, exposure and risk-based considerations (section III.D.1) and advice from the CASAC (section III.D.2).

A. General Approach

As is the case for all such reviews, this review of the current secondary O₃ standard is based, most fundamentally, on using the EPA's assessments of the current scientific evidence and associated quantitative analyses to inform the Administrator's judgment regarding a secondary standard that is requisite to protect the public welfare from known or anticipated adverse effects associated with the pollutant's presence in the ambient air. The EPA's assessments are primarily documented in the ISA and PA, both of which have received CASAC review and public comment (84 FR 50836, September 26, 2019; 84 FR 58711, November 1, 2019; 84 FR 58713, November 1, 2019; 85 FR 21849, April 20, 2020; 85 FR 31182, May 22, 2020). In bridging the gap between the scientific assessments of the ISA and the judgments required of the Administrator in determining whether the current standard provides the requisite public welfare protection, the PA evaluates policy implications of the evaluation of the current evidence in the ISA and the quantitative air quality, exposure and risk analyses and information documented in the PA. In evaluating the public welfare protection afforded by the current standard, the four basic elements of the NAAQS (indicator, averaging time, level, and form) are considered collectively.

The final decision on the adequacy of the current secondary standard is a public welfare policy judgment to be made by the Administrator. In reaching conclusions with regard to the standard, the decision will draw on the scientific information and analyses about welfare effects, environmental exposure and risks, and associated public welfare significance, as well as judgments about how to consider the range and magnitude of uncertainties that are inherent in the scientific evidence and analyses. This approach is based on the recognition that the available evidence generally reflects a continuum that includes ambient air exposures at which scientists generally agree that effects are

likely to occur through lower levels at which the likelihood and magnitude of responses become increasingly uncertain. This approach is consistent with the requirements of the provisions of the Clean Air Act related to the review of NAAQS and with how the EPA and the courts have historically interpreted the Act. These provisions require the Administrator to establish secondary standards that, in the judgment of the Administrator, are requisite to protect the public welfare from known or anticipated adverse effects associated with the presence of the pollutant in the ambient air. In so doing, the Administrator seeks to establish standards that are neither more nor less stringent than necessary for this purpose. The Act does not require that standards be set at a zero-risk level, but rather at a level that reduces risk sufficiently so as to protect the public welfare from known or anticipated adverse effects.

The subsections below provide background and introductory information. Background on the establishment of the current standard in 2015, including the rationale for that decision, is summarized in section III.A.1. This is followed, in section III.A.2, by an overview of the general approach for the current review of the 2015 standard. Following this introductory section and subsections, the subsequent sections summarize current information and analyses, including that newly available in this review. The Administrator's proposed conclusions on the standard set in 2015, based on the current information, are provided in section III.D.3

1. Background on the Current Standard

The current standard was set in 2015 based on the scientific and technical information available at that time, as well as the Administrator's judgments regarding the available welfare effects evidence, the appropriate degree of public welfare protection for the revised standard, and available air quality information on seasonal cumulative exposures that may be allowed by such a standard (80 FR 65292, October 26, 2015). With the 2015 decision, the Administrator revised the level of the secondary standard for photochemical oxidants, including O₃, to 0.070 ppm, in conjunction with retaining the indicator (O₃), averaging time (8 hours) and form (fourth-highest annual daily maximum 8-hour average concentration, averaged across three years).

The welfare effects evidence base available in the 2015 review included more than fifty years of extensive research on the phytotoxic effects of O₃,

conducted both in and outside of the U.S. that documents the impacts of O₃ on plants and their associated ecosystems (U.S. EPA, 1978, 1986, 1996, 2006, 2013). As was established in prior reviews, O₃ can interfere with carbon gain (photosynthesis) and allocation of carbon within the plant, making fewer carbohydrates available for plant growth, reproduction, and/or yield (U.S. EPA, 1996, pp. 5–28 and 5–29). The strongest evidence for effects from O₃ exposure on vegetation is from controlled exposure studies, which ‘‘have clearly shown that exposure to O₃ is causally linked to visible foliar injury, decreased photosynthesis, changes in reproduction, and decreased growth’’ in many species of vegetation (2013 ISA, p. 1–15).¹⁰⁷ Such effects at the plant scale can also be linked to an array of effects at larger organizational (e.g., population, community, system) and spatial scales, with the evidence available in the last review supporting conclusions of causal relationships between O₃ and alteration of below-ground biogeochemical cycles, in addition to likely to be a causal relationships between O₃ and reduced carbon sequestration in terrestrial ecosystems, alteration of terrestrial ecosystem water cycling and alteration of terrestrial community composition (2013 ISA, p. lxviii and Table 9–19). Further, the 2013 ISA also found there to be a causal relationship between changes in tropospheric O₃ concentrations and radiative forcing, and likely to be a causal relationship between tropospheric O₃ concentrations and effects on climate as quantified through surface temperature response (2013 ISA, section 10.5).

The 2015 decision was a public welfare policy judgment made by the Administrator, which drew upon the available scientific evidence for O₃-attributable welfare effects and on quantitative analyses of exposures and public welfare risks, as well as judgments about the appropriate weight to place on the range of uncertainties inherent in the evidence and analyses. The analyses utilized cumulative, concentration-weighted exposure indices for O₃. Use of this metric was based on conclusions in the 2013 ISA that exposure indices that cumulate hourly O₃ concentrations, giving greater weight to the higher concentrations (such as the W126 index), perform well in describing exposure-response relationships documented in crop and tree seedling studies (2013 ISA, section 9.5). Included in this decision were

¹⁰⁷ Visible foliar injury includes leaf or needle changes such as small dots or bleaching (2013 ISA, p. 9–38).

judgments on the weight to place on the evidence of specific vegetation-related effects estimated to result across a range of cumulative seasonal concentration-weighted O₃ exposures; on the weight to give associated uncertainties, including uncertainties of predicted environmental responses (based on experimental study data); variability in occurrence of the specific effects in areas of the U.S., especially in areas of particular public welfare significance; and on the extent to which such effects in such areas may be considered adverse to public welfare.

The decision was based on a thorough review in the 2013 ISA of the scientific information on O₃-induced environmental effects. The decision also took into account: (1) Assessments in the 2014 PA of the most policy-relevant information in the 2013 ISA regarding evidence of adverse effects of O₃ to vegetation and ecosystems, information on biologically-relevant exposure metrics, 2014 welfare REA (WREA) analyses of air quality, exposure, and ecological risks and associated ecosystem services, and staff analyses of relationships between levels of a W126-based exposure index¹⁰⁸ and potential alternative standard levels in combination with the form and averaging time of the then-current standard; (2) additional air quality analyses of the W126 index and design values based on the form and averaging time of the then-current standard; (3) CASAC advice and recommendations; and (4) public comments received during the development of these documents and on the proposal document. In addition to reviewing the most recent scientific information as required by the CAA, the 2015 rulemaking also incorporated the EPA's response to the judicial remand of the 2008 secondary O₃ standard in *Mississippi v. EPA*, 744 F.3d 1334 (D.C. Cir. 2013) and, in light of the court's decision in that case, explained the Administrator's conclusions as to the level of air quality judged to provide the requisite protection of public welfare from known or anticipated adverse effects.

Consistent with the general approach routinely employed in NAAQS reviews, the initial consideration in the 2015 review of the secondary standard was

¹⁰⁸ The W126 index is a cumulative seasonal metric described as the sigmoidally weighted sum of all hourly O₃ concentrations observed during a specified daily and seasonal time window, where each hourly O₃ concentration is given a weight that increases from zero to one with increasing concentration (80 FR 65373–74, October 26, 2015). Accordingly, W126 index values are in the units of ppm-hours (ppm-hrs).

with regard to the adequacy of protection provided by the existing standard, that was set in 2008 (0.075 ppm, as annual fourth-highest daily maximum 8-hour average concentration averaged over three consecutive years). In her decision making, the Administrator considered the effects of O₃ on tree seedling growth, as suggested by the CASAC, as a surrogate or proxy for the broader array of vegetation-related effects of O₃, ranging from effects on sensitive species to broader ecosystem-level effects (80 FR 65369, 65406, October 26, 2015). The metric used for quantifying effects on tree seedling growth in the review was relative biomass loss (RBL), with the evidence base providing robust and established exposure-response (E–R) functions for seedlings of 11 tree species (80 FR 65391–92, October 26, 2015; 2014 PA, Appendix 5C).¹⁰⁹ The Administrator used this surrogate or proxy in making her judgments on O₃ effects to the public welfare. In this context, exposure was evaluated in terms of the W126 cumulative seasonal exposure index, an index supported by the evidence in the 2013 ISA for this purpose and that was consistent with advice from the CASAC (2013 ISA, section 9.5.3, p. 9–99; 80 FR 65375, October 26, 2015).

In considering the public welfare protection provided by the then-current standard, the Administrator gave primary consideration to an analysis of cumulative seasonal exposures in or near Class I areas¹¹⁰ during periods when the then-current standard was met, and the associated estimates of growth effects in well-studied species of tree seedlings, in terms of the O₃ attributable reductions in RBL in the median species for which E–R functions have been established (80 FR 65385–65386, 65389–65390, October 26, 2015).¹¹¹ The Administrator noted the

¹⁰⁹ These functions for RBL estimate the reduction in a year's growth as a percentage of that expected in the absence of O₃ (2013 ISA, section 9.6.2; 2014 WREA, section 6.2).

¹¹⁰ Areas designated as Class I include all international parks, national wilderness areas which exceed 5,000 acres in size, national memorial parks which exceed 5,000 acres in size, and national parks which exceed 6,000 acres in size, provided the park or wilderness area was in existence on August 7, 1977. Other areas may also be Class I if designated as Class I consistent with the CAA.

¹¹¹ In specifically evaluating exposure levels in terms of the W126 index as to potential for impacts on vegetation, the Administrator focused on the median RBL estimate across the eleven tree species for which robust established E–R functions were available. The presentation of these E–R functions for growth effects on tree seedlings (and crops) included estimates of RBL (and relative yield loss [RYL]) at a range of W126-based exposure levels (2014 PA, Tables 5C–1 and 5C–2). The median tree

occurrence of exposures for which the associated median estimates of growth effects across the species with E–R functions extend above a magnitude considered to be “unacceptably high” by the CASAC.¹¹² This analysis estimated cumulative exposures, in terms of 3-year average W126 index values, at and above 19 ppm-hrs, occurring under the then-current standard for nearly a dozen areas, distributed across two NOAA climatic regions of the U.S. (80 FR 65385–86, October 26, 2015). The Administrator gave particular weight to this analysis because of its focus on exposures in Class I areas, which are lands that Congress set aside for specific uses intended to provide benefits to the public welfare, including lands that are to be protected so as to conserve the scenic value and the natural vegetation and wildlife within such areas, and to leave them unimpaired for the enjoyment of future generations. This emphasis on lands afforded special government protections, such as national parks and forests, wildlife refuges, and wilderness areas, some of which are designated Class I areas under the CAA, was consistent with a similar emphasis in the 2008 review of the standard (73 FR 16485, March 27, 2008). The Administrator additionally recognized that states, tribes and public interest groups also set aside areas that are intended to provide similar benefits to the public welfare for residents on those lands, as well as for visitors to those areas (80 FR 65390, October 26, 2015).

As noted across past reviews of O₃ secondary standards, the Administrator's judgments regarding effects that are adverse to public welfare consider the intended use of the ecological receptors, resources and ecosystems affected (80 FR 65389, October 26, 2015; 73 FR 16496, March 27, 2008). Thus, in the 2015 review, the Administrator utilized the median RBL estimate for the studied species as a quantitative tool within a larger framework of considerations pertaining to the public welfare significance of O₃

species RBL or crop RYL was presented for each W126 level (2014 PA, Table 5C–3; 80 FR 65391 [Table 4], October 26, 2015). The Administrator focused on RBL as a surrogate or proxy for the broader array of vegetation-related effects of potential public welfare significance, which include effects on growth of individual sensitive species and extend to ecosystem-level effects, such as community composition in natural forests, particularly in protected public lands, as well as forest productivity (80 FR 65406, October 26, 2015).

¹¹² In the CASAC's consideration of RBL estimates presented in the 2014 draft PA, it characterized an estimate of 6% RBL in the median studied species as being “unacceptably high,” (Frey, 2014b).

effects. She recognized such considerations to include effects that are associated with effects on growth and that the 2013 ISA determined to be causally or likely causally related to O₃ in ambient air, yet for which there are greater uncertainties affecting estimates of impacts on public welfare. These other effects included reduced productivity in terrestrial ecosystems, reduced carbon sequestration in terrestrial ecosystems, alteration of terrestrial community composition, alteration of below-ground biogeochemical cycles, and alteration of terrestrial ecosystem water cycles. Thus, in giving attention to the CASAC's characterization of a 6% estimate for tree seedling RBL in the median studied species as “unacceptably high”, the Administrator, while mindful of uncertainties with regard to the magnitude of growth impact that might be expected in the field and in mature trees, was also mindful of related, broader, ecosystem-level effects for which the available tools for quantitative estimates are more uncertain and those for which the policy foundation for consideration of public welfare impacts is less well established. As a result, the Administrator considered tree growth effects of O₃, in terms of RBL “as a surrogate for the broader array of O₃ effects at the plant and ecosystem levels” (80 FR 65389, October 26, 2015).

Based on all of these considerations, and taking into consideration CASAC advice and public comment, the Administrator concluded that the protection afforded by the then-current standard was not sufficient and that the standard needed to be revised to provide additional protection from known and anticipated adverse effects to public welfare, related to effects on sensitive vegetation and ecosystems, most particularly those occurring in Class I areas, and also in other areas set aside by states, tribes and public interest groups to provide similar benefits to the public welfare for residents on those lands, as well as for visitors to those areas. In so doing, she further noted that a revised standard would provide increased protection for other growth-related effects, including relative yield loss (RYL) of crops, reduced carbon storage, and types of effects for which it is more difficult to determine public welfare significance, as well as other welfare effects of O₃, such as visible foliar injury (80 FR 65390, October 26, 2015).

Consistent with the approach employed for considering the adequacy of the then-current secondary standard, the approach for considering revisions

that would result in a standard providing the requisite protection under the Act also focused on growth-related effects of O₃, using RBL as a surrogate for the broader array of vegetation-related effects and included judgments on the magnitude of such effects that would contribute to public welfare impacts of concern. In considering the adequacy of potential alternative standards to provide protection from such effects, the approach also focused on considering the cumulative seasonal O₃ exposures likely to occur with different alternative standards.

In light of the judicial remand of the 2008 secondary O₃ standard referenced above, the 2015 decision on selection of a revised secondary standard first considered the available evidence and quantitative analyses in the context of an approach for considering and identifying public welfare objectives for such a standard (80 FR 65403–65408, October 26, 2015). In light of the extensive evidence base of O₃ effects on vegetation and associated terrestrial ecosystems, the Administrator focused on protection against adverse public welfare effects of O₃-related effects on vegetation, giving particular attention to such effects in natural ecosystems, such as those in areas with protection designated by Congress for current and future generations, as well as areas similarly set aside by states, tribes and public interest groups with the intention of providing similar benefits to the public welfare. The Administrator additionally recognized that providing protection for this purpose will also provide a level of protection for other vegetation that is used by the public and potentially affected by O₃ including timber, produce grown for consumption and horticultural plants used for landscaping (80 FR 65403, October 26, 2015).

As mentioned above, the Administrator considered the use of a cumulative seasonal exposure index (the W126 index) for purposes of assessing potential public welfare risks, and similarly, for assessing potential protection achieved against such risks on a national scale. In consideration of conclusions of the 2013 ISA and 2014 PA, as well as advice from the CASAC and public comments, this W126 index was defined as a maximum, seasonal (3-month), 12-hour index (80 FR 65404, October 26, 2015).¹¹³ While recognizing that no one definition of an exposure

¹¹³ As also described in section III.B.3.a below, this index is defined by the 3-consecutive-month period within the O₃ season with the maximum sum of W126-weighted hourly O₃ concentrations during the period from 8:00 a.m. to 8:00 p.m. each day.

metric used for the assessment of protection for multiple effects at a national scale will be exactly tailored to every species or each vegetation type, ecosystem and region of the country, the Administrator judged that on balance, a W126 index derived in this way, and averaged over three years would be appropriate for such purposes (80 FR 65403, October 26, 2015).

Based on a number of considerations, the Administrator recognized greater confidence in judgments related to public welfare impacts based on a 3-year average metric than a single-year metric, and consequently concluded it to be appropriate to use a seasonal W126 index averaged across three years for judging public welfare protection afforded by a revised secondary standard (80 FR 65404, October 26, 2015). For example, the Administrator was mindful of both the strengths and limitations of the evidence and of the information on which to base her judgments with regard to adversity of effects on the public welfare.¹¹⁴ While the Administrator recognized the scientific information and interpretations, as well as CASAC advice, with regard to a single-year exposure index, she also took note of uncertainties associated with judging the degree of vegetation impacts for single-year effects that would be adverse to public welfare. The Administrator was also mindful of the variability in ambient air O₃ concentrations from year to year, as well as year-to-year variability in environmental factors, including rainfall and other meteorological factors, that influence the occurrence and magnitude of O₃-related effects in any year, and contribute uncertainties to interpretation of the potential for harm to public welfare over the longer term (80 FR 65404, October 26, 2015).

In reaching a conclusion on the amount of public welfare protection from the presence of O₃ in ambient air that is appropriate to be afforded by a revised secondary standard, the Administrator gave particular consideration to the following: (1) The nature and degree of effects of O₃ on vegetation, including her judgments as to what constitutes an adverse effect to

¹¹⁴ In this regard, she recognized uncertainties associated with interpretation of the public welfare significance of effects resulting from a single-year exposure, and that the public welfare significance of effects associated with multiple years of critical exposures are potentially greater than those associated with a single year of such exposure. The Administrator concluded that use of a 3-year average metric could address the potential for adverse effects to public welfare that may relate to shorter exposure periods, including a single year (80 FR 65404, October 26, 2015).

the public welfare; (2) the strengths and limitations of the available and relevant information; (3) comments from the public on the Administrator's proposed decision, including comments related to identification of a target level of protection; and (4) the CASAC's views regarding the strength of the evidence and its adequacy to inform judgments on public welfare protection. The Administrator recognized that such judgments should neither overstate nor understate the strengths and limitations of the evidence and information nor the appropriate inferences to be drawn as to risks to public welfare, and that the choice of the appropriate level of protection is a public welfare policy judgment entrusted to the Administrator under the CAA taking into account both the available evidence and the uncertainties (80 FR 65404–05, October 26, 2015).¹¹⁵

With regard to the extensive evidence of welfare effects of O₃, including visible foliar injury and crop RYL, the information available for tree species was judged to be more useful in informing judgments regarding the nature and severity of effects associated with different air quality conditions and associated public welfare significance. Accordingly, the Administrator gave particular attention to the effects related to native tree growth and productivity, including forest and forest community composition, recognizing the relationship of tree growth and productivity to a range of ecosystem services, (80 FR 65405–06, October 26, 2015). In making this judgment, the Administrator recognized that among the broad array of O₃-induced vegetation effects were the occurrence of visible foliar injury and growth and/or yield loss in O₃-sensitive species, including crops and other commercial species (80 FR 65405, October 26, 2015). In regard to visible foliar injury, the Administrator recognized the potential for this effect to affect the public welfare in the context of affecting value ascribed to natural forests, particularly those afforded special government protection, with the significance of O₃-induced visible foliar injury depending on the extent and severity of the injury (80 FR 65407, October 26, 2015). In so doing, however, the Administrator also took note of limitations in the available visible foliar injury information, including the lack of established E–R functions that would allow prediction of

¹¹⁵ The CAA does not require that a secondary standard be protective of all effects associated with a pollutant in the ambient air but rather those known or anticipated effects judged “adverse to the public welfare” (CAA section 109).

visible foliar injury severity and incidence under varying air quality and environmental conditions, a lack of consistent quantitative relationships linking visible foliar injury with other O₃-induced vegetation effects, such as growth or related ecosystem effects, and a lack of established criteria or objectives that might inform consideration of potential public welfare impacts related to this vegetation effect (80 FR 65407, October 26, 2015). Similarly, while O₃-related growth effects on agricultural and commodity crops had been extensively studied and robust E-R functions developed for a number of species, the Administrator found this information less useful in informing her judgments regarding an appropriate level of public welfare protection (80 FR 65405, October 26, 2015).¹¹⁶

Thus, and in light of the extensive evidence base in this regard, the Administrator focused on trees and associated ecosystems in identifying the appropriate level of protection for the secondary standard. Accordingly, the Administrator found the estimates of tree seedling growth impacts (in terms of RBL) associated with a range of W126-based index values developed from the E-R functions for 11 tree species (referenced above) to be appropriate and useful for considering the appropriate public welfare protection objective for a revised standard (80 FR 65391–92, Table 4, October 26, 2015). The Administrator also incorporated into her considerations the broader evidence base associated with forest tree seedling biomass loss, including other less quantifiable effects of potentially greater public welfare significance. That is, in drawing on these RBL estimates, the Administrator recognized she was not simply making judgments about a specific magnitude of growth effect in seedlings that would be acceptable or unacceptable in the natural environment. Rather, though mindful of

associated uncertainties, the Administrator used the RBL estimates as a surrogate or proxy for consideration of the broader array of related vegetation and ecosystem effects of potential public welfare significance that include effects on growth of individual sensitive species and extend to ecosystem-level effects, such as community composition in natural forests, particularly in protected public lands, as well as forest productivity (80 FR 65406, October 26, 2015). This broader array of vegetation-related effects included those for which public welfare implications are more significant but for which the tools for quantitative estimates were more uncertain.

In using the RBL estimates as a proxy, and in consideration of CASAC advice; strengths, limitations and uncertainties in the evidence; and the linkages of growth effects to larger population, community and ecosystem impacts, the Administrator considered it appropriate to focus on a standard that would generally limit cumulative exposures to those for which the median RBL estimate for seedlings of the 11 species with robust and established E-R functions would be somewhat below 6% (80 FR 65406–07, October 26, 2015). In focusing on cumulative exposures associated with a median RBL estimate somewhat below 6%, the Administrator considered the relationships between W126-based exposure and RBL in the studied species (presented in the final PA and proposal document), noting that the median RBL estimate was 6% for a cumulative seasonal W126 exposure index of 19 ppm-hrs (80 FR 65391–92, Table 4, October 26, 2015).¹¹⁷ Given the information on median RBL at different W126 exposure levels, using a 3-year cumulative exposure index for assessing vegetation effects, the potential for single-season effects of concern, and CASAC comments on the appropriateness of a lower value for a 3-year average W126 index, the Administrator concluded it was appropriate to identify a standard that would restrict cumulative seasonal exposures to 17 ppm-hrs or lower, in terms of a 3-year W126 index, in nearly all instances (80 FR 65407, October 26, 2015). Based on such information, available at that time, to inform consideration of vegetation effects and their potential adversity to public welfare, the Administrator additionally

judged that the RBL estimates associated with marginally higher exposures in isolated, rare instances are not indicative of effects that would be adverse to the public welfare, particularly in light of variability in the array of environmental factors that can influence O₃ effects in different systems and uncertainties associated with estimates of effects associated with this magnitude of cumulative exposure in the natural environment (80 FR 65407, October 26, 2015).

The Administrator's decisions regarding the revisions to the then-current standard that would appropriately achieve these public welfare protection objectives were based on extensive air quality analyses that extended from the then most recently available data (monitoring year 2013) back more than a decade (80 FR 65408, October 26, 2015; Wells, 2015). These analyses evaluated the cumulative seasonal exposure levels in locations meeting different alternative levels for a standard of the existing form and averaging time, indicating reductions in cumulative exposures associated with air quality meeting lower levels of a standard of the existing form and averaging time. Based on these analyses, the Administrator judged that the desired level of public welfare protection could be achieved with a secondary standard having a revised level in combination with the existing form and averaging time (80 FR 65408, October 26, 2015).

The air quality analyses described the occurrences of 3-year W126 index values of various magnitudes at monitor locations where O₃ concentrations met potential alternative standards; the alternative standards were different levels for the current form and averaging time (annual fourth-highest daily maximum 8-hour average concentration, averaged over three consecutive years) (Wells, 2015). In the then-most recent period, 2011–2013, across the more than 800 monitor locations meeting the then-current standard (with a level of 75 ppb), the 3-year W126 index values were above 17 ppm-hrs in 25 sites distributed across different NOAA climatic regions, and above 19 ppm-hrs at nearly half of these sites, with some well above. In comparison, among sites meeting an alternative standard of 70 ppb, there were no occurrences of a W126 value above 17 ppm-hrs and fewer than a handful of occurrences that equaled 17 ppm-hrs.¹¹⁸ For the longer

¹¹⁶ With respect to commercial production of commodities, the Administrator noted that judgments about the extent to which O₃-related effects on commercially managed vegetation are adverse from a public welfare perspective are particularly difficult to reach, given that the extensive management of such vegetation (which, as the CASAC noted, may reduce yield variability) may also to some degree mitigate potential O₃-related effects. The management practices used on such vegetation are highly variable and are designed to achieve optimal yields, taking into consideration various environmental conditions. In addition, changes in yield of commercial crops and commercial commodities, such as timber, may affect producers and consumers differently, further complicating the question of assessing overall public welfare impacts (80 FR 65405, October 26, 2015).

¹¹⁷ When stated to the first decimal place, the median RBL was 6.0% for a cumulative seasonal W126 exposure index of 19 ppm-hrs. For 18 ppm-hrs, the median RBL estimate was 5.7%, which rounds to 6%, and for 17 ppm-hrs, the median RBL estimate was 5.3%, which rounds to 5% (80 FR 65407, October 26, 2015).

¹¹⁸ The more than 500 monitors that would meet an alternative standard of 70 ppb during the 2011–2013 period were distributed across all nine NOAA climatic regions and 46 of the 50 states (Wells, 2015).

time period (extending back to 2001), among the nearly 4000 instances where a monitoring site met a standard level of 70 ppb, the Administrator noted that there was only “a handful of isolated occurrences” of 3-year W126 index values above 17 ppm-hrs, “all but one of which were below 19 ppm-hrs” (80 FR 65409, October 26, 2015). The Administrator concluded that that single value of 19.1 ppm-hrs (just equaling 19, when rounded), observed at a monitor for the 3-year period of 2006–2008, was reasonably regarded as an extremely rare and isolated occurrence, and, as such, it was unclear whether it would recur, particularly as areas across the U.S. took further steps to reduce O₃ to meet revised primary and secondary standards. Further, based on all of the then available information, as noted above, the Administrator did not judge RBL estimates associated with marginally higher exposures in isolated, rare instances to be indicative of adverse effects to the public welfare. The Administrator concluded that a standard with a level of 70 ppb and the existing form and averaging time would be expected to limit cumulative exposures, in terms of a 3-year average W126 exposure index, to values at or below 17 ppm-hrs, in nearly all instances, and accordingly, to eliminate or virtually eliminate cumulative exposures associated with a median RBL of 6% or greater (80 FR 65409, October 26, 2015). Thus, using RBL as a proxy in judging effects to public welfare, the Administrator judged that such a standard with a level of 70 ppb would provide the requisite protection from adverse effects to public welfare by limiting cumulative seasonal exposures to 17 ppm-hrs or lower, in terms of a 3-year W126 index, in nearly all instances.

In summary, the Administrator judged that the revised standard would protect natural forests in Class I and other similarly protected areas against an array of adverse vegetation effects, most notably including those related to effects on growth and productivity in sensitive tree species. The Administrator additionally judged that the revised standard would be sufficient to protect public welfare from known or anticipated adverse effects. This judgment by the Administrator appropriately recognized that the CAA does not require that standards be set at a zero-risk level, but rather at a level that reduces risk sufficiently so as to protect the public welfare from known or anticipated adverse effects. Thus,

and associated dataset in the docket [document identifier, EPA-HQ-OAR–2008–0699–4325]).

based on the conclusions drawn from the air quality analyses which demonstrated a strong, positive relationship between the 8-hour and W126 metrics and the findings that indicated the significant amount of control provided by the fourth-high metric, the evidence base of O₃ effects on vegetation and her public welfare policy judgments, as well as public comments and CASAC advice, the Administrator decided to retain the existing form and averaging time and revise the level to 0.070 ppm, judging that such a standard would provide the requisite protection to the public welfare from any known or anticipated adverse effects associated with the presence of O₃ in ambient air (80 FR 65409–10, October 26, 2015).

2. Approach for the Current Review

To evaluate whether it is appropriate to consider retaining the now current secondary O₃ standard, or whether consideration of revision is appropriate, the EPA has adopted an approach in this review that builds upon the general approach used in the last review and reflects the body of evidence and information now available. Accordingly the approach in this review takes into consideration the approach used in the last review, including the substantial assessments and evaluations performed over the course of that review, and also taking into account the more recent scientific information and air quality data now available to inform understanding of the key policy-relevant issues in the current review. As summarized above, the Administrator’s decisions in the prior review were based on an integration of O₃ welfare effects information with judgments on the public welfare significance of key effects, policy judgments as to when the standard is requisite, consideration of CASAC advice, and consideration of public comments.

Similarly, in this review we draw on the current evidence and quantitative analyses of air quality and exposure pertaining to the welfare effects of O₃ in ambient air. In so doing, we consider both the information available at the time of the last review and information more recently available, including that which has been critically analyzed and characterized in the current ISA. The evaluations in the PA, of the potential implications of various aspects of the scientific evidence assessed in the ISA (building on prior such assessments), augmented by the quantitative air quality, exposure or risk-based information, are also considered along with the associated uncertainties and limitations.

This review of the secondary O₃ standard also considers the August 2019 decision by the D.C. Circuit on the secondary standard established in 2015 and issues raised by the court in its remand of that standard to the EPA such that the decision in this review will incorporate the EPA’s response to this remand. The opinion issued by the court concluded, in relevant part, that EPA had not provided a sufficient rationale for aspects of its decision on the 2015 secondary standard. See *Murray Energy Corp. v. EPA*, 936 F.3d 597 (D.C. Cir. 2019). Accordingly, the court remanded the secondary standard to EPA for further justification or reconsideration, particularly in relation to its decision to focus on a 3-year average for consideration of the cumulative exposure, in terms of W126, identified as providing requisite public welfare protection, and its decision to not identify a specific level of air quality related to visible foliar injury.¹¹⁹ Thus, in addition to considering the currently available welfare effects evidence and quantitative air quality, exposure and risk information, this proposed decision on the secondary standard that was established in 2015, and the associated proposed conclusions and judgments, also consider the court’s remand. In so doing, we have, for example, expanded certain analyses in this review compared with those conducted in the last review, included discussion on issues raised in the remand, and provided additional explanation of rationales for proposed conclusions on these points in this review. Together, the information, evaluations and considerations recognized here inform the Administrator’s public welfare policy judgments and conclusions, including his decision as to whether to retain or revise this standard.

B. Welfare Effects Information

The information summarized here is based on our scientific assessment of the welfare effects evidence available in this review; this assessment is documented in the ISA¹²⁰ and its policy

¹¹⁹ The EPA’s decision not to use a seasonal W126 index as the form and averaging time of the secondary standard was also challenged in this case, but the court did not reach that issue, concluding that it lacked a basis to assess the EPA’s rationale on this point because the EPA had not yet fully explained its focus on a 3-year average W126 in its consideration of the standard. See *Murray Energy Corp. v. EPA*, 936 F.3d 597, 618 (D.C. Cir. 2019).

¹²⁰ The ISA builds on evidence and conclusions from previous assessments, focusing on synthesizing and integrating the newly available evidence (ISA, section IS.1.1). Past assessments are cited when providing further details not repeated in newer assessments.

implications are further discussed in the PA. In this review, as in past reviews, the health effects evidence evaluated in the ISA for O₃ and related photochemical oxidants is focused on O₃ (ISA, p. IS-3). Ozone is concluded to be the most prevalent photochemical oxidant present in the atmosphere and the one for which there is a very large, well-established evidence base of its health and welfare effects. Further, “the primary literature evaluating the health and ecological effects of photochemical oxidants includes ozone almost exclusively as an indicator of photochemical oxidants” (ISA, section IS.1.1). Thus, the current welfare effects evidence and the Agency’s review of the evidence, including the evidence newly available in this review, continues to focus on O₃.

More than 1600 studies are newly available and considered in the ISA, including more than 500 studies on welfare effects (ISA, Appendix 10, Figure 10–2). While expanding the evidence for some effect categories, studies on growth-related effects, a key group of effects from the last review, are largely consistent with the evidence that was previously available. Policy implications of the currently available evidence are discussed in the PA (as summarized in section III.D.1 below). The subsections below briefly summarize the following aspects of the evidence: The nature of O₃-related welfare effects (section III.B.1), the potential public welfare implications (section III.B.2), and exposure concentrations associated with effects (section III.B.3).

1. Nature of Effects

The welfare effects evidence base available in the current review includes more than fifty years of extensive research on the phytotoxic effects of O₃, conducted both in and outside of the U.S., that documents the impacts of O₃ on plants and their associated ecosystems (1978 AQCD, 1986 AQCD, 1996 AQCD, 2006 AQCD, 2013 ISA, 2020 ISA). As was established in prior reviews, O₃ can interfere with carbon gain (photosynthesis) and allocation of carbon within the plant, making fewer carbohydrates available for plant growth, reproduction, and/or yield (1996 AQCD, pp. 5–28 and 5–29). For seed-bearing plants, reproductive effects can include reduced seed or fruit production or yield. The strongest evidence for effects from O₃ exposure on vegetation was recognized at the time of the last review to be from controlled exposure studies, which “have clearly shown that exposure to O₃ is causally linked to visible foliar injury, decreased

photosynthesis, changes in reproduction, and decreased growth” in many species of vegetation (2013 ISA, p. 1–15). Such effects at the plant scale can also be linked to an array of effects at larger spatial scales (and higher levels of biological organization), with the evidence available in the last review indicating that “O₃ exposures can affect ecosystem productivity, crop yield, water cycling, and ecosystem community composition” (2013 ISA, p. 1–15, Chapter 9, section 9.4). Beyond its effects on plants, the evidence in the last review also recognized O₃ in the troposphere as a major greenhouse gas (ranking behind carbon dioxide and methane in importance), with associated radiative forcing and effects on climate, and recognized the accompanying “large uncertainties in the magnitude of the radiative forcing estimate . . . making the impact of tropospheric O₃ on climate more uncertain than the effect of the longer-lived greenhouse gases” (2013 ISA, sections 10.3.4 and 10.5.1 [p. 10–30]).

The evidence newly available in this review supports, sharpens and expands somewhat on the conclusions reached in the last review (ISA, Appendices 8 and 9). Consistent with the evidence in the last review, the currently available evidence describes an array of O₃ effects on vegetation and related ecosystem effects, as well as the role of O₃ in radiative forcing and subsequent climate-related effects. Evidence newly available in this review augments more limited previously available evidence related to insect interactions with vegetation, contributing to conclusions regarding O₃ effects on plant-insect signaling (ISA, Appendix 8, section 8.7) and on insect herbivores (ISA, Appendix 8, section 8.6), as well as for ozone effects on tree mortality (Appendix 8, section 8.4). Thus, conclusions reached in the last review are supported by the current evidence base and conclusions are also reached in a few new areas based on the now expanded evidence.

The current evidence base, including a wealth of longstanding evidence, supports the conclusion of causal relationships between O₃ and visible foliar injury, reduced vegetation growth and reduced plant reproduction,¹²¹ as well as reduced yield and quality of agricultural crops, reduced productivity in terrestrial ecosystems, alteration of

terrestrial community composition,¹²² and alteration of belowground biogeochemical cycles (ISA, section IS.5). Based on the current evidence base, the ISA also concluded there likely to be a causal relationship between O₃ and alteration of ecosystem water cycling, reduced carbon sequestration in terrestrial ecosystems, and with increased tree mortality (ISA, section IS.5). Additional evidence newly available in this review is concluded by the ISA to support conclusions on two additional plant-related effects: The body of evidence is concluded to be sufficient to infer that there is likely to be a causal relationship between O₃ exposure and alteration of plant-insect signaling, and to infer that there is likely to be a causal relationship between O₃ exposure and altered insect herbivore growth and reproduction (ISA, Table IS–12).

As in the last review, the strongest evidence and the associated findings of causal or likely causal relationships with O₃ in ambient air, and the quantitative characterizations of relationships between O₃ exposure and occurrence and magnitude of effects are for vegetation effects. The scales of these effects range from the individual plant scale to the ecosystem scale, with potential for impacts on the public welfare (as discussed in section III.B.2 below). The following summary addresses the identified vegetation-related effects of O₃ across these scales.

The current evidence, consistent with the decades of previously available evidence, documents and characterizes visible foliar injury in many tree, shrub, herbaceous, and crop species as an effect of exposure to O₃ (ISA, Appendix 8, section 8.2; 2013 ISA, section 9.4.2; 2006 AQCD, 1996 AQCD, 1986 AQCD, 1978 AQCD). As was also stated in the last scientific assessment, “[r]ecent experimental evidence continues to show a consistent association between visible injury and ozone exposure” (ISA, Appendix 8, section 8.2, p. 8–13; 2013 ISA, section 9.4.2, p. 9–41). Ozone-induced visible foliar injury symptoms on certain tree and herbaceous species, such as black cherry, yellow-poplar and common milkweed, have long been considered diagnostic of exposure to elevated O₃ based on the consistent association established with experimental evidence (ISA, Appendix 8, section 8.2; 2013 ISA, p. 1–10).¹²³

¹²² The 2013 ISA concluded alteration of terrestrial community composition to be likely causally related to O₃ based on the then available information (ISA, Table IS–12).

¹²³ As described in the ISA, “[t]ypical types of visible injury to broadleaf plants include stippling, flecking, surface bleaching, bifacial necrosis,

¹²¹ The 2013 ISA did not include a separate causality determination for reduced plant reproduction. Rather, it was included with the conclusion of a causal relationship with reduced vegetation growth (ISA, Table IS–12).

The currently available evidence, consistent with that in past reviews, indicates that “visible foliar injury usually occurs when sensitive plants are exposed to elevated ozone concentrations in a predisposing environment,” with a major factor for such an environment being the amount of soil moisture available to the plant (ISA, Appendix 8, p. 8–23; 2013 ISA, section 9.4.2). Further, the significance of O₃ injury at the leaf and whole plant levels also depends on an array of factors that include the amount of total leaf area affected, age of plant, size, developmental stage, and degree of functional redundancy among the existing leaf area (ISA, Appendix 8, section 8.2; 2013 ISA, section 9.4.2). In this review, as in the past, such modifying factors contribute to the difficulty in quantitatively relating visible foliar injury to other vegetation effects (e.g., individual tree growth, or effects at population or ecosystem levels), such that visible foliar injury “is not always a reliable indicator of other negative effects on vegetation” (ISA, Appendix 8, section 8.2, p. 8–24; 2013 ISA, p. 9–39).¹²⁴

Consistent with conclusions in past reviews, the evidence, extending back several decades, continues to document the detrimental effects of O₃ on plant growth and reproduction (ISA, Appendix 8, sections 8.3 and 8.4; 2013 ISA, p. 9–42). The available studies come from a variety of different study types that cover an array of different species, effects endpoints, and exposure methods and durations. In addition to studies on scores of plant species that have found O₃ to reduce plant growth, the evidence accumulated over the past several decades documents O₃ alteration of allocation of biomass within the plant

pigmentation (e.g., bronzing), and chlorosis or premature senescence” and “[t]ypical visible injury symptoms for conifers include chlorotic banding, tip burn, flecking, chlorotic mottling, and premature senescence of needles” (ISA, Appendix 8, p. 8–13).

¹²⁴ Similar to the 2013 ISA, the ISA for the current review states the following (ISA, pp. 8–24).

Although visible injury is a valuable indicator of the presence of phytotoxic concentrations of ozone in ambient air, it is not always a reliable indicator of other negative effects on vegetation [e.g., growth, reproduction; U.S. EPA (2013)]. The significance of ozone injury at the leaf and whole-plant levels depends on how much of the total leaf area of the plant has been affected, as well as the plant’s age, size, developmental stage, and degree of functional redundancy among the existing leaf area (U.S. EPA, 2013). Previous ozone AQCDs have noted the difficulty in relating visible foliar injury symptoms to other vegetation effects, such as individual plant growth, stand growth, or ecosystem characteristics (U.S. EPA, 2006, 1996). Thus, it is not presently possible to determine, with consistency across species and environments, what degree of injury at the leaf level has significance to the vigor of the whole plant.

and plant reproduction (ISA, Appendix 8, sections 8.3 and 8.4; 2013 ISA, p. 1–10). The biological mechanisms underlying the effect of O₃ on plant reproduction include “both direct negative effects on reproductive tissues and indirect negative effects that result from decreased photosynthesis and other whole plant physiological changes” (ISA, p. IS–71). A newly available meta-analysis of more than 100 studies published between 1968 and 2010 summarizes effects of O₃ on multiple measures of reproduction (ISA, Appendix 8, section 8.4.1).

Studies involving experimental field sites have also reported effects on measures of plant reproduction, such as effects on seeds (reduced weight, germination, and starch levels) that could lead to a negative impact on species regeneration in subsequent years, and bud size that might relate to a delay in spring leaf development (ISA, Appendix 8, section 8.4; 2013 ISA, section 9.4.3; Darbah et al., 2007, Darbah et al., 2008). A more recent laboratory study reported 6-hour daily O₃ exposures of flowering mustard plants to 100 ppb during different developmental stages to have mixed effects on reproductive metrics. While flowers exposed early *versus* later in development produced shorter fruits, the number of mature seeds per fruit was not significantly affected by flower developmental stage of exposure (ISA, Appendix 8, section 8.4.1; Black et al., 2012). Another study assessed seed viability for a flowering plant in laboratory and field conditions, finding effects on seed viability of O₃ exposures (90 and 120 ppb) under laboratory conditions but less clear effects under more field-like conditions (ISA, Appendix 8, section 8.4.1; Landesmann et al., 2013).

With regard to agricultural crops, the current evidence base, as in the last review, is sufficient to infer a causal relationship between O₃ exposure and reduced yield and quality (ISA, section IS.5.1.2). The current evidence is augmented by new research in a number of areas, including studies on soybean, wheat and other nonsoy legumes. The new information assessed in the ISA remains consistent with the conclusions reached in the 2013 ISA (ISA, section IS.5.1.2).

The evidence base for trees includes a number of studies conducted at the Aspen free-air carbon-dioxide and ozone enrichment (FACE) experiment site in Wisconsin (that operated from 1998 through 2011) and also available in the last review (ISA, IS.5.1 and Appendix 8, section 8.1.2.1; 2013 ISA, section 9.2.4). These studies, which

occurred in a field setting (more similar to natural forest stands than open-top-chamber studies), reported reduced tree growth when grown in single or three species stands within 30-m diameter rings and exposed over one or more years to elevated O₃ concentrations (hourly concentrations 1.5 times concentrations in ambient air at the site) compared to unadjusted ambient air concentrations (2013 ISA, section 9.4.3; Kubiske et al., 2006, Kubiske et al., 2007).¹²⁵

With regard to tree mortality, the 2013 ISA did not include a determination of causality (ISA, Appendix 8, section 8.4). While the then-available evidence included studies identifying ozone as a contributor to tree mortality, which contributed to the 2013 conclusion regarding O₃ and alteration of community composition (2013 ISA, section 9.4.7.4), a separate causality determination regarding O₃ and tree mortality was not assessed (ISA, Appendix 8, section 8.4; 2013 ISA, Table 9–19). The evidence assessed in the 2013 ISA (and 2006 AQCD) was largely observational, including studies that reported declines in conifer forests for which elevated O₃ was identified as contributor but in which a variety of environmental factors may have also played a role (2013 ISA, section 9.4.7.1; 2006 AQCD, sections AX9.6.2.1, AX9.6.2.2, AX9.6.2.6, AX9.6.4.1 and AX9.6.4.2). Since the last review, three additional studies are available (ISA, Appendix 8, Table 8–9). Two of these are analyses of field observations, one of which is set in the Spanish Pyrenees.¹²⁶ A second study is a large-scale empirical statistical analysis of factors potentially contributing to tree mortality in eastern and central U.S. forests during the 1971–2005 period, which reported O₃ (county-level 11-year [1996–2006] average 8 hour metric)¹²⁷ to be ninth among the 13 potential factors assessed¹²⁸ and to have a

¹²⁵ Seasonal (90-day) W126 index values for unadjusted O₃ concentrations over six years of the Aspen FACE experiments ranged from 2 to 3 ppm-hrs, while the elevated exposure concentrations (reflecting addition of O₃ to ambient air concentrations) ranged from somewhat above 20 to somewhat above 35 ppm-hrs (ISA, Appendix 8, Figure 8–17).

¹²⁶ The concentration gradient with altitude in the Spanish study, includes—at the highest site—annual average April-to-September O₃ concentrations for the 2004 to 2007 period that range up to 74 ppb (Diaz-de-Quijano et al., 2016).

¹²⁷ Annual fourth highest daily maximum 8-hour O₃ concentrations in these regions were above 80 ppb in the early 2000s and median design values at national trend sites were nearly 85 ppb (PA, Figures 2–11 and 2–12).

¹²⁸ This statistical analysis, which utilized datasets from within the 1971–2005 period,

significant positive correlation with tree mortality (ISA, section IS.5.1.2, Appendix 8, section 8.4.3; Dietze and Moorcroft, 2011). A newly available experimental study also reported increased mortality in two of five aspen genotypes grown in mixed stands under elevated O₃ concentrations (ISA, section IS.5.1.2; Moran and Kubiske, 2013). Coupled with the plant-level evidence of phytotoxicity discussed above, as well as consideration of community composition effects, this evidence was concluded to indicate the potential for elevated O₃ concentrations to contribute to tree mortality (ISA, section IS.5.1.2 and Appendix 8, sections 8.4.3 and 8.4.4). Based on the current evidence, the ISA concludes there is likely to be a causal relationship between O₃ and increased tree mortality (ISA, Table IS-2, Appendix 8, section 8.4.4). A variety of factors in natural environments can either mitigate or exacerbate predicted O₃-plant interactions and are recognized sources of uncertainty and variability. Such factors at the plant level include multiple genetically influenced determinants of O₃ sensitivity, changing sensitivity to O₃ across vegetative growth stages, co-occurring stressors and/or modifying environmental factors (ISA, Appendix 8, section 8.12).

Ozone-induced effects at the scale of the whole plant have the potential to translate to effects at the ecosystem scale, such as reduced terrestrial productivity and carbon storage, and altered terrestrial community composition, as well as impacts on ecosystem functions, such as belowground biogeochemical cycles and ecosystem water cycling. For example, under the relevant exposure conditions, O₃-related reduced tree growth and reproduction, as well as increased mortality, could lead to reduced ecosystem productivity. Recent studies from the Aspen FACE experiment and modeling simulations indicate that O₃-related negative effects on ecosystem productivity may be temporary or may be limited in some systems (ISA, Appendix 8, section 8.8.1). Previously available studies had reported impacts on productivity in some forest types and locations, such as ponderosa pine in southern California and other forest

included an examination of the sensitivity of predicted mortality rate to 13 different covariates. On average across the predictions for 10 groups of trees (based on functional type and major representative species), the order of mortality rate sensitivity to the covariates, from highest to lowest, was: Sulfate deposition, tree diameter, nitrate deposition, summer temperature, tree age, elevation, winter temperature, precipitation, O₃ concentration, tree basal area, topographic moisture index, slope and topographic radiation index (Dietze and Moorcroft, 2011).

types in the mid-Atlantic region (2013 ISA, section 9.4.3.4). Through reductions in sensitive species growth, and related ecosystem productivity, O₃ could lead to reduced ecosystem carbon storage (ISA, IS.5.1.4; 2013 ISA, section 9.4.3). With regard to forest community composition, available studies have reported changes in tree communities composed of species with relatively greater and relatively lesser sensitivity to O₃ (ISA, section IS.5.1.8.1, Appendix 8, section 8.10; 2013 ISA, section 9.4.3; Kubiske et al., 2007). As the ISA concludes, “[t]he extent to which ozone affects terrestrial productivity will depend on more than just community composition, but other factors, which both directly influence [net primary productivity] (*i.e.*, availability of N and water) and modify the effect of ozone on plant growth” (ISA, Appendix 8, section 8.8.1). Thus, the magnitude of O₃ impact on ecosystem productivity, as on forest composition, can vary among plant communities based on several factors, including the type of stand or community in which the sensitive species occurs (*e.g.*, single species *versus* mixed canopy), the role or position of the species in the stand (*e.g.*, dominant, sub-dominant, canopy, understory), and the sensitivity of co-occurring species and environmental factors (*e.g.*, drought and other factors).

The effects of O₃ on plants and plant populations have implications for ecosystem functions. Two such functions, effects with which O₃ is concluded to be likely causally or causally related, are ecosystem water cycling and belowground biogeochemical cycles, respectively (ISA, Appendix 8, sections 8.11 and 8.9). With regard to the former, the effects of O₃ on plants (*e.g.*, *via* stomatal control, as well as leaf and root growth and changes in wood anatomy associated with water transport) can affect ecosystem water cycling through impacts on root uptake of soil moisture and groundwater as well as transpiration through leaf stomata to the atmosphere (ISA, Appendix 8, section 8.11.1). These “impacts may in turn affect the amount of water moving through the soil, running over land or through groundwater and flowing through streams” (ISA, Appendix 8, p. 8–161). Evidence newly available in this review is supportive of previously available evidence in this regard (ISA, Appendix 8, section 8.11.6). The current evidence, including that newly available, indicates the extent to which the effects of O₃ on plant leaves and roots (*e.g.*, through effects on chemical composition and biomass) can impact

belowground biogeochemical cycles involving root growth, soil food web structure, soil decomposer activities, soil microbial respiration, soil carbon turnover, soil water cycling and soil nutrient cycling (ISA, Appendix 8, section 8.9).

Additional vegetation-related effects with implications beyond individual plants include the effects of O₃ on insect herbivore growth and reproduction and plant-insect signaling (ISA, Table IS–12, Appendix 8, sections 8.6 and 8.7). With regard to insect herbivore growth and reproduction, the evidence includes multiple effects in an array of insect species, although without a consistent pattern of response for most endpoints (ISA, Appendix 8, Table 8–11). As was also the case with the studies available at the time of the last review,¹²⁹ in the newly available studies individual-level responses are highly context- and species-specific and not all species tested showed a response (ISA, section IS.5.1.3 and Appendix 8, section 8.6). Evidence on plant-insect signaling that is newly available in this review comes from laboratory, greenhouse, open top chambers (OTC) and FACE experiments (ISA, section IS.5.1.3 and Appendix 8, section 8.7). The available evidence indicates a role for elevated O₃ in altering and degrading emissions of chemical signals from plants and reducing detection of volatile plant signaling compounds (VPSCs) by insects, including pollinators. Elevated O₃ concentrations degrade some VPSCs released by plants, potentially affecting ecological processes including pollination and plant defenses against herbivory. Further, the available studies report elevated O₃ conditions to be associated with plant VPSC emissions that may make a plant either more attractive or more repellant to herbivorous insects, and to predators and parasitoids that target phytophagous (plant-eating) insects (ISA, section IS.5.1.3 and Appendix 8, section 8.7).

Ozone welfare effects also extend beyond effects on vegetation and associated biota due to it being a major greenhouse gas and radiative forcing agent.¹³⁰ As in the last review, the

¹²⁹ During the last review, the 2013 ISA stated with regard to O₃ effects on insects and other wildlife that “there is no consensus on how these organisms respond to elevated O₃” (2013 ISA, section 9.4.9.4, p. 9–98).

¹³⁰ Radiative forcing is a metric used to quantify the change in balance between radiation coming into and going out of the atmosphere caused by the presence of a particular substance. The ISA describes it more specifically as “a perturbation in net radiative flux at the tropopause (or top of the atmosphere) caused by a change in radiatively active forcing agent(s) after stratospheric

current evidence, augmented since the 2013 ISA, continues to support a causal relationship between the global abundance of O₃ in the troposphere and radiative forcing, and a likely causal relationship between the global abundance of O₃ in the troposphere and effects on temperature, precipitation, and related climate variables¹³¹ (ISA, section IS.5.2 and Appendix 9; Myhre et al., 2013). As was also true at the time of the last review, tropospheric O₃ has been ranked third in importance for global radiative forcing, after carbon dioxide and methane, with the radiative forcing of O₃ since pre-industrial times estimated to be about 25 to 40% of the total warming effects of anthropogenic carbon dioxide and about 75% of the effects of anthropogenic methane (ISA, Appendix 9, section 9.1.3.3). Uncertainty in the magnitude of radiative forcing estimated to be attributed to tropospheric O₃ is a contributor to the relatively greater uncertainty associated with climate effects of tropospheric O₃ compared to such effects of the well mixed greenhouse gases, such as carbon dioxide and methane (ISA, section IS.6.2.2).

Lastly, the evidence regarding tropospheric O₃ and UV-B shielding (shielding of ultraviolet radiation at wavelengths of 280 to 320 nanometers) was evaluated in the 2013 ISA and determined to be inadequate to draw a causal conclusion (2013 ISA, section 10.5.2). The current ISA concludes there to be no new evidence since the 2013 ISA relevant to the question of UV-B shielding by tropospheric O₃ (ISA, IS.1.2.1 and Appendix 9, section 9.1.3.4).

2. Public Welfare Implications

The secondary standard is to “specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator . . . is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air” (CAA, section 109(b)(2)). As recognized in prior reviews, the secondary standard is not meant to protect against all known or anticipated O₃-related welfare effects, but rather those that are judged to be adverse to the public welfare, and a bright-line determination of adversity is

temperatures have readjusted to radiative equilibrium (stratospherically adjusted RF)” (ISA, Appendix 9, section 9.1.3.3).

¹³¹ Effects on temperature, precipitation, and related climate variables were referred to as “climate change” or “effects on climate” in the 2013 ISA (ISA, p. IS-82; 2013 ISA, pp. 1–14 and 10–31).

not required in judging what is requisite (78 FR 3212, January 15, 2013; 80 FR 65376, October 26, 2015; see also 73 FR 16496, March 27, 2008). Thus, the level of protection from known or anticipated adverse effects to public welfare that is requisite for the secondary standard is a public welfare policy judgment to be made by the Administrator. In each review, the Administrator’s judgment regarding the currently available information and adequacy of protection provided by the current standard is generally informed by considerations in prior reviews and associated conclusions.

The categories of effects identified in the CAA to be included among welfare effects are quite diverse,¹³² and among these categories, any single category includes many different types of effects that are of broadly varying specificity and level of resolution. For example, effects on vegetation, is a category identified in CAA section 302(h), and the ISA recognizes numerous vegetation-related effects of O₃ at the organism, population, community and ecosystem level, as summarized in section III.B.1 above (ISA, Appendix 8). The significance of each type of vegetation-related effect with regard to potential effects on the public welfare depends on the type and severity of effects, as well as the extent of such effects on the affected environmental entity, and on the societal use of the affected entity and the entity’s significance to the public welfare. Such factors are generally considered in light of judgments and conclusions made in prior reviews regarding effects on the public welfare. For example, a key consideration with regard to public welfare implications in prior reviews of the O₃ secondary standard was the intended use of the affected or sensitive vegetation and the significance of the vegetation to the public welfare (73 FR 16496, March 27, 2008; 80 FR 65292, October 26, 2015).

More specifically, judgments regarding public welfare significance in the last two O₃ NAAQS decisions gave particular attention to O₃ effects in areas with special federal protections, and lands set aside by states, tribes and public interest groups to provide similar benefits to the public welfare (73 FR 16496, March 27, 2008; 80 FR 65292,

¹³² Section 302(h) of the CAA states that language referring to “effects on welfare” in the CAA “includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.”

October 26, 2015). For example, in the decision to revise the secondary standard in the 2008 review, the Administrator took note of “a number of actions taken by Congress to establish public lands that are set aside for specific uses that are intended to provide benefits to the public welfare, including lands that are to be protected so as to conserve the scenic value and the natural vegetation and wildlife within such areas, and to leave them unimpaired for the enjoyment of future generations” (73 FR 16496, March 27, 2008).¹³³ Such areas include Class I areas¹³⁴ which are federally mandated to preserve certain air quality related values. Additionally, as the Administrator recognized, “States, Tribes and public interest groups also set aside areas that are intended to provide similar benefits to the public welfare, for residents on State and Tribal lands, as well as for visitors to those areas” (73 FR 16496, March 27, 2008). The Administrator took note of the “clear public interest in and value of maintaining these areas in a condition that does not impair their intended use and the fact that many of these lands contain O₃-sensitive species” (73 FR 16496, March 27, 2008). Similarly, in the 2015 review, the Administrator indicated particular concern for O₃-related effects on plant function and productivity and associated ecosystem effects in natural ecosystems “such as those in areas with protection designated by Congress for current and future generations, as well

¹³³ For example, the fundamental purpose of parks in the National Park System “is to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations” (54 U.S.C. 100101). Additionally, the Wilderness Act of 1964 defines designated “wilderness areas” in part as areas “protected and managed so as to preserve [their] natural conditions” and requires that these areas “shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, [and] the preservation of their wilderness character . . .” (16 U.S.C. 1131 (a) and (c)). Other lands that benefit the public welfare include national forests which are managed for multiple uses including sustained yield management in accordance with land management plans (see 16 U.S.C. 1600(1)–(3); 16 U.S.C. 1601(d)(1)).

¹³⁴ Areas designated as Class I include all international parks, national wilderness areas which exceed 5,000 acres in size, national memorial parks which exceed 5,000 acres in size, and national parks which exceed 6,000 acres in size, provided the park or wilderness area was in existence on August 7, 1977. Other areas may also be Class I if designated as Class I consistent with the CAA (as described in the PA, Appendix 4D, section 4D.2.4).

as areas similarly set aside by states, tribes and public interest groups with the intention of providing similar benefits to the public welfare” (80 FR 65403, October 26, 2015).

The 2008 and 2015 decisions recognized that the degree to which effects on vegetation in specially protected areas, such as those identified above, may be judged adverse involves considerations from the species level to the ecosystem level, such that judgments can depend on the intended use for, or service (and value) of, the affected vegetation, ecological receptors, ecosystems and resources and the significance of that use to the public welfare (73 FR 16496, March 27, 2008; 80 FR 65377, October 26, 2015). Uses or services provided by areas that have been afforded special protection can flow in part or entirely from the vegetation that grows there. For example, ecosystem services are the “benefits that people derive from functioning ecosystems” (Costanza et al., 2017; ISA, section IS.5.1).¹³⁵ Ecosystem services range from those directly related to the natural functioning of the ecosystem to ecosystem uses for human recreation or profit, such as through the production of lumber or fuel (Costanza et al., 2017). Aesthetic value and outdoor recreation depend, at least in part, on the perceived scenic beauty of the environment. Further, there have been analyses that report the American public values—in monetary as well as nonmonetary ways—the protection of forests from air pollution damage (Haefele et al., 1991). In fact, public surveys have indicated that Americans rank as very important the existence of resources, the option or availability of the resource and the ability to bequest or pass it on to future generations (Cordell et al., 2008). The spatial, temporal and social dimensions of public welfare impacts are also influenced by the type of service affected. For example, a national park can provide direct recreational services to the thousands of visitors that come each year, but also provide an indirect value to the millions who may not visit but receive satisfaction from knowing that it exists and is preserved for the future (80 FR 65377, October 26, 2015).

The different types of effects on vegetation discussed in section III.B.1

¹³⁵ Ecosystem services analyses were one of the tools used in the last review of the secondary standards for oxides of nitrogen and sulfur to inform the decisions made with regard to adequacy of protection provided by the standards and as such, were used in conjunction with other considerations in the discussion of adversity to public welfare (77 FR 20241, April 3, 2012).

above differ with regard to aspects important to judging their public welfare significance. In the case of crop yield loss, such judgments depend on considerations related to the heavy management of agriculture in the U.S. Judgments for other categories of effects may generally relate to considerations regarding forested areas, including specifically those forested areas that are not managed for harvest. For example, effects on tree growth and reproduction, and also visible foliar injury, have the potential to be significant to the public welfare through impacts in Class I and other areas given special protection in their natural/existing state, although they differ in how they might be significant. Additionally, as described in section III.B.1 above, O₃ effects on tree growth and reproduction could, depending on severity, extent and other factors, lead to effects on a larger scale including reduced productivity, altered forest and forest community (plant, insect and microbe) composition, reduced carbon storage and altered ecosystem water cycling (ISA, section IS.5.1.8.1; 2013 ISA, Figure 9–1, sections 9.4.1.1 and 9.4.1.2). For example, forest or forest community composition can be affected through O₃ effects on growth and reproductive success of sensitive species in the community, with the extent of compositional changes dependent on factors such as competitive interactions (ISA, section IS.5.1.8.1; 2013 ISA, sections 9.4.3 and 9.4.3.1). Impacts on some of these characteristics (e.g., forest or forest community composition) may be considered of greater public welfare significance when occurring in Class I or other protected areas, due to value for particular services that the public places on such areas.

Depending on the type and location of the affected ecosystem, however, a broader array of services benefitting the public can be affected in a broader array of areas as well. For example, other services valued by people that can be affected by reduced tree growth, productivity and associated forest effects include aesthetic value, food, fiber, timber, other forest products, habitat, recreational opportunities, climate and water regulation, erosion control, air pollution removal, and desired fire regimes (PA, Figure 4–2; ISA, section IS.5.1; 2013 ISA, sections 9.4.1.1 and 9.4.1.2). In considering such services in past reviews, the Agency has given particular attention to effects in natural ecosystems, indicating that a protective standard, based on consideration of effects in natural ecosystems in areas afforded special

protection, would also “provide a level of protection for other vegetation that is used by the public and potentially affected by O₃ including timber, produce grown for consumption and horticultural plants used for landscaping” (80 FR 65403, October 26, 2015). For example, locations potentially vulnerable to O₃-related impacts might include forested lands, both public and private, where trees are grown for timber production. Forests in urbanized areas also provide a number of services that are important to the public in those areas, such as air pollution removal, cooling, and beautification. There are also many other tree species, such as various ornamental and agricultural species (e.g., Christmas trees, fruit and nut trees), that provide ecosystem services that may be judged important to the public welfare.

Depending on its severity and spatial extent, visible foliar injury, which affects the physical appearance of the plant, also has the potential to be significant to the public welfare through impacts in Class I and other similarly protected areas. In cases of widespread and severe injury during the growing season (particularly when sustained across multiple years, and accompanied by obvious impacts on the plant canopy), O₃-induced visible foliar injury might be expected to have the potential to impact the public welfare in scenic and/or recreational areas, particularly in areas with special protection, such as Class I areas.¹³⁶ The ecosystem services most likely to be affected by O₃-induced visible foliar injury (some of which are also recognized above for tree growth-related effects) are cultural services, including aesthetic value and outdoor recreation.

The geographic extent of protected areas that may be vulnerable to public welfare effects of O₃, such as impacts to outdoor recreation, is potentially appreciable. For example, biomonitoring surveys that were routinely administered by the U.S.

¹³⁶ For example, although analyses specific to visible foliar injury are of limited availability, there have been analyses developing estimates of recreation value damages of severe impacts related to other types of forest effects, such as tree mortality due to bark beetle outbreaks (e.g., Rosenberger et al., 2013). Such analyses estimate reductions in recreational use when the damage is severe (e.g., reductions in the density of live, robust trees). Such damage would reasonably be expected to also reflect damage indicative of injury with which a relationship with other plant effects (e.g., growth and reproduction) would be also expected. Similarly, a couple of studies from the 1970s and 1980s indicated likelihood for reduced recreational use in areas with stands of pine in which moderate to severe injury was apparent from 30 or 40 feet (PA, section 4.3.2).

Forest Service (USFS) as far back as 1994 in the eastern U.S. and 1998 in the western U.S. include many field sites at which there are plants sensitive to O₃-related visible foliar injury; there are 450 field sites across 24 states in the North East and North Central regions (Smith, 2012).¹³⁷ Since visible foliar injury is a visible indication of O₃ exposure in species sensitive to this effect, a number of such species have been established as bioindicator species, and such surveys have been used by federal land managers as tools in assessing potential air quality impacts in Class I areas (U.S. Forest Service, 2010). Additionally, the USFS has developed categories for the scoring system that it uses for purposes of describing and comparing injury severity at biomonitoring sites. The sites are termed biosites and the scoring system involves deriving biosite index (BI) scores that may be described with regard to one of several categories ranging from little or no foliar injury to severe injury (e.g., Smith et al., 2003; Campbell et al., 2007; Smith et al., 2007; Smith, 2012).¹³⁸ As noted in section III.B.1 above, there is not an established quantitative relationship between visible foliar injury and other effects, such as reduced growth and productivity as visible foliar injury “is not always a reliable indicator of other negative effects” (ISA, Appendix 8, section 8.2).

Public welfare implications associated with visible foliar injury might further be considered to relate largely to effects on scenic and aesthetic values. The available information does not yet address or describe the relationships expected to exist between some level of injury severity (e.g., little, low/light, moderate or severe) and/or spatial extent affected and scenic or aesthetic values. This gap impedes consideration of the public welfare implications of different injury severities, and accordingly judgments on the potential for public welfare significance. That notwithstanding, while minor spotting on a few leaves of a plant may easily be concluded to be of little public welfare significance, some level of severity and widespread occurrence of visible foliar injury, particularly if occurring in specially protected areas, such as Class

I areas, where the public can be expected to place value (e.g., for recreational uses), might reasonably be concluded to impact the public welfare. Accordingly, key considerations for public welfare significance of this endpoint would relate to qualitative consideration of the potential for such effects to affect the aesthetic value of plants in protected areas, such as Class I areas (73 FR 16490, March 27, 2008).

While, as noted above, public welfare benefits of forested lands can be particular to the type of area in which the forest occurs, some of the potential public welfare benefits associated with forest ecosystems are not location dependent. A potentially extremely valuable ecosystem service provided by forested lands is carbon sequestration or storage (ISA, section IS.5.1.4 and Appendix 8, section 8.8.3; 2013 ISA, section 2.6.2.1 and p. 9–37).¹³⁹ As noted above, the EPA has concluded that effects on this ecosystem service are likely causally related to O₃ in ambient air (ISA, Table IS–12). The importance of carbon sequestration to the public welfare relates to its role in counteracting the impact of greenhouse gases on radiative forcing and related climate effects. As summarized in section III.B.1 above, O₃ is also a greenhouse gas and O₃ abundance in the troposphere is causally related to radiative forcing and likely causally related to subsequent effects on temperature, precipitation and related climate variables (ISA, section IS.6.2.2). Accordingly, such effects also have important public welfare implications, although their quantitative evaluation in response to O₃ concentrations in the U.S. is complicated by “[c]urrent limitations in climate modeling tools, variation across models, and the need for more comprehensive observational data on these effects” (ISA, section IS.6.2.2). The service of carbon storage is of paramount importance to the public welfare no matter in what location the trees are growing or what their intended current or future use (e.g., 2013 ISA, section 9.4.1.2). In other words, the benefit exists as long as the trees are growing, regardless of what additional functions and services it provides.

With regard to agriculture-related effects, the EPA has recognized other complexities related to areas and plant species that are heavily managed to obtain a particular output (such as commodity crops or commercial timber

production). For example, the EPA has recognized that the degree to which O₃ impacts on vegetation that could occur in such areas and on such species would impair the intended use at a level that might be judged adverse to the public welfare has been less clear (80 FR 65379, October 26, 2015; 73 FR 16497, March 27, 2008). While having sufficient crop yields is of high public welfare value, important commodity crops are typically heavily managed to produce optimum yields. Moreover, based on the economic theory of supply and demand, increases in crop yields would be expected to result in lower prices for affected crops and their associated goods, which would primarily benefit consumers. These competing impacts on producers and consumers complicate consideration of these effects in terms of potential adversity to the public welfare (2014 WREA, sections 5.3.2 and 5.7). When agricultural impacts or vegetation effects in other areas are contrasted with the emphasis on ecosystem effects in Class I and similarly protected areas, the EPA most recently has judged the significance to the public welfare of O₃-induced effects on sensitive vegetation growing within the U.S. to differ depending on the nature of the effect, the intended use of the sensitive plants or ecosystems, and the types of environments in which the sensitive vegetation and ecosystems are located, with greater significance ascribed to areas identified for specific uses and benefits to the public welfare, such as Class I areas, than to areas for which such uses have not been established (80 FR 65292, October 26, 2015; FR 73 16496–16497, March 27, 2008).

Categories of effects newly identified as likely causally related to O₃ in ambient air, such as alteration of plant-insect signaling and insect herbivore growth and reproduction, also have potential public welfare implications. For example, given the role of plant-insect signaling in such important ecological processes as insect herbivore growth and reproduction. The potential to contribute to adverse effects to the public welfare, e.g., given the role of the plant-insect signaling process in pollination and seed dispersal, as well as natural plant defenses against predation and parasitism, particular effects on particular signaling processes can be seen to have the potential for adverse effects on the public welfare (ISA, section IS.5.1.3). However, uncertainties and limitations in the current evidence (e.g., summarized in sections III.B.3 and III.D.1 below) preclude an assessment of the extent

¹³⁷ This aspect of the USFS biomonitoring surveys has apparently been suspended, with the most recent surveys conducted in 2011 (USFS, 2013, USFS, 2017).

¹³⁸ Studies presenting USFS biomonitoring program data have suggested what might be “assumptions of risk” related to scores in these categories, e.g., none, low, moderate and high for BI scores of zero to five, five to 15, 15 to 25 and above 25, respectively (e.g., Smith et al., 2003; Smith et al., 2012).

¹³⁹ While carbon sequestration or storage also occurs for vegetated ecosystems other than forests, it is relatively larger in forests given the relatively greater biomass for trees compared to other plants.

and magnitude of O₃ effects on these endpoints, which thus also precludes an evaluation of the potential for associated public welfare implications, particularly under exposure conditions expected to occur in areas meeting the current standard.

In summary, several considerations are recognized as important to judgments on the public welfare significance of the array of welfare effects of different O₃ exposure conditions. There are uncertainties and limitations associated with the consideration of the magnitude of key welfare effects that might be concluded to be adverse to ecosystems and associated services. There are numerous locations where the presence of O₃-sensitive tree species may contribute to a vulnerability to impacts from O₃ on tree growth, productivity and carbon storage and their associated ecosystems and services. Exposures that may elicit effects and the significance of the effects in specific situations can vary due to differences in exposed species sensitivity, the severity and associated significance of the observed or predicted O₃-induced effect, the role that the species plays in the ecosystem, the intended use of the affected species and its associated ecosystem and services, the presence of other co-occurring predisposing or mitigating factors, and associated uncertainties and limitations.

3. Exposures Associated With Effects

The welfare effects identified in section III.B.1 above vary widely with regard to the extent and level of detail of the available information that describes the O₃ exposure circumstances that may elicit them. As recognized in the 2013 ISA and in the ISA for this review, such information is most advanced for growth-related effects such as growth and yield. For example, the information on exposure metric and E-R relationships for these effects is long-standing, having been first described in the 1997 review. The current information regarding exposure metrics and relationships between exposure and the occurrence and severity of visible foliar injury, summarized in section III.B.3.b below, is much less advanced or well established. The evidence base for other categories of effects is still more lacking in information that might support characterization of potential impacts related to these effects of changes in O₃ concentrations.

a. Growth-Related Effects

(i) Exposure Metric

The long-standing body of vegetation effects evidence includes a wealth of information on aspects of O₃ exposure that are important in influencing effects on plant growth and yield that has been described in the scientific assessments across the last several decades (1996 AQCD; 2006 AQCD; 2013 ISA; 2020 ISA). A variety of factors have been investigated, including “concentration, time of day, respite time, frequency of peak occurrence, plant phenology, predisposition, etc.” (2013 ISA, section 9.5.2), and the importance of the duration of the exposure as well as the relatively greater importance of higher concentrations over lower concentrations have been consistently well documented (2013 ISA, section 9.5.3). Based on the associated improved understanding of the biological basis for plant response to O₃ exposure, a number of mathematical approaches have been developed for summarizing O₃ exposure for the purpose of assessing effects on vegetation, including those that cumulate exposures over some specified period while weighting higher concentrations more than lower (2013 ISA, sections 9.5.2 and 9.5.3; ISA, Appendix 8, section 8.2.2.2).

In the last several reviews, based on the then-available evidence, as well as advice from the CASAC, the EPA’s scientific assessments have focused on the use of a cumulative, seasonal¹⁴⁰ concentration-weighted index for considering the growth-related effects evidence and in quantitative exposure analyses for purposes of reaching conclusions on the secondary standard. More specifically, the Agency used the W126-based cumulative, seasonal metric (80 FR 65404, October 26, 2015; ISA, section IS.3.2, Appendix 8, section 8.13). This metric, commonly called the W126 index, is a non-threshold approach described as the sigmoidally weighted sum of all hourly O₃ concentrations observed during a specified daily and seasonal time window, where each hourly O₃ concentration is given a weight that increases from zero to one with increasing concentration (2013 ISA, pp. 9–101, 9–104).

Across the last several decades, several different exposure metrics have been evaluated, primarily for their ability to summarize ambient air O₃ concentrations into a metric that best

describes quantitatively the relationship of O₃ in ambient air with the occurrence and/or extent of effects on vegetation, particularly growth-related effects. More specifically, an important objective has been to identify the metric that summarizes O₃ exposure in a way that is most predictive of the effect of interest (e.g., reduced growth). Along with the continuous weighted, W126 index, the two other cumulative indices that have received greatest attention across the past several O₃ NAAQS reviews are the threshold weighted indices, AOT60¹⁴¹ and SUM06.¹⁴² Accordingly, some studies of O₃ vegetation effects have reported exposures using these metrics. Alternative methods for characterizing O₃ exposure to predict various plant responses (particularly those related to photosynthesis, growth and productivity) have, in recent years, also included flux models (models that are based on the amount of O₃ that enters the leaf). However, as was the case in the last review, there remain a variety of complications, limitations and uncertainties associated with this approach. For example, “[w]hile some efforts have been made in the U.S. to calculate ozone flux into leaves and canopies, little information has been published relating these fluxes to effects on vegetation” (ISA, section IS.3.2). Further, as flux of O₃ into the plant under different conditions of O₃ in ambient air is affected by several factors including temperature, vapor pressure deficit, light, soil moisture, and plant growth stage, use of this approach to quantify the vegetation impact of O₃ would require information on these various types of factors (ISA, section IS.3.2). In addition to these data requirements, each species has different amounts of internal detoxification potential that may protect species to differing degrees. The lack of detailed species- and site-specific data required for flux modeling in the U.S. and the lack of understanding of detoxification

¹⁴¹ The AOT60 index is the seasonal sum of the difference between an hourly concentration above 60 ppb, minus 60 ppb (2006 AQCD, p. AX9–161). More recently, some studies have also reported O₃ exposures in terms of AOT40, which is conceptually similar but with 40 substituted for 60 in its derivation (ISA, Appendix 8, section 8.13.1).

¹⁴² The SUM06 index is the seasonal sum of hourly concentrations at or above 0.06 ppm during a specified daily time window (2006 AQCD, p. AX9–161; 2013 ISA, section 9.5.2). This may sometimes be referred to as SUM60, e.g., when concentrations are in terms of ppb. There are also variations on this metric that utilize alternative reference points above which hourly concentrations are summed. For example, SUM08 is the seasonal sum of hourly concentrations at or above 0.08 ppm and SUM0 is the seasonal sum of all hourly concentrations.

¹⁴⁰ The “seasonal” descriptor refers to the duration of the period quantified (3 months) rather than a specific season of the year.

processes continues to make this technique less viable for use in risk assessments in the U.S. (ISA, section IS.3.2).

Based on extensive review of the published literature on different types of E–R metrics, including comparisons between metrics, the EPA has generally focused on cumulative, concentration-weighted indices of exposure, recognizing them as the most appropriate biologically based metrics to consider in this context (1996 AQCD; 2006 AQCD; 2013 ISA). Quantifying exposure in this way has been found to improve the explanatory power of E–R models for growth and yield over using indices based only on mean and peak exposure values (2013 ISA, section 2.6.6.1, p. 2–44). The most well-analyzed datasets in such evaluations are two detailed datasets established two decades ago, one for seedlings of 11 tree species and one for 10 crops, described further in section III.B.3.a(ii)

below (*e.g.*, Lee and Hogsett, 1996, Hogsett et al., 1997). These datasets, which include species-specific seedling growth and crop yield response information across multiple seasonal cumulative exposures, were used to develop robust quantitative E–R functions to predict growth reduction relative to a zero-O₃ setting (termed relative biomass loss or RBL) in seedlings of the tree species and E–R functions for RYL for a set of common crops (ISA, Appendix 8, section 8.13.2; 2013 ISA, section 9.6.2).

Among the studies newly available in this review, no new exposure indices for assessing effects on vegetation growth or other physiological process parameters have been identified. The SUM06, AOTx (*e.g.*, AOT60) and W126 exposure metrics remain the cumulative metrics that are most commonly discussed (ISA, Appendix 8, section 8.13.1). The ISA notes that “[c]umulative indices of exposure that differentially weight

hourly concentrations [which would include the W126 index] have been found to be best suited to characterize vegetation exposure to ozone with regard to reductions in vegetation growth and yield” (ISA, section ES.3). Accordingly, in this review, as in the last two reviews, the seasonal W126-based cumulative, concentration-weighted metric receives primary attention in considering the effects evidence and exposure analyses, particularly related to growth effects (*e.g.*, in sections III.C and III.D below).

The first step in calculating the seasonal W126 index for a specific year, as described and considered in this review, is to sum the weighted hourly O₃ concentrations in ambient air during daylight hours (defined as 8:00 a.m. to 8:00 p.m. local standard time) within each calendar month, resulting in monthly index values. The monthly W126 index values are calculated from hourly O₃ concentrations as follows.¹⁴³

$$\text{Monthly W126} = \sum_{d=1}^N \sum_{h=8}^{19} \frac{C_{dh}}{1+4403 \cdot \exp(-126 \cdot C_{dh})}$$

where,

N is the number of days in the month
 d is the day of the month ($d = 1, 2, \dots, N$)
 h is the hour of the day ($h = 0, 1, \dots, 23$)
 C_{dh} is the hourly O₃ concentration observed on day d , hour h , in parts per million

The W126 index value for a specific year is the maximum sum of the monthly index values for three consecutive months within a calendar year (*i.e.*, January to March, February to April, . . . October to December). Three-year average W126 index values are calculated by taking the average of seasonal W126 index values for three consecutive years (*e.g.*, as described in the PA, Appendix 4D, section 4D.2.2).

(ii) Relationships Between Exposure Levels and Effects

Across the array of O₃-related welfare effects, consistent and systematically evaluated information on E–R relationships across multiple exposure levels is limited. Most prominent is the information on E–R relationships for growth effects on tree seedlings and crops,¹⁴⁴ which has been available for

the past several reviews. The information on which these functions are based comes primarily from the U.S. EPA’s National Crop Loss Assessment Network (NCLAN)¹⁴⁵ project for crops and the NHEERL–WED project for tree seedlings, projects implemented primarily to define E–R relationships for major agricultural crops and tree species, thus advancing understanding of responses to O₃ exposures (ISA, Appendix 8, section 8.13.2). These projects included a series of experiments that used OTCs to investigate tree seedling growth response and crop yield over a growing season under a variety of O₃ exposures and growing conditions (2013 ISA, section 9.6.2; Lee and Hogsett, 1996). These experiments have produced multiple studies that document O₃ effects on tree seedling growth and crop yield across multiple levels of exposure. Importantly, the information on exposure includes hourly concentrations across the season-long (or longer) exposure period which can

then be summarized in terms of the various seasonal metrics.¹⁴⁶ In the initial analyses of these data, exposure was characterized in terms of several metrics, including seasonal SUM06 and W126 indices (Lee and Hogsett, 1996; 1997 Staff Paper, sections IV.D.2 and IV.D.3; 2007 Staff Paper, section 7.6), while use of these functions more recently has focused on their implementation in terms of seasonal W126 index (2013 ISA, section 9.6; 80 FR 65391–92, October 26, 2015).

The 11 tree species for which robust and well-established E–R functions for RBL are available are black cherry, Douglas fir, loblolly pine, ponderosa pine, quaking aspen, red alder, red maple, sugar maple, tulip poplar, Virginia pine, and white pine (PA, Appendix 4A; 2013 ISA, section 9.6).¹⁴⁷ While these 11 species represent only a small fraction of the total number of native tree species in the contiguous U.S., this small subset includes eastern and western species, deciduous and coniferous species, and species that

¹⁴³ In situations where data are missing, an adjustment is factored into the monthly index (PA, Appendix 4D, section 4D.2.2).

¹⁴⁴ The E–R functions estimate O₃-related reduction in a year’s tree seedling growth or crop yield as a percentage of that expected in the absence of O₃ (ISA, Appendix 8, section 8.13.2).

¹⁴⁵ The NCLAN program, which was undertaken in the early to mid-1980s, assessed multiple U.S. crops, locations, and O₃ exposure levels, using consistent methods, to provide the largest, most

uniform database on the effects of O₃ on agricultural crop yields (1996 AQCD, 2006 AQCD, 2013 ISA, sections 9.2, 9.4, and 9.6; ISA, Appendix 8, section 8.13.2).

¹⁴⁶ This underlying database for the exposure is a key characteristic that sets this set of studies (and their associated E–R analyses) apart from other available studies.

¹⁴⁷ A quantitative analysis of E–R information for an additional species was considered in the 2014 WREA. But the underlying study, rather than being

a controlled exposure study, involves exposure to ambient air along an existing gradient of O₃ concentrations in the New York City metropolitan area, such that O₃ and climate conditions were not controlled (2013 ISA, section 9.6.3.3). Based on recognition that this dataset is not as strong as those for the 11 species for which E–R functions are based on controlled ozone exposure, this study is not included with the established E–R functions for the 11 species (PA, section 4.3.3).

grow in a variety of ecosystems and represent a range of tolerance to O₃ (PA, Appendix 4B; 2013 ISA, section 9.6.2). The established E–R functions for most of the 11 species were derived using data from multiple studies or experiments involving a wide range of exposure and/or growing conditions. From the available data, separate E–R functions were developed for each combination of species and experiment (2013 ISA, section 9.6.1; Lee and Hogsett, 1996). From these separate species-experiment-specific E–R functions, species-specific composite E–R functions were developed (PA, Appendix 4A).

In total, the 11 species-specific composite E–R functions are based on 51 tree seedling studies or experiments (PA, Appendix 4A, section 4A.1.1). For six of the 11 species, this function is based on just one or two studies (*e.g.*, red maple and black cherry), while for other species there were as many as 11 studies available (*e.g.*, ponderosa pine). A stochastic analysis drawing on the experiment-specific functions provides a sense of the variability and uncertainty associated with the estimated E–R relationships among and within species (PA, Appendix 4A, section 4A.1.1, Figure 4A–13). Based on the species-specific E–R functions, growth of the studied tree species at the seedling stage appears to vary widely in sensitivity to O₃ exposure (PA, Appendix 4A, section 4A.1.1). Since the initial set of studies were completed, several additional studies, focused on aspen, have been published based on the Aspen FACE experiment in a planted forest in Wisconsin; the findings were consistent with many of the earlier OTC studies (ISA, Appendix 8, section 8.13.2).

With regard to crops, established E–R functions are available for 10 crops: Barley, field corn, cotton, kidney bean, lettuce, peanut, potato, grain sorghum, soybean and winter wheat (PA, Appendix 4A, section 4A.1; ISA, Appendix 8, section 8.13.2). Studies available since the last review for seven soybean cultivars support conclusions from prior studies that of similarity of current soybean cultivar sensitivity compared to the earlier genotypes from which the soybean E–R functions were (ISA, Appendix 8, section 8.13.2).

Newly available studies that investigated growth effects of O₃ exposures are also consistent with the existing evidence base, and generally involve particular aspects of the effect rather than expanding the conditions under which plant species, particularly trees, have been assessed (ISA, section IS.5.1.2). These include a compilation of

previously available studies on plant biomass response to O₃ (in terms of AOT40); the compilation reports linear regressions conducted on the associated varying datasets (ISA, Appendix 8, section 8.13.2; van Goethem et al., 2013). Based on these regressions, this study describes distributions of sensitivity to O₃ effects on biomass across nearly 100 plant species (trees and grasslands) including 17 species native to the U.S. and 65 additional species that have been introduced to the U.S. (ISA, Appendix 8, section 8.13.2; van Goethem et al., 2013). Additional information is needed to more completely describe O₃ exposure response relationships for these species in the U.S.¹⁴⁸

b. Visible Foliar Injury

With regard to visible foliar injury, as with the evidence available in the last review, the current evidence “continues to show a consistent association between visible injury and ozone exposure,” while also recognizing the role of modifying factors such as soil moisture and time of day (ISA, section IS.5.1.1). The current ISA, in concluding that the newly available information is consistent with conclusions of the 2013 ISA, also summarizes several recently available studies that continue to document that O₃ elicits visible foliar injury in many plant species. These include a synthesis of previously published studies that categorizes studied species (and their associated taxonomic classifications) as to whether or not O₃-related foliar injury has been reported to occur in the presence of elevated O₃,¹⁴⁹ while not providing quantitative information regarding specific exposure conditions or analyses of E–R relationships (ISA, Appendix 8, section 8.2). The evidence in the current review, as was the case in the last review, while documenting that elevated O₃ conditions in ambient air generally results in visible foliar injury in sensitive species (when in a

predisposing environment),¹⁵⁰ does not include a quantitative description of the relationship of incidence or severity of visible foliar injury in sensitive species in natural locations in the U.S. with specific metrics of O₃ exposure.

Several studies of the extensive USFS field-based dataset of visible foliar injury incidence in forests across the U.S.¹⁵¹ illustrate the extent to which our current understanding of this relationship is limited. For example, a study that was available in the last review presents a trend analysis of these data for sites located in 24 states of the northeast and north central U.S. for the 16-year period from 1994 through 2009 that provides some insight into the influence of changes in air quality and soil moisture on visible foliar injury and the difficulty inherent in predicting foliar injury response under different air quality and soil moisture scenarios (Smith, 2012, Smith et al., 2012; ISA, Appendix 8, section 8.2). This study, like prior analyses of such data, shows the dependence of foliar injury incidence and severity on local site conditions for soil moisture availability and O₃ exposure. For example, while the authors characterize the ambient air O₃ concentrations to be the “driving force” behind incidence of injury and its severity, they state that “site moisture conditions are also a very strong influence on the biomonitoring data” (Smith et al., 2003). In general, the USFS data analyses have found foliar injury prevalence and severity to be higher during seasons and sites that have experienced the highest O₃ than during other periods (*e.g.*, Campbell et al., 2007; Smith, 2012).

Although studies of the incidence of visible foliar injury in national forests, wildlife refuges, and similar areas have often used cumulative indices (*e.g.*, SUM06) to investigate variations in incidence of foliar injury, studies also suggest an additional role for metrics focused on peak concentrations (ISA; 2013 ISA; 2006 AQCD; Hildebrand et al., 1996; Smith, 2012). For example, a

¹⁴⁸ The set of studies included in this compilation were described as meeting a set of criteria, such as: Including O₃ only exposures in conditions described as “close to field” exposures (which were expressed as AOT40); including at least 21 days exposure above 40 ppb O₃; and having a maximum hourly concentration that was no higher than 100 ppb (van Goethem et al., 2013). The publication does not report exposure duration for each study or details of biomass response measurements, making it less useful for the purpose of describing E–R relationships that might provide for estimation of specific impacts associated with air quality conditions meeting the current standard (*e.g.*, 2013 ISA, p. 9–118).

¹⁴⁹ The publication identifies 245 species across 28 plant genera, many native to the U.S., in which O₃-related visible foliar injury has been reported (ISA, Appendix 8, Table 8–3).

¹⁵⁰ As noted in the 2013 ISA and the ISA for the current review, visible foliar injury usually occurs when sensitive plants are exposed to elevated ozone concentrations in a predisposing environment, with a major modifying factor being the amount of soil moisture available to a plant. Accordingly, dry periods are concluded to decrease the incidence and severity of ozone-induced visible foliar injury, such that the incidence of visible foliar injury is not always higher in years and areas with higher ozone, especially with co-occurring drought (ISA, Appendix 8, p. 8–23; Smith, 2012; Smith et al., 2003).

¹⁵¹ These data were collected as part of the U.S. Forest Service Forest Health Monitoring/Forest Inventory and Analysis (USFS FHM/FIA) biomonitoring network program (2013 ISA, section 9.4.2.1; Campbell et al., 2007, Smith et al., 2012).

study of six years of USFS biosite¹⁵² data (2000–2006) for three western states found that the biosites with the highest O₃ exposure (SUM06 at or above 25 ppm-hrs) had the highest percentage of biosites with injury and the highest mean BI, with little discernable difference among the lower exposure categories; this study also identified “better linkage between air levels and visible injury” as an O₃ research need (Campbell et al., 2007).¹⁵³ More recent studies of the complete 16 years of data in 24 northeast and north central states have suggested that a cumulative exposure index alone may not completely describe the O₃-related risk of this effect at USFS sites (Smith et al., 2012; Smith, 2012). For example, Smith (2012) observed there to be a declining trend in the 16-year dataset, “especially after 2002 when peak ozone concentrations declined across the entire region” thus suggesting a role for peak concentrations.

Some studies of visible foliar injury incidence data have investigated the role of peak concentrations quantified by an O₃ exposure index that is a count of hourly concentrations (e.g., in a growing season) above a threshold 1-hour concentration of 100 ppb, N100 (e.g., Smith, 2012; Smith et al., 2012). For example, the study by Smith (2012) discussed injury patterns at biosites in 24 states in the Northeast and North Central regions in the context of the SUM06 index and N100 metrics (although not via a statistical model).¹⁵⁴ That study of 16 years of biomonitoring data from these sites suggested that there may be a threshold exposure needed for injury to occur, and the number of hours of elevated O₃ concentrations during the growing season (such as what is captured by a metric like N100) may be more important than cumulative exposure in determining the occurrence of foliar injury (Smith, 2012).¹⁵⁵ The study’s

¹⁵² As described in section III.B.2 above, biosites are biomonitoring sites where the USFS applies a scoring system for purposes of categorizing areas with regard to severity of visible foliar injury occurrence (U.S. Forest Service, 2010).

¹⁵³ In considering their findings, the authors expressed the view that “[a]lthough the number of sites or species with injury is informative, the average biosite injury index (which takes into account both severity and amount of injury on multiple species at a site) provides a more meaningful measure of injury” for their assessment at a statewide scale (Campbell et al., 2007).

¹⁵⁴ The current ISA, 2013 ISA and prior AQCDs have not described extensive evaluation of specific peak-concentration metrics such as the N100 that might assist in identifying the one best suited for such purposes.

¹⁵⁵ In summarizing this study in the last review, the ISA observed that “[o]verall, there was a declining trend in the incidence of foliar injury as

authors noted this finding to be consistent with findings reported by a study of statistical analyses of seven years of visible foliar injury data from a wildlife refuge in the mid-Atlantic (Davis and Orendovici, 2006, Smith et al., 2012). The latter study investigated the fit of multiple models that included various metrics of cumulative O₃ (SUM06, SUM0, SUM08), alone and in combination with some other variables (Davis and Orendovici, 2006). Among the statistical models investigated (which did not include one with either W126 index or N100 alone), the model with the best fit to the visible foliar injury incidence data was found to be one that included the cumulative metric, W126, and the N100 index, as well as drought index (Davis and Orendovici, 2006).¹⁵⁶

The established significant role of higher or peak O₃ concentrations, as well as pattern of their occurrence, in plant responses has been noted in prior ISAs or AQCDs. In identifying support with regard to foliar injury as the response, the 2013 ISA and 2006 AQCD both cite studies that support the “important role that peak concentrations, as well as the pattern of occurrence, plays in plant response to O₃” (2013 ISA, p. 9–105; 2006 AQCD, p. AX9–169). For example, a study of European white birch saplings reported that peak concentrations and the duration of the exposure event were important determinants of foliar injury (2013 ISA, section 9.5.3.1; Oksanen and Holopainen, 2001). This study also evaluated tree growth, which was found to be more related to cumulative exposure (2013 ISA, p. 9–105).¹⁵⁷ A second study that was cited by both assessments that focused on aspen, reported that “the variable peak exposures were important in causing injury, and that the different exposure treatments, although having the same SUM06, resulted in very different patterns of foliar injury” (2013 ISA, p. 9–105; 2006 AQCD, p. AX9–169; Yun and Laurence, 1999). As noted in the 2006 AQCD, the cumulative exposure indices (e.g., SUM06, W126) were

peak O₃ concentrations declined” (2013 ISA, p. 9–40).

¹⁵⁶ The models evaluated included several with cumulative exposure indices alone. These included SUM60, SUM0, and SUM80, but not W126. They did not include a model with W126 that did not also include N100. Across all of the models evaluated, the model with the best fit to the data was found to be the one that included N100 and W126, along with the drought index (Davis and Orendovici, 2006).

¹⁵⁷ The study authors concluded that “high peak concentrations were important for visible injuries and stomatal conductance, but less important for determining growth responses” (Oksanen and Holopainen, 2001).

“originally developed and tested using only growth/yield data, not foliar injury” and “[t]his distinction is critical in comparing the efficacy of one index to another” (2006 AQCD, p. AX9–173). It is also recognized that where cumulative indices are highly correlated with the frequency or occurrence of higher hourly average concentrations, they could be good predictors of such effects (2006 AQCD, section AX9.4.4.3).

In a more recent study (by Wang et al. [2012]) that is cited in the current ISA, a statistical modeling analysis was performed on a subset of the years of data that were described in Smith (2012). This analysis, which involved 5,940 data records from 1997 through 2007 from the 24 northeast and north central states, tested a number of models for their ability to predict the presence of visible foliar injury (a nonzero biosite score), regardless of severity, and generally found that the type of O₃ exposure metric (e.g., SUM06 versus N100) made only a small difference, although the models that included both a cumulative index (SUM06) and N100 had a just slightly better fit (Wang et al., 2012). Based on their investigation of 15 different models, using differing combination of several types of potential predictors, the study authors concluded that they were not able to identify environmental conditions under which they “could reliably expect plants to be damaged” (Wang et al., 2012). This is indicative of the current state of knowledge, in which there remains a lack of established quantitative functions describing E–R relationships that would allow prediction of visible foliar injury severity and incidence under varying air quality and environmental conditions.

The available information related to O₃ exposures associated with visible foliar injury of varying severity also includes the dataset developed by the EPA in the last review from USFS BI scores, collected during the years 2006 through 2010 at locations in 37 states. In developing this dataset, the BI scores were combined with estimates of soil moisture¹⁵⁸ and estimates of seasonal cumulative O₃ exposure in terms of

¹⁵⁸ Soil moisture categories (dry, wet or normal) were assigned to each biosite record based on the NOAA Palmer Z drought index values obtained from the NCDC website for the April-through-August periods, averaged for the relevant year; details are provided in the PA, Appendix 4C, section 4C.2. There are inherent uncertainties in this assignment, including the substantial spatial variation in soil moisture and large size of NOAA climate divisions (hundreds of miles). This dataset, including associated uncertainties and limitations, is described in the PA, Appendix 4C, section 4C.5.

W126 index¹⁵⁹ (Smith and Murphy, 2015; PA, Appendix 4C). This dataset includes more than 5,000 records of which more than 80 percent have a BI score of zero (indicating a lack of visible foliar injury). While the estimated W126 index assigned to records in this dataset ranges from zero to somewhat above 50 ppm-hrs, more than a third of all the records (and also of records with BI scores above zero or five)¹⁶⁰ are at sites with W126 index estimates below 7 ppm-hrs.

In an extension of analyses of this dataset developed in the last review, the presentation in the PA¹⁶¹ describes the BI scores for the records in the dataset in relation to the W126 index estimate for each record, using bins of increasing W126 index values. The PA presentation utilizes the BI score breakpoints in the scheme used by the USFS to categorize severity. The lowest USFS category encompasses BI scores from zero to just below 5; scores of this magnitude are described as “little or no foliar injury” (Smith et al., 2012). The next highest category encompasses scores from five to just below 15 and is described as “light to moderate foliar injury.” BI scores of 15 up to 25 are described as “moderate” and above 25 is described as “severe” (Smith et al., 2012). The PA presentation indicates that across the W126 bins, there is variation in both the incidence of particular magnitude BI scores and in the average score per bin. In general, however the greatest incidence of records with BI scores above zero, five, or higher—and the highest average BI score—occurs with the highest W126 bin, *i.e.*, the bin for W126 index estimates greater than 25 ppm-hrs (PA, Appendix 4C, Table 4C–6).

While recognizing limitations in the dataset,¹⁶² the PA makes several

observations, focusing particularly on records in the normal soil category (PA, section 4.5.1). For records categorized as wet soil moisture, the sample size for the W126 bins above 13 ppm-hrs is quite small (including only 18 of the 1,189 records in that soil moisture category), precluding meaningful interpretation.¹⁶³ For the normal soil category, the percentages of records in the greater than 25 ppm-hrs bin that have BI scores above 15 (“moderate” and “severe” injury) or above 5 (“little,” “moderate” and “severe” injury) are both more than three times greater than such percentages in any of the lower W126 bins.¹⁶⁴ For example, the proportion of records with BI above five fluctuates between 5% and 13% across all but the highest W126 bin (>25 ppm-hrs) for which the proportion is 41% (PA, Appendix 4C, Table 4C–6). The same pattern is observed for BI scores above 15 at sites with normal and dry soil moisture conditions, albeit with lower incidences. For example, the incidence of normal soil moisture records with BI score above 15 in the bin for W126 index values above 25 ppm-hrs was 20% but fluctuates between 1% and 4% in the bin for W126 index values at or below 25 ppm-hrs (PA, Appendix 4C, Table 4C–6). The average BI of 7.9 in the greater-than-25-ppm-hrs bin is more than three times the next highest W126 bin average. The average BI in each of the next two lower W126 bins is just slightly higher than average BIs for the rest of the bins, and the average BI for all bins at or below 25 ppm-hrs are well below 5 (PA, Appendix 4C).

Overall, the dataset described in the PA generally indicates the risk of injury, and particularly injury considered at least light, moderate or severe, to be higher at the highest W126 index

values, with appreciable variability in the data for the lower bins (PA, Appendix 4C). This appears to be consistent with the conclusions of the studies of detailed quantitative analyses, summarized above, that the pattern is stronger at higher O₃ concentrations. A number of factors may contribute to the observed variability in BI scores and lack of a clear pattern with W126 index bin; among others, these may include uncertainties in assignment of W126 estimates and soil moisture categories to biosite locations, variability in biological response among the sensitive species monitored, and the potential role of other aspects of O₃ air quality not captured by the W126 index. Thus, the dataset has limitations affecting associated conclusions and uncertainty remains regarding the tools for and the appropriate metric (or metrics) for quantifying O₃ exposures, as well as perhaps soil moisture conditions, with regard to their influence on extent and/or severity of injury in sensitive species in natural areas (Davis and Orendovici, 2006, Smith et al., 2012; Wang et al., 2012).

Dose modeling or flux models (referenced in section III.B.3.a(i) above, have also been considered for quantifying O₃ dose that may be related to plant leaf injury. Among the newly available evidence is a study examining relationships between short-term flux and leaf injury on cotton plants that described a sensitivity parameter that might characterize the influence on the flux-injury relationship of diel and seasonal variability in plant defenses (among other factors) and suggested additional research might provide for such a sensitivity parameter to “function well in combination with a sigmoidal weighting of flux, analogous to the W126 weighting of concentration”, and perhaps an additional parameter (Grantz et al., 2013, p. 1710; ISA, Appendix 8, section 8.13.1). However, the ISA recognizes there is “much unknown” with regard to the relationship between O₃ uptake and leaf injury, and relationships with detoxification processes (ISA, Appendix 8, section 8.13.1 and p. 8–184). These uncertainties have made this technique less viable for assessments in the U.S., precluding use of a flux-based approach at this time (ISA, Appendix 8, section 8.13.1 and p. 8–184).

c. Other Effects

With regard to radiative forcing and subsequent climate effects associated with the global tropospheric abundance of O₃, the newly available evidence in this review does not provide more detailed quantitative information

¹⁵⁹ The W126 index values assigned to the biosite locations are estimates developed for 12 kilometer (km) by 12 km cells in a national-scale spatial grid for each year. The grid cell estimates were derived from applying a spatial interpolation technique to annual W126 values derived from O₃ measurements at ambient air monitoring locations for the years corresponding to the biosite surveys (details in the PA, Appendix 4C, sections 4.C.2 and 4.C.5).

¹⁶⁰ One third (33%) of scores above 15 are at sites with W126 below 7 ppm-hrs (PA, Appendix 4C, Table 4C–3).

¹⁶¹ Beyond the presentation of a statistical analysis developed in the last review, the PA presentations are primarily descriptive (as compared to statistical) in recognition of the limitations and uncertainties of the dataset (PA, Appendix 4C, section 4C.5).

¹⁶² For example, the majority of records have W126 index estimates at or below 9 ppm-hrs, and fewer than 10% have W126 estimates above 15 ppm-hrs. Further, the BI scores are quite variable across the range of W126 bins, with even the lowest W126 bin (estimates below 7 ppm-hrs) including BI scores well above 15 (PA, Appendix 4C, section

4C.4.2). The records for the wet soil moisture category in the higher W126 bins are more limited than the other categories, with nearly 90% of the wet soil moisture records falling into the bins for W126 index at or below 9 ppm-hrs, limiting interpretations for higher W126 bins (PA, Appendix 4C, Table 4C.4 and section 4C.6). Accordingly, the PA observations focused primarily on the records for the normal or dry soil moisture categories, for which W126 index above 13 ppm-hrs is better represented.

¹⁶³ The full database includes only 18 records at sites in the wet soil moisture category with estimated W126 index above 13 ppm-hrs, with 9 or fewer (less than 1%) in each of the W126 bins above 13 ppm-hrs (PA, Appendix 4C, Table 4C–3). Among the bins for W126 at or below 13 ppm-hrs, the average BI score is less than 2 (PA, Appendix 4C, Table 4C–5).

¹⁶⁴ When scores characterized as “little injury” by the USFS classification scheme are also included (*i.e.*, when considering all scores above zero), there is a suggestion of increased frequency of records for the W126 bins above 19 or 17 ppm-hrs, although difference from lower bins is less than a factor of two (PA, Appendix 4C).

regarding O₃ concentrations at the national scale. For example, tropospheric O₃ continues to be recognized as having a causal relationship with radiative forcing, although “uncertainty in the magnitude of radiative forcing estimated to be attributed to tropospheric ozone is a contributor to the relatively greater uncertainty associated with climate effects of tropospheric ozone compared to such effects of the well mixed greenhouse gases (e.g., carbon dioxide and methane)” (ISA, section IS.6.2.2).

While tropospheric O₃ also continues to be recognized as having a likely causal relationship with subsequent effects on temperature, precipitation and related climate variables, the non-uniform distribution of O₃ within the troposphere (spatially and temporally) makes the development of quantitative relationships between the magnitude of such effects and differing O₃ concentrations in the U.S. challenging (ISA, Appendix 9). Additionally, “the heterogeneous distribution of ozone in the troposphere complicates the direct attribution of spatial patterns of temperature change to ozone induced [radiative forcing]” and there are “ozone climate feedbacks that further alter the relationship between ozone [radiative forcing] and temperature (and other climate variables) in complex ways” (ISA, Appendix 9, section 9.3.1, p. 9–19). Thus, various uncertainties “render the precise magnitude of the overall effect of tropospheric ozone on climate more uncertain than that of the well-mixed GHGs” and “[c]urrent limitations in climate modeling tools, variation across models, and the need for more comprehensive observational data on these effects represent sources of uncertainty in quantifying the precise magnitude of climate responses to ozone changes, particularly at regional scales” (ISA, section IS.6.2.2, Appendix 9, section 9.3.3, p. 9–22). For example, current limitations in modeling tools include “uncertainties associated with simulating trends in upper tropospheric ozone concentrations” (ISA, section 9.3.1, p. 9–19), and uncertainties such as “the magnitude of [radiative forcing] estimated to be attributed to tropospheric ozone” (ISA, section 9.3.3, p. 9–22). Further, “precisely quantifying the change in surface temperature (and other climate variables) due to tropospheric ozone changes requires complex climate simulations that include all relevant feedbacks and interactions” (ISA, section 9.3.3, p. 9–22). For example, an important limitation in current climate modeling capabilities for O₃ is representation of

important urban- or regional-scale physical and chemical processes, such as O₃ enhancement in high-temperature urban situations or O₃ chemistry in city centers where NO_x is abundant. Such limitations impede our ability to quantify the impact of incremental changes in O₃ concentrations in the U.S. on radiative forcing and subsequent climate effects.

With regard to tree mortality (the evidence for which the 2013 ISA did not assess with regard to its support for inference of a causal relationship with O₃ exposure), the evidence available in the last several reviews included field studies of pollution gradients that concluded O₃ damage to be an important contributor to tree mortality although several confounding factors such as drought, insect outbreak and forest management were identified as potential contributors (2013 ISA, section 9.4.7.1). Although three newly available studies contribute to the ISA conclusion of sufficient evidence to infer a likely causal relationship for O₃ with tree mortality (ISA, Appendix 8, section 8.4), there is only limited experimental evidence that isolates the effect of O₃ on tree mortality and might be informative regarding O₃ concentrations of interest in the review. This evidence, primarily from an Aspen FACE study of aspen survival, involves cumulative seasonal exposure to W126 index levels above 30 ppm-hrs during the first half of the 11-year study period (ISA, Appendix 8, Tables 8–8 and 8–9). Evidence is lacking regarding exposure conditions closer to those occurring under the current standard and any contribution to tree mortality.

With regard to the two categories of welfare effects involving insects (for which there are new causal determinations in this review), there are multiple limitations and uncertainties regarding characterization of exposure conditions that might elicit effects and the comprehensive characterization of the effects (ISA, p. IS–91, Appendix 8, section 8.6.3). For example, with regard to alteration of herbivore growth and reproduction, although “[t]here are multiple studies demonstrating ozone effects on fecundity and growth in insects that feed on ozone-exposed vegetation”, “no consistent directionality of response is observed across studies and uncertainties remain in regard to different plant consumption methods across species and the exposure conditions associated with particular severities of effects” (ISA, pp. ES–18). The ISA also notes the variation in study designs and endpoints used to assess O₃ response (ISA, IS.6.2.1 and Appendix 8, section

8.6). Thus, while the evidence describes changes in nutrient content and leaf chemistry following O₃ exposure (ISA, p. IS–73), the effect of these changes on herbivores consuming the leaves is not well characterized, and factors such as identified here preclude broader characterization, as well as quantitative analysis related to air quality conditions meeting the O₃ standard.

The evidence for the second category, alteration of plant-insect signaling, draws on new research that has provided clear evidence of O₃ modification of VPSCs and behavioral responses of insects to these modified chemical signals (ISA, section IS.6.2.1). The available evidence involves a relatively small number of plant species and plant-insect associations. While the evidence documents effects on plant production of signaling chemicals and on the atmospheric persistence of signaling chemicals, as well as on the behaviors of signal-responsive insects, it is limited with regard to characterization of mechanisms and the consequences of any modification of VPSCs by O₃ (ISA, p. ES–18; sections ES.5.1.3 and IS.6.2.1). Further, the available studies vary with regard to the experimental exposure circumstances in which the different types of effects have been reported (most of the studies have been carried out in laboratory conditions rather than in natural environments), and many of the studies involve quite short controlled exposures (hours to days) to elevated concentrations, posing limitations for our purposes of considering the potential for impacts associated with the studied effects to be elicited by air quality conditions that meet the current standard (ISA, section IS.6.2.1 and Appendix 8, section 8.7).

With regard to previously recognized categories of vegetation-related effects, other than growth and visible foliar injury, such as reduced plant reproduction, reduced productivity in terrestrial ecosystems, alteration of terrestrial community composition and alteration of below-ground biogeochemical cycles, the newly available evidence includes a variety of studies, as identified in the ISA (ISA, Appendix 8, sections 8.4, 8.8 and 8.10). Across the studies, a variety of metrics (including AOT40, 4- to 12-hour mean concentrations, and others) are used to quantify exposure over varying durations and various countries. The ISA additionally describes publications that summarize previously published studies in several ways. For example, a meta-analysis of reproduction studies categorized the reported O₃ exposures into bins of differing magnitude,

grouping differing concentration metrics and exposure durations together, and performed statistical analyses to reach conclusions regarding the presence of an O₃-related effect (ISA, Appendix 8, section 8.4.1). While such studies continue to support conclusions of the ecological hazards of O₃, they do not improve capabilities for characterizing the likelihood of such effects under varying patterns of environmental O₃ concentrations that occur with air quality conditions that meet the current standard.

As at the time of the last review, growth impacts, most specifically as evaluated by RBL for tree seedlings and RYL for crops, remain the type of vegetation-related effects for which we have the best understanding of exposure conditions likely to elicit them. Thus, as was the case in the decision for the last review, the quantitative analyses of exposures occurring under air quality that meets the current standard, summarized below, are focused primarily on the W126 index, given its established relationship with growth effects.

C. Summary of Air Quality and Exposure Information

The air quality and exposure analyses developed in this review, like those in the last review, are of two types: (1) W126-based cumulative exposure estimates in Class I areas; and (2) analyses of W126-based exposures and their relationship with the current standard for all U.S. monitoring locations (PA, Appendix 4D). As summarized in the IRP, we identified these analyses to be updated in this review in recognition of the relatively reduced uncertainty associated with the use of these types of analyses (compared to the national or regional-scale modeling analyses performed in the last review) to inform a characterization of cumulative O₃ exposure (in terms of the W126 index) associated with air quality just meeting the current standard (IRP, section 5.2.2). As in the last review, the lesser uncertainty of these air quality monitoring-based analyses contributes to their value in informing the current review. The sections below present findings of the updated analyses that have been performed in the current review using recently available information.

As in the last review, the analyses focus on both the most recent 3-year period (2016 to 2018) for which data were available when the analyses were performed, and also across the full historical period back to 2000, which is now expanded from that available in the

last review.¹⁶⁵ Design values (3-year average annual fourth-highest 8-hour daily maximum concentration, also termed “4th max metric” in this analysis) and W126 index values (in terms of the 3-year average) were calculated at each site where sufficient data were available.¹⁶⁶ Across the seventeen 3-year periods from 2000–2002 to 2016–2018, the number of monitoring sites with sufficient data for calculation of valid design values and W126 index values (across the 3-year design value period) ranged from a low of 992 in 2000–2002 to a high of 1119 in 2015–2017. The specific monitoring sites differed somewhat across the 19 years. There were 1,557 sites with sufficient data for calculation of valid design values and W126 index values for at least one 3-year period between 2000 and 2018, and 543 sites had such data for all seventeen 3-year periods. Analyses in the current review are based on the expanded set of air monitoring data now available¹⁶⁷ (PA, Appendix 4D, section 4D.2.2).

These analyses are based primarily on the hourly air monitoring data that were reported to EPA from O₃ monitoring sites nationwide. In the recent and historical datasets, the O₃ monitors (more than 1000 in the most recent period) are distributed across the U.S., covering all nine NOAA climate regions and all 50 states (PA, Figure 4–6 and Appendix 4D, Table 4D–1). Some geographical areas within these regions and states are more densely covered and well represented by monitoring sites, while others may have sparse or no data. Given that there has been a longstanding emphasis on urban areas in the EPA’s monitoring regulations, urban areas are generally well represented in the U.S. dataset, with the effect being that the current dataset is more representative of locations where people live than of complete spatial coverage for all areas in the U.S., (*i.e.*, the current dataset is more population weighted than geographically weighted). As O₃ precursor sources are also generally more associated with urban areas, one impact of this may be a greater representation of relatively

higher concentration sites (PA, section 4.4.3 and Appendix 4D, section 4D.4).

With regard to Class I areas, of the 158 mandated federal Class I areas, 65 (just over 40%) have or have had O₃ monitors within 15 km with valid design values, thus allowing inclusion in the Class I area analysis. Even so, the Class I areas dataset includes monitoring sites in 27 states distributed across all nine NOAA climatic regions across the contiguous U.S., as well as Hawaii and Alaska. Some NOAA regions have far fewer numbers of Class I areas with monitors than others. For instance, the Central, Northeast, East North Central, and South regions all have three or fewer Class I areas in the dataset. However, these areas also have appreciably fewer Class I areas in general when compared to the Southwest, Southeast, West, and West North Central regions, which are more well represented in the dataset. The West and Southwest regions are identified as having the largest number of Class I areas, and they have approximately one third of those areas represented with monitors, which include locations where W126 index values are generally higher, thus playing a prominent role in the analysis (PA, section 4.4.3 and Appendix 4D, section 4D.4).

These updated air quality analyses, and what they indicate regarding environmental exposures of interest in this review, are summarized in the following two subsections which differ in their areas of focus. The first subsection (section III.C.1) summarizes information regarding relationships between air quality in terms of the form and averaging time of the current standard and environmental exposures in terms of the W126 index. The second subsection (section III.C.2) summarizes findings of the analyses of the currently available monitoring data with regard to the magnitude of environmental exposures, in terms of the W126 index, in areas across the U.S., and particularly in Class I areas, during periods in which air quality met the current standard.

1. Influence of Form and Averaging Time of Current Standard on Environmental Exposure

In revising the standard in 2015 to the now-current standard, the Administrator concluded that, with revision of the standard level, the existing form and averaging time provided the control of cumulative seasonal exposure circumstances needed for the public welfare protection desired (80 FR 65408, October 26, 2015). The focus on cumulative seasonal exposure as the type of exposure metric of interest primarily reflects the

¹⁶⁵ In the last review, the dataset analyzed included data from 2000 through 2013, with the most recent period being 2011 to 2013 (Wells, 2015).

¹⁶⁶ Data adequacy requirements and methods for these calculations are described in Appendix 4D, section 4D.2 of the PA.

¹⁶⁷ In addition to being expanded with regard to data for more recent time periods than were available during the last review, the current dataset also includes a small amount of newly available older data for some rural monitoring sites that are now available in the AQS.

evidence on E-R relationships for plant growth (summarized in section III.B.3 above). The 2015 conclusion was based on the air quality data analyzed at that time (80 FR 65408, October 26, 2015). Analyses in the current review of the now expanded set of air monitoring data, which now span 19 years and 17 3-year periods, document similar findings as from the analysis of data from 2000–2013 described in the last review (PA, Appendix 4D, section 4D.2.2).

Among the analyses performed is an evaluation of the variability in the annual W126 index values across a 3-year period (PA, Appendix 4D, section 4D.3.1.2). This evaluation was performed for all U.S. monitoring sites with sufficient data available in the most recent 3-year period, 2016 to 2018. This analysis indicates the extent to which the three single-year W126 index values within a 3-year period deviate from the average for the period. Across the full set of sites, regardless of W126 index magnitude (or whether or not the current standard is met), single-year W126 index values differ less than 15 ppm-hrs from the average for the 3-year period (PA, Appendix 4D, Figure 4D–6). Focusing on the approximately 850 sites meeting the current standard (*i.e.*, sites with a design value at or below 70 ppb), over 99% of single-year W126 index values in this subset differ from the 3-year average by no more than 5 ppm-hrs, and 87% by no more than 2 ppm-hrs (PA, Appendix 4D, Figure 4D–7).

Another air quality analysis performed for the current review documents the positive nonlinear relationship that is observed between cumulative seasonal exposure, quantified using the W126 index, and design values, based on the form and averaging time of the current standard. This relationship is shown for both the average W126 index across the 3-year design value period and for W126 index values for individual years within the period (PA, Figure 4–7). From this presentation, it is clear that cumulative seasonal exposures, assessed in terms of W126 index (in a year or averaged across years), are lower at monitoring sites with lower design values. This is seen both for design values above the level of the current standard (70 ppb), where the slope is steeper (due to the sigmoidal weighting of higher concentrations by the W126 index function), as well as for lower design values that meet the current standard (PA, Figure 4–7). This presentation also indicates some regional differences in the relationship. For example, for the 2016–2018 period, at sites meeting the current standard in the regions outside

of the West and Southwest regions, all 3-year average W126 index values are at or below 12 ppm-hrs and all single-year values are at or below 16 ppm-hrs (PA, Figures 4–6 and 4–7). The W126 index values are generally higher in the West and Southwest regions. However, the positive relationship between the W126 index and the design value is evident in all nine regions (PA, Figure 4–7).

An additional analysis assesses the relationship between long-term changes in design value and long-term changes in the W126 index. This analysis is presented in detail in the PA and focuses on the relationship between changes (at each monitoring site) in the 3-year design value across the 16 design value periods from 2000–2002 to 2016–2018 and changes in the W126 index over the same period (PA, Appendix 4D, section 4D.3.2.3).¹⁶⁸ This analysis, performed using either the 3-year average W126 index or values for individual years, shows there to be a positive, linear relationship between the changes in the W126 index and the changes in the design value at monitoring sites across the U.S. (PA, Appendix 4D, Figure 4D–11). The existence of this relationship means that a change in the design value at a monitoring site was generally accompanied by a similar change in the W126 index. Nationally, the W126 index (in terms of 3-year average) decreased by approximately 0.62 ppm-hrs per ppb decrease in design value over the full period from 2000 to 2018 (PA, Appendix 4D, Table 4D–12). This relationship varies across the NOAA climate regions, with the greatest change in the W126 index per unit change in design value observed in the Southwest and West regions. Thus, the regions which had the highest W126 index values at sites meeting the current standard (PA, Figure 4D–6) also showed the greatest improvement in the W126 index per unit decrease in their design values over the past 19 years (PA, Appendix 4D, Table 4D–12 and Figure 4D–14).

The trends analyses indicate that going forward as design values are reduced in areas that are presently not meeting the current standard, the W126

index in those areas would also be expected to decline (PA, Appendix 4D, section 4D.3.2.3 and 4D.5). The overall trend showing reductions in the W126 index concurrent with reductions in the design value metric for the current standard is positive whether the W126 index is expressed in terms of the average across the 3-year design value period or the annual value (PA, Appendix 4D, section 4D.3.2.3). This similarity is consistent with the strong positive relationship that exists between the W126 index and the design value metric for the current standard summarized above.

With regard to the control of the current form and averaging time on vegetation exposures of potential concern, the PA also describes air quality information pertinent to the evidence discussed in section III.B.3 above regarding the potential for days with particularly high O₃ concentrations to play a contributing role in visible foliar injury. In so doing, the PA notes that the current standard's form and averaging time, by their very definition, limit occurrences of such concentrations. For example, the peak 8-hour average concentrations are lower at sites with lower design values, as illustrated by the declining trends in annual fourth highest MDA8 concentrations that accompany the declining trend in design values (PA, Figure 2–11). Additionally, the frequency of elevated 1-hour concentrations, including concentrations at or above 100 ppb, decrease with decreasing design values (PA, Appendix 2A, section 2A.2). For example, in the most recent design value period (2016–2018) across all sites with adequate data to derive design values, the mean number of daily maximum 1-hour observations per site at or above 100 ppb was well below one (0.19) for sites that meet the current standard, compared to well above one (8.09) for sites not meeting the current (PA, Appendix 2A, Table 2A–2).

In summary, monitoring sites with lower O₃ concentrations (as measured by the design value metric (based on the current form and averaging time of the secondary standard) have lower cumulative seasonal exposures, as quantified by the W126 index, as well as lower short-term peak concentrations. As the form and averaging time of the secondary standard have not changed since 1997, the analyses performed have been able to assess the amount of control exerted by these aspects of the standard, in combination with reductions in the standard level (*i.e.*, from 0.08 ppm in 1997 to 0.075 ppm in 2008 to 0.070 ppm in 2015) on

¹⁶⁸ At each site, the trend in values of a metric (W126 or design value), in terms of a per-year change in metric value, is calculated using the Theil-Sen estimator, a type of linear regression method that chooses the median slope among all lines through pairs of sample points. For example, if applying this method to a dataset with metric values for four consecutive years (*e.g.*, W126₁, W126₂, W126₃, W126₄), the trend would be the median of the different per-year changes observed in the six possible pairs of values ($[W126_4 - W126_3] / 1$, $[W126_3 - W126_2] / 1$, $[W126_2 - W126_1] / 1$, $[W126_4 - W126_2] / 2$, $[W126_3 - W126_1] / 2$, $[W126_4 - W126_1] / 3$).

cumulative seasonal exposures in terms of W126 index (and on the magnitude of short-term peak concentrations). The analyses have found that the long-term reductions in the design values, presumably associated with implementation of the revised standards, have been accompanied by reductions in cumulative seasonal exposures in terms of W126 index, as well as reductions in short-term peak concentrations.

2. Environmental Exposures in Terms of W126 Index

The following presentation is framed by the question: What are the nature and magnitude of vegetation exposures associated with conditions meeting the current standard at sites across the U.S., particularly in specially protected areas, such as Class I areas, and what do they indicate regarding the potential for O₃-related vegetation impacts? Given the evidence indicating the W126 index to be strongly related to growth effects and its use in the E-R functions for tree seedling RBL (as summarized in section III.B above), exposure is quantified using the W126 metric. The potential for impacts of interest is assessed through considering the magnitude of estimated exposure, in light of current information and, in comparison to levels given particular focus in the 2015 decision on the current standard (80 FR 65292; October 26, 2015). The updated analyses summarized here, while including assessment of all monitoring sites nationally, include a particular focus on monitoring sites in or near Class I areas¹⁶⁹, in light of the greater public welfare significance of many O₃ related impacts in such areas, as described in section III.B.2 above.

The analyses summarized here consider both recent air quality (2016–2018) and air quality since 2000 (PA, Appendix 4D). These air quality analyses of cumulative seasonal exposures associated with conditions

meeting the current standard nationally provide conclusions generally similar to those based on the data available at the time of the last review when the current standard was set, when the most recent data were available for 2011 to 2013 (Wells, 2015). Such conclusions are with regard to regional differences as well as the rarity of W126 index values at or above 19 ppm-hrs in areas with air quality meeting the current standard.¹⁷⁰

Cumulative exposures vary across the U.S. with the highest W126 index values for sites that met the current standard being located exclusively in Southwest and West climate regions (PA, Figure 4–6). At sites meeting the current standard in all other NOAA climate regions, W126 index values, averaged over the 3-year design value period are at or below 13 ppm-hrs (PA, Figure 4–6 and Appendix 4D, Figure 4D–2). At Southwest and West region sites that met the current standard, W126 index values, averaged across the 3-year design value period, are at or below 17 ppm-hrs in virtually all cases in the most recent 3-year period and across all of the seventeen 3-year periods in the full dataset evaluated (*i.e.*, all but one site out of 147 for recent period and all but eight out of over 1,800 cases across full dataset). Across all U.S. sites with valid design values at or below 70 ppb in the full 2000 to 2018 dataset, the W126 index, averaged over three years, was at or below 17 ppm-hrs on 99.9% of all occasions, and at or below 13 ppm-hrs on 97% of all occasions. All but one of the eight occasions when the 3-year W126 index was above 17 ppm-hrs (including the highest occasion at 19 ppm-hrs) occurred in the Southwest region during a period before 2011. The most recent occasion occurred in 2018 at a site in the West region when the 3-year average W126 index value was 18 ppm-hrs (PA, Appendix 4D, section 4D.3.2).

In summary, among sites meeting the current standard in the most recent

period of 2016 to 2018, there are none with a W126 index, based on the 3-year average, above 19 ppm-hrs, and just one with such a value above 17 ppm-hrs (Table 5). Additionally, the full historical dataset includes no occurrences of a 3-year average W126 index above 19 ppm-hrs for sites meeting the current standard, and just eight occurrences of a W126 index above 17 ppm-hrs, with the highest such occurrence just equaling 19 ppm-hrs (Table 5; PA, Appendix 4D, section 4D.3.2.1).

With regard to Class I areas, the updated air quality analyses include data at sites in or near 65 Class I areas. The findings for these sites, which are distributed across all nine NOAA climate regions in the contiguous U.S., as well as Alaska and Hawaii, mirror the findings for the analysis of all U.S. sites. Among the Class I area sites meeting the current standard (*i.e.*, having a design value at or below 70 ppb) in the most recent period of 2016 to 2018, there are none with a W126 index (as average over design value period) above 17 ppm-hrs (Table 5). The historical dataset includes just seven occurrences (all dating from the 2000–2010 period) of a Class I area site meeting the current standard and having a 3-year average W126 index above 17 ppm-hrs, and no such occurrences above 19 ppm-hrs (Table 5).

The W126 exposures at sites with design values above 70 ppb range up to approximately 60 ppm-hrs (Table 5). Among all sites across the U.S. that do not meet the current standard in the 2016 to 2018 period, more than a quarter have average W126 index values above 19 ppm-hrs and a third exceed 17 ppm-hrs (Table 5). A similar situation exists for Class I area sites (Table 5). Thus, as was the case in the last review, the currently available quantitative information continues to indicate appreciable control of seasonal W126 index-based cumulative exposure at all sites with air quality meeting the current standard.

¹⁶⁹ This includes monitors sited within Class I areas or the closest monitoring site within 15 km of the area boundary.

¹⁷⁰ Rounding conventions are described in detail in the PA, Appendix 4D, section 4D.2.2.

TABLE 5—DISTRIBUTION OF 3-YR AVERAGE SEASONAL W126 INDEX FOR SITES IN CLASS I AREAS AND ACROSS U.S. THAT MEET THE CURRENT STANDARD AND FOR THOSE THAT DO NOT

3-year periods	Number of occurrences or site-DVs ^A							
	In Class I areas				Across all monitoring sites (urban and rural)			
	Total	W126 (ppm-hrs)			Total	W126 (ppm-hrs)		
		>19	>17	≤17		>19	>17	≤17
At Sites That Meet the Current Standard (Design Value at or Below 70 ppb)								
2016–2018	47	0	0	47	849	0	1	848
All from 2000 to 2018	498	0	7	491	8,292	0	8	8,284
At Sites That Exceed the Current Standard (Design Value Above 70 ppb)								
2016–2018	11	8	9	2	273	78	91	182
All from 2000 to 2018	362	159	197	165	10,695	2,317	3,174	7,521

^A Counts presented here are drawn from the PA, Appendix D, Tables 4D–1, 4D–4, 4D–5, 4D–6, 4D–9, 4D–10 and 4D–13 through 16.

As summarized above, the information available in this review continues to indicate that average cumulative seasonal exposure levels at virtually all sites and 3-year periods with air quality meeting the current standard fall at or below the level of 17 ppm-hrs that was identified when the current standard was established (80 FR 65393; October 26, 2015). Additionally, the full dataset indicates that at sites meeting the current standard, annual W126 index values were less than or equal to 19 ppm-hrs well over 99% of the time (PA, Appendix 4D, section 4D.3.2.1). Additionally, the average W126 index in Class I areas that meet the current standard for the most recent 3-year period is below 17 ppm-hrs at all areas which have a monitor within or near their borders (PA, Appendix 4D, Table 4D–16). Further, with the exception of seven values that occurred prior to 2011, cumulative seasonal exposures, in terms of average 3-year W126, in all Class I areas during periods that met the current standard were no higher than 17 ppm-hrs. This contrasts with the occurrence of much higher W126 index values at sites when the current standard was not met. For example, out of the 11 Class I area sites with design values above 70 ppb during the most recent period, eight sites had a 3-year average W126 index above 19 ppm-hrs (ranging up to 47 ppm-hrs) and for nine, it was above 17 ppm-hrs (Table 5; PA, Appendix 4D, Table 4D–17).

D. Proposed Conclusions on the Secondary Standard

In reaching proposed conclusions on the current secondary O₃ standard (presented in section III.D.3), the Administrator has taken into account policy-relevant evidence-based and air

quality-, exposure- and risk-based considerations discussed in the PA (summarized in section III.D.1), as well as advice from the CASAC, and public comment on the standard received thus far in the review (section III.D.2). In general, the role of the PA is to help “bridge the gap” between the Agency’s assessment of the current evidence and quantitative analyses (of air quality, exposure and risk), and the judgments required of the Administrator in determining whether it is appropriate to retain or revise the NAAQS. Evidence-based considerations draw upon the EPA’s integrated assessment of the scientific evidence of welfare effects related to O₃ exposure presented in the ISA (summarized in section III.B above) to address key policy-relevant questions in the review. Similarly, the air quality-, exposure- and risk-based considerations draw upon our assessment of air quality, exposure and associated risk (summarized in section III.C above) in addressing policy-relevant questions focused on the potential for O₃ exposures associated with welfare effects under air quality conditions meeting the current standard.

This approach to reviewing the secondary standard is consistent with requirements of the provisions of the CAA related to the review of the NAAQS and with how the EPA and the courts have historically interpreted the CAA. As discussed in section I.A above, these provisions require the Administrator to establish secondary standards that, in the Administrator’s judgment, are requisite (*i.e.*, neither more nor less stringent than necessary) to protect the public welfare from known or anticipated adverse effects associated with the presence of the

pollutant in the ambient air. Consistent with the Agency’s approach across all NAAQS reviews, the EPA’s approach to informing these judgments is based on a recognition that the available welfare effects evidence generally reflects a continuum that includes ambient air exposures for which scientists generally agree that effects are likely to occur through lower levels at which the likelihood and magnitude of response become increasingly uncertain. The CAA does not require the Administrator to establish a secondary standard at a zero-risk level, but rather at a level that reduces risk sufficiently so as to protect the public welfare from known or anticipated adverse effects.

The proposed decision on the adequacy of the current secondary standard described below is a public welfare policy judgment by the Administrator that draws upon the scientific evidence for welfare effects, quantitative analyses of air quality, exposure and risks, as available, and judgments about how to consider the uncertainties and limitations that are inherent in the scientific evidence and quantitative analyses. This proposed decision has additionally considered the August 2019 remand of the secondary standard. The four basic elements of the NAAQS (*i.e.*, indicator, averaging time, form, and level) have been considered collectively in evaluating the public welfare protection afforded by the current standard. The Administrator’s final decision will additionally consider public comments received on this proposed decision.

1. Evidence- and Exposure/Risk-Based Considerations in the Policy Assessment

Based on its evaluation of the evidence and quantitative analyses of

air quality, exposure and potential risk, the PA for this review reaches the conclusion that consideration should be given to retaining the current secondary standard, without revision (PA, section 4.5.3). Accordingly, and in light of this conclusion that it is appropriate to consider the current secondary standard to be adequate, the PA did not identify any potential alternative secondary standards for consideration in this review (PA, section 4.5.3). The PA additionally recognized that, as is the case in NAAQS reviews in general, the extent to which the Administrator judges the current secondary O₃ standard to be adequate will depend on a variety of factors, including science policy judgments and public welfare policy judgments. These factors include public welfare policy judgments concerning the appropriate benchmarks on which to place weight, as well as judgments on the public welfare significance of the effects that have been observed at the exposures evaluated in the welfare effects evidence. The factors relevant to judging the adequacy of the standard also include the interpretation of, and decisions as to the weight to place on, different aspects of the quantitative analyses of air quality and cumulative O₃ exposure and any associated uncertainties. Thus, the Administrator's conclusions regarding the adequacy of the current standard will depend in part on public welfare policy judgments, science policy judgments regarding aspects of the evidence and exposure/risk estimates, as well as judgments about the level of public welfare protection that is requisite under the Clean Air Act.

The subsections below summarize key considerations and conclusions from the PA. The main focus of the policy-relevant considerations in the PA is the question: Does the currently available scientific evidence- and exposure/risk-based information support or call into question the adequacy of the protection afforded by the current secondary O₃ standard? In addressing this overarching question, the PA focuses first on consideration of the evidence, as evaluated in the ISA (and supported by the prior ISA and AQCDs), including that newly available in this review, and the extent to which it alters the EPA's overall conclusions regarding welfare effects associated with photochemical oxidants, including O₃, in ambient air. The PA also considers questions related to the general approach or framework in which to evaluate public welfare protection of the standard. Additionally, the PA considers the currently available quantitative information regarding

environmental exposures likely to occur in areas of the U.S. where the standard is met, including associated limitations and uncertainties, and the significance of these exposures with regard to the potential for O₃-related vegetation effects, their potential severity and any associated public welfare implications and judgments about the uncertainties inherent in the scientific evidence and quantitative analyses that are integral to consideration of whether the currently available information supports or calls into question the adequacy of the current secondary O₃ standard.

a. Welfare Effects Evidence

With regard to the support in the current evidence for O₃ as the indicator for photochemical oxidants, no newly available evidence has been identified in this review regarding the importance of photochemical oxidants other than O₃ with regard to abundance in ambient air, and potential for welfare effects.¹⁷¹ Data for photochemical oxidants other than O₃ are generally derived from a few special field studies; such that national-scale data for these other oxidants are scarce (ISA, Appendix 1, section 1.1; 2013 ISA, sections 3.1 and 3.6). Moreover, few studies of the welfare effects of other photochemical oxidants beyond O₃ have been identified by literature searches conducted for the 2013 ISA and prior AQCDs, such that "the primary literature evaluating the . . . ecological effects of photochemical oxidants includes ozone almost exclusively as an indicator of photochemical oxidants" (ISA, section IS.1.1, Appendix 1, section 1.1). Thus, as was the case for previous reviews, the PA finds that the evidence base for welfare effects of photochemical oxidants does not indicate an importance of any other photochemical oxidants such that O₃ continues to be appropriately considered for the secondary standard's indicator.

(i) Nature of Effects

Across the full array of welfare effects, summarized in section III.B.1 above, the evidence newly available in this review strengthens previous conclusions, provides further mechanistic insights and augments current understanding of varying effects of O₃ among species, communities and ecosystems (ISA, sections IS.1.3.2, IS.5 and IS.6.2, and Appendices 8 and 9). The current

¹⁷¹ Close agreement between past ozone measurements and the photochemical oxidant measurements upon which the early NAAQS (for photochemical oxidants including O₃) was based indicated the very minor contribution of other oxidant species in comparison to O₃ (U.S. DHEW, 1970).

evidence, including the wealth of long-standing evidence, continues to support conclusions of causal relationships between O₃ and visible foliar injury, reduced yield and quality of agricultural crops, reduced vegetation growth and plant reproduction, reduced productivity in terrestrial ecosystems, and alteration of belowground biogeochemical cycles. The current evidence additionally continues to support conclusions of likely causal relationships between O₃ and reduced carbon sequestration in terrestrial systems, and alteration of terrestrial ecosystem water cycling (ISA, section IS.I.3.2). Also as in the last review, the current ISA determines there to be a causal relationship between tropospheric O₃ and radiative forcing and a likely causal relationship between tropospheric O₃ and temperature, precipitation and related climate variables (ISA, section IS.1.3.3). The current evidence has led to an updated conclusion on the relationship of O₃ with alteration of terrestrial community composition to causal (ISA, sections IS.I.3.2). Lastly, the current ISA concludes the current evidence sufficient to infer likely causal relationships of O₃ with three additional categories of effects (ISA, sections IS.I.3.2). For example, while previous recognition of O₃ as a contributor to tree mortality in a number of field studies was a factor in the 2013 conclusion of a likely causal relationship between O₃ and alterations in community composition, tree mortality has been separately assessed in this review. Additionally, newly available evidence on two additional plant related effects augments more limited previously available evidence related to insect interactions with vegetation, contributing to additional conclusions that the body of evidence is sufficient to infer likely causal relationships between O₃ and alterations of plant-insect signaling and insect herbivore growth and reproduction (ISA, Appendix 8, sections 8.6 and 8.7).¹⁷²

As in the last review, the strongest evidence and the associated findings of causal or likely causal relationships with O₃ in ambient air, and quantitative characterizations of relationships between O₃ exposure and occurrence and magnitude of effects are for vegetation-related effects. With regard to uncertainties and limitations associated with the current welfare effects

¹⁷² As in the last review, the ISA again concludes that the evidence is inadequate to determine if a causal relationship exists between changes in tropospheric ozone concentrations and UV-B effects (ISA, Appendix 9, section 9.1.3.4; 2013 ISA, section 10.5.2).

evidence, the PA recognized that the type of uncertainties for each category of effects tends to vary, generally in relation to the maturity of the associated evidence base, from those associated with overarching characterizations of the effects to those associated with quantification of the cause and effect relationships. For example, given the longstanding nature of the evidence for many of the vegetation effects identified in the ISA as causally or likely causally related to O₃ in ambient air, the key uncertainties and limitations in our understanding of these effects relate largely to the implications or specific aspects of the evidence, as well as to current understanding of the quantitative relationships between O₃ concentrations in the environment and the occurrence and severity (or relative magnitude) of such effects or understanding of key influences on these relationships. For more newly identified categories of effects, the evidence may be less extensive, and accordingly, the areas of uncertainty greater, thus precluding consideration of quantitative details related to risk of such effects under varying air quality conditions that would inform review of the current standard.

The evidence bases for the three newly identified categories provide examples of such gaps in relevant information. For example, the evidence for increased tree mortality includes previously available studies with field observations from locations and periods of O₃ concentrations higher than are common today and three more recently available publications assessing O₃ exposures not expected under conditions meeting the current standard, as summarized in section III.B.1 above. The information available regarding the newly identified categories of plant-insect signaling and insect herbivore growth and reproduction additionally does not provide for a clear understanding of the specific environmental effects that may occur in the natural environment under specific exposure conditions, as summarized in sections III.B.1 and III.B.3 above (PA, section 4.5.1.1). Accordingly, the PA does not find the current evidence for these newly identified categories to call into question the adequacy of the current standard.

With regard to tropospheric O₃ as a greenhouse gas at the global scale, and associated effects on climate, the PA notes that while additional characterizations of tropospheric O₃ and climate have been completed since the last review, uncertainties and limitations in the evidence that were

also recognized in the last review remain (PA, section 4.5.1.1). As summarized in section III.B.3 above, there is appreciable uncertainty associated with understanding quantitative relationships involving regional O₃ concentrations near the earth's surface and climate effects of tropospheric O₃ on a global scale. Further, there are limitations in our modeling tools and associated uncertainties in interpretations related to capabilities for quantitatively estimating effects of regional-scale lower tropospheric O₃ concentrations on climate. These uncertainties and limitations affect our ability to make a quantitative characterization of the potential magnitude of climate response to changes in O₃ concentrations in ambient air, particularly at regional (vs global) scales, and thus our ability to assess the impact of changes in ambient air O₃ concentrations in regions of the U.S. on global radiative forcing or temperature, precipitation and related climate variables. Consequently, the PA finds that current evidence in this area is not informative to consideration of the adequacy of public welfare protection of the current standard (PA, section 4.5.1.1).

(ii) E-R Information

The category of O₃ welfare effects for which current understanding of quantitative relationships is strongest continues to be reduced plant growth. While the ISA describes studies of welfare effects associated with O₃ exposures newly identified since the last review, the established E-R functions for tree seedling growth and crop yield that have been available in the last several reviews continue to be the most robust descriptions of E-R relationships for welfare effects. These well-established E-R functions for seedling growth reduction in 11 tree species and yield loss in 10 crop species are based on response information across multiple levels of cumulative seasonal exposure (estimated from extensive records of hourly O₃ concentrations across the exposure periods). Studies of some of the same species, conducted since the derivation of these functions, provide supporting information (ISA, Appendix 8, section 8.13.2; 2013 ISA, sections 9.6.3.1 and 9.6.3.2). The E-R functions provide for estimation of the growth-related effect, RBL, for a range of cumulative seasonal exposures.

The evidence newly available in this review does not include studies that assessed reductions in tree growth or crop yield responses across multiple O₃ exposures and for which sufficient data

are available for analyses of the shape of the E-R relationship across a range of cumulative exposure levels (e.g., in terms of W126 index) relevant to conditions associated with the current standard. While there are several newly available studies that summarize previously available studies or draw from them, such as for linear regression analyses, these do not provide robust E-R functions or cumulative seasonal exposure levels associated with important vegetation effects, such as reduced growth, that define the associated exposure circumstances in a consistent manner (as summarized in section III.B.3 above).¹⁷³ This limits their usefulness for considering the potential for occurrence of welfare effects in air quality conditions that meet the current standard. Thus, the PA concludes that robust E-R functions are not available for growth or yield effects on any additional tree species or crops in this review.

In considering the E-R functions and their use in informing judgments regarding such effects in areas with air quality of interest, the PA additionally recognized a number of limitations, and associated uncertainties, that remain in the current evidence base, and that affect characterization of the magnitude of cumulative exposure conditions eliciting growth reductions in U.S. forests (PA, section 4.3.4). For example, there are uncertainties in the extent to which the 11 tree species for which there are established E-R functions encompass the range of O₃ sensitive species in the U.S., and also the extent to which they represent U.S. vegetation as a whole. These 11 species include both deciduous and coniferous trees with a wide range of sensitivities and species native to every NOAA climate region across the U.S. and in most cases are resident across multiple states and regions. Thus, they may provide a range that encompasses species without E-R

¹⁷³ For example, among the newly available publications cited in the ISA is a study that compiles EC₁₀ values (estimated concentration at which 10% lower biomass [compared to zero O₃] is predicted) derived for trees and grassland species (including 17 native to the U.S. [ISA, Table 8-26]) using linear regression of previously published data on plant growth response and O₃ concentration quantified as AOT40. The data were from studies of various experimental designs, that involved various durations ranging up from 21 days, and involving various concentrations no higher than 100 ppb as a daily maximum hourly concentration. More detailed analyses of exposure and response information across a relevant range of seasonal exposure levels (e.g., accompanied by detailed records of O₃ concentrations) that would support derivation of robust E-R functions for purposes discussed here are not available.

functions.¹⁷⁴ The PA additionally recognizes important uncertainties in the extent to which the E–R functions for reduced growth in tree seedlings are also descriptive of such relationships during later lifestages, for which there is a paucity of established E–R relationships. Although such information is limited with regard to mature trees, analyses in the 2013 ISA indicated that reported growth response of young aspen over six years was similar to the reported growth response of seedlings (ISA, Appendix 8, section 8.13.2; 2013 ISA, section 9.6.3.2). Additionally, there are uncertainties with regard to the extent to which various factors in natural environments can either mitigate or exacerbate predicted O₃-plant interactions and contribute variability in vegetation-related effects, including reduced growth. Such factors include multiple genetically influenced determinants of O₃ sensitivity, changing sensitivity to O₃ across vegetative growth stages, co-occurring stressors and/or modifying environmental factors (PA, section 4.3.4).

The PA additionally considered the quantitative information for other long-recognized effects of O₃ (PA, section 4.3.4). For example, with regard to crop yield effects, as at the time of the last review, the PA recognized the potential for greater uncertainty in estimating the impacts of O₃ exposure on agricultural crop production than that associated with O₃ impacts on vegetation in natural forests. This relates to uncertainty in the extent to which agricultural management methods influence potential for O₃-related effects and accordingly, the applicability of the established E–R functions for RYL in current agricultural areas (PA, section 4.3.4).

With regard to visible foliar injury, the PA finds that, as in the last review, there remains a lack of established E–R functions that would quantitatively describe relationships between the occurrence and severity of visible foliar injury and O₃ exposure, as well as factors influential in those relationships, such as soil moisture conditions (PA, section 4.5.1.1). While the currently available information continues to include studies that document foliar injury in sensitive plant species in response to specific O₃ exposures, investigations of a quantitative relationship between environmental O₃ exposures and visible foliar injury occurrence/severity have not yielded a predictive result. In addition to

experimental studies, the evidence includes multiple studies that have analyzed data collected as part of the USFS biosite biomonitoring program (e.g., Smith, 2012). These analyses continue to indicate the limitations in capabilities for predicting the exposure circumstances under which visible foliar injury would be expected to occur, as well as the circumstances contributing to increased injury severity. As noted in section III.B.3.b above, expanded summaries of the dataset compiled in the 2015 review from several years of USFS biosite records also does not clearly and consistently describe a relationship between incidence of foliar injury or severity (based on individual site scores) and W126 index estimates across the range of exposures. Overall, however, the dataset indicates that the proportion of records having different levels of severity score is generally highest in the records at sites with the highest W126 index (e.g., greater than 25 ppm-hrs for the normal and dry soil moisture categories). This analysis does not provide for identification of air quality conditions, in terms of O₃ concentrations associated with the relatively lower environmental exposures most common in the USFS dataset that would correspond to a specific magnitude of injury incidence or severity scores across locations.

As discussed in section III.B.3 above, a number of analyses of the USFS biosite data (as well as several experimental studies), while often using cumulative exposure metrics to quantify O₃ exposures have additionally reported there to be a role for a metric that quantifies the incidence of “high” O₃ days (2013 ISA, p. 9–10; Smith, 2012; Wang et al., 2012). Such analyses have not, however, established specific air quality metrics and associated quantitative functions for describing the influence of ambient air O₃ on incidence and severity of visible foliar injury. As a result, the PA concludes that limitations recognized in the last review remain in our ability to quantitatively estimate incidence and severity of visible foliar injury likely to occur in areas across the U.S. under different air quality conditions over a year, or over a multi-year period.

In looking across the full array of O₃ welfare effects, the PA recognizes that the E–R functions for growth-related effects that were available in the last review continue to be the most robust E–R information available. The currently available evidence for growth-related effects, including that newly available in this review, does not indicate the occurrence of growth-

related responses attributable to cumulative O₃ exposures lower than was established at the time of the last review. With regard to visible foliar injury, the available information that would support estimates of occurrence and severity across a range of air quality conditions continues to be limited, affecting the nature of conclusions that may be reached related to potential occurrence and/or severity for conditions. The quantitative information for other effects is more limited, as recognized earlier in this section and in section III.B.3 above. Thus, the PA concludes that the newly available evidence does not appreciably address key limitations or uncertainties as would be needed to expand capabilities for estimating welfare impacts that might be expected as a result of differing patterns of O₃ concentrations in the U.S.

(iii) W126 Index as Exposure Metric

With regard to exposure metric the currently available evidence continues to support a cumulative, seasonal exposure index as a biologically relevant and appropriate metric for assessment of the evidence of exposure/risk information for vegetation, most particularly for growth-related effects. The most commonly used such metrics are the SUM06, AOT40 (or AOT60) and W126 indices (ISA, section IS.3.2).¹⁷⁵ The evidence for growth-related effects continues to support important roles for cumulative exposure and for weighting higher concentrations over lower concentrations. Thus, among the various such indices considered in the literature, the cumulative, concentration-weighted metric, defined by the W126 function, continues to be best supported for purposes of relating O₃ air quality to growth-related effects. Accordingly, the PA continues to find the W126 index appropriate for consideration of the potential for vegetation-related effects to occur under air quality conditions (PA, section 4.5.1.1). The PA also recognizes, as recognized in the past, the lack of support for E–R functions for incidence and severity of visible foliar injury with W126 index as the descriptor of exposure, particularly in environmental settings where exposures are below a

¹⁷⁵ The evidence includes some studies reporting O₃-reduced soybean yield and perennial plant biomass loss using AOT40 (as well as W126) as the exposure metric, however, no newly available analyses are available that compare AOT40 to W126 in terms of the strength of association with such responses. Nor are studies available that provide analyses of E–R relationships for AOT with reduced growth or RBL with such extensiveness as the analyses supporting the established E–R functions for W126 with RBL and RYL.

¹⁷⁴ This was the view of the CASAC in the 2015 review (Frey, 2014b, p. 11).

W126 index of 25 ppm-hrs. While the PA analysis of the dataset of USFS biosite scores indicates appreciable increases in incidence and severity at and above 25 ppm-hrs, a pattern is unclear at lower W126 index estimates across which the dataset does not support a predictive relationship. As summarized in section III.3.b above, while the overall evidence also indicates an important role for peak concentrations (*e.g.*, N100) in influencing the occurrence and severity of visible foliar injury, the current evidence does not include an established predictive relationship based on such an additional metric (PA, section 4.5.1.1).

b. General Approach for Considering Public Welfare Protection

This section summarizes PA consideration of the current evidence and air quality information with regard to key aspects of the general approach and risk management framework for making judgments and reaching conclusions regarding the adequacy of public welfare protection provided by the secondary standard that was applied in 2015 (summarized in section III.A.1 above). Key aspects of the approach include the use of RBL as a proxy for the broad array of O₃ vegetation-related effects, E-R relationships for this endpoint with the W126 index, and the focus on this index averaged across a 3-year period.

(i) RBL as Proxy or Surrogate

In the last review, the Administrator used RBL as a proxy or surrogate for an array of adverse welfare effects based on consideration of ecosystem services and potential for impacts to the public, as well as conceptual relationships between vegetation growth effects and ecosystem-scale effects. Such a use was supported by the CASAC at that time (80 FR 65406, October 26, 2015; Frey, 2014b, pp. iii, 9–10).¹⁷⁶ In consideration

¹⁷⁶ The CASAC letter on the second draft PA in that review stated the following (Frey, 2014b, p. 9–10):

For example, CASAC concurs that trees are important from a public welfare perspective because they provide valued services to humans, including aesthetic value, food, fiber, timber, other forest products, habitat, recreational opportunities, climate regulation, erosion control, air pollution removal, and hydrologic and fire regime stabilization. Damage effects to trees that are adverse to public welfare occur in such locations as national parks, national refuges, and other protected areas, as well as to timber for commercial use. The CASAC concurs that biomass loss in trees is a relevant surrogate for damage to tree growth that affects ecosystem services such as habitat provision for wildlife, carbon storage, provision of food and fiber, and pollution removal. Biomass loss may also have indirect process-related effects such as on nutrient and hydrologic cycles. Therefore,

of the broader evidence base and public welfare implications, including associated strengths, limitations and uncertainties, the Administrator focused on RBL, not simply in making judgments specific to a magnitude of growth effect in seedlings that would be acceptable or unacceptable in the natural environment, but as a surrogate or proxy for consideration of the broader array of vegetation-related effects of potential public welfare significance, that included effects on growth of individual sensitive species and extended to ecosystem-level effects, such as community composition in natural forests, particularly in protected public lands (80 FR 65406, October 26, 2015).

The currently available evidence related to conceptual relationships between plant growth impacts and the broader array of vegetation effects (*e.g.*, that supported the use of RBL as a surrogate or proxy) is largely consistent with that available in the last review. In fact, the ISA for the current review describes (or relies on) such relationships in considering causality determinations for ecosystem-scale effects such as altered terrestrial community composition and reduced productivity, as well as reduced carbon sequestration, in terrestrial ecosystems (ISA, Appendix 8, sections 8.8 and 8.10). Thus, the PA concludes that the current evidence does not call into question conceptual relationships between plant growth impacts and the broader array of vegetation effects. Rather, the current evidence continues to support the use of tree seedling RBL as a proxy for the broad array of vegetation-related effects, most particularly those conceptually related to growth (PA, sections 4.5.1.2 and 4.5.3).

Beyond tree seedling growth, on which RBL is specifically based, two other vegetation effect categories with extensive evidence bases, crop yield and visible foliar injury, were also given attention in considering the public welfare protection provided by the standard in 2015. Based on the available information for these endpoints, along with associated limitations and uncertainties, the Administrator at that time concluded there was not support for giving a primary focus, in selecting a revised secondary standard, to these two types of effects. With regard to crop yield, the Administrator recognized the significant role of agricultural management practices in agricultural productivity, as well as market

biomass loss is a scientifically valid surrogate of a variety of adverse effects to public welfare.

variability, concluding that, in describing her public welfare protection objectives, additional attention to this endpoint was not necessary. The rough similarities in estimated W126 levels of median crops and tree species are also noteworthy. With regard to foliar injury, the lack of clear quantitative relationships that would support predictive E-R functions was recognized. In light of such considerations, the Administrator focused on RBL estimates in identifying the requisite standard, and judged that a standard set based on public welfare protection objectives described in terms of cumulative exposures and relationships with tree seedling RBL was an appropriate means to, and would, provide appropriate protection for the array of vegetation-related effects. With regard to the information available in the current review, the PA concludes it does not call into question the basis for such judgments and continues to be supportive of the use of tree seedling RBL as a proxy for the broad array of vegetation-related effects (PA, section 4.5.1.2).

In considering the magnitude of estimated RBL on which to focus in its role as a surrogate or proxy for the full array of vegetation effects in the last review, the Administrator endeavored to identify a secondary standard that would limit 3-year average O₃ exposures somewhat below W126 index values associated with a 6% RBL median estimate from the established species-specific E-R functions. This led to identification of a seasonal W126 index value of 17 ppm-hrs that the Administrator concluded appropriate as a target at or below which the new standard would generally restrict cumulative seasonal exposures (80 FR 65407, October 26, 2015). In identifying this exposure level as a target, the Administrator, recognizing limitations and uncertainties in the evidence and variability in biota and ecosystems in the natural environment, additionally judged that RBL estimates associated with isolated rare instances of marginally higher cumulative exposures (in terms of a 3-year average W126 index), *e.g.*, those that round to 19 ppm-hrs (which corresponds to 6% RBL as median from 11 established E-R functions), were not indicative of adverse effects to the public welfare (80 FR 65409, October 26, 2015).

The PA concludes that the information newly available in this review does not differ from that available in the last review with regard to a magnitude of RBL in the median species appropriately considered a reference for judgments concerning

potential vegetation-related impacts to the public welfare (PA, section 4.5.1.2). The currently available evidence continues to indicate conceptual relationships between reduced growth and the broader array of vegetation-related effects, and limitations and uncertainties remain with regard to quantitation. The PA notes that consideration of the magnitude of tree growth effects that might cause or contribute to adverse effects for trees, forests, forested ecosystems or the public welfare is complicated by various uncertainties or limitations in the evidence base, including those associated with relating magnitude of tree seedling growth reduction to larger-scale forest ecosystem impacts. Further, other factors can influence the degree to which O₃-induced growth effects in a sensitive species affect forest and forest community composition and other ecosystem service flows (*e.g.*, productivity, belowground biogeochemical cycles and terrestrial ecosystem water cycling) from forested ecosystems. These include (1) the type of stand or community in which the sensitive species is found (*i.e.*, single species versus mixed canopy); (2) the role or position the species has in the stand (*i.e.*, dominant, sub-dominant, canopy, understory); (3) the O₃ sensitivity of the other co-occurring species (O₃ sensitive or tolerant); and (4) environmental factors, such as soil moisture and others. The lack of such established relationships with O₃ complicates consideration of the extent to which different estimates of impacts on tree seedling growth would indicate significance to the public welfare. Further, efforts to estimate O₃ effects on carbon sequestration are handicapped by the large uncertainties involved in attempting to quantify the additional carbon uptake by plants as a result of avoided O₃-related growth reductions. Such analyses require complex modeling of biological and ecological processes with their associated sources of uncertainty.

Quantitative representations of such relationships have been used to study potential impacts of tree growth effects on such larger-scale effects as community composition and productivity with the results indicating the array of complexities involved (*e.g.*, ISA, Appendix 8, section 8.8.4). Given their purpose in exploring complex ecological relationships and their responses to environmental variables, as well as limitations of the information available for such work, these analyses commonly utilize somewhat general representations. The PA notes that this

work indicates how established the existence of such relationships is, while also identifying complexities inherent in quantitative aspects of such relationships and interpretation of estimated responses. Thus, the PA finds the currently available evidence to be little changed from the last review with regard to informing identification of an RBL reference point reflecting ecosystem-scale effects with public welfare impacts elicited through such linkages (PA, section 4.5.1.2).

(ii) Focus on 3-Year Average W126 Index

In setting the current standard, as described in section III.A.1 above, the Administrator focused on control of seasonal cumulative exposures in terms of a 3-year average W126 index. The evaluations in the PA for that review recognized there to be limited information to discern differences in the level of protection afforded for cumulative growth-related effects by a standard focused on a single-year W126 index as compared to a 3-year W126 index (80 FR 65390, October 26, 2015). Accordingly, 3-year average was identified for considering the seasonal W126 index based on the recognition that there was year-to-year variability not just in O₃ concentrations, but also in environmental factors, including rainfall and other meteorological factors, that influence the occurrence and magnitude of O₃-related effects in any year (*e.g.*, through changes in soil moisture), contributing uncertainties to projections of the potential for harm to public welfare (80 FR 65404 October 26, 2015). Given this recognition, as well as other considerations, the Administrator expressed greater confidence in judgments related to projections of public welfare impacts based on seasonal W126 index estimated by a 3-year average and accordingly, relied on that metric.

A general area of uncertainty that remains in the current evidence continues to affect interpretation of the potential for harm to public welfare over multi-year periods of air quality that meet the current standard (PA, section 4.3.4). As recognized in the last review, there is variability in ambient air O₃ concentrations from year to year, as well as year-to-year variability in environmental factors, including rainfall and other meteorological factors that affect plant growth and reproduction, such as through changes in soil moisture. Accordingly, these variabilities contribute uncertainties to estimates of the occurrence and magnitude of O₃-related effects in any year, and to such estimates over multi-

year periods. The PA recognizes that limitations in our ability to estimate the effects on growth over tree lifetimes of year-to-year variation in O₃ concentrations, particularly those associated with conditions meeting the current standard, contribute uncertainty to estimates of cumulative growth (biomass) effects over multi-year periods in the life of individual trees and associated populations, as well as related effects in associated communities and ecosystems (PA, section 4.3.4).

As summarized in section III.B.3 above, the longstanding evidence on O₃ effects on plant growth includes the established and robust E-R functions for 11 species of tree seedlings (ISA, Appendix 8, Table 8–24; PA, Appendix 4A, Table 4A–1.). The PA recognized the strength of these functions in describing tree seedling response across a broad range of W126 index values, concluding that the evidence continues to support their use in estimating the median RBL across species in this review. In considering the appropriate representation of seasonal W126 for use of these functions with air quality data, the PA additionally considered the available information underlying the E-R functions and the extent to which the information is specific to a single seasonal exposure, *e.g.*, as compared to providing representation for an average W126 index across multiple seasons (PA, section 4.5.1.2). In so doing, the PA took note of aspects of the evidence that reflect variability in organism response under different experimental conditions and the extent to which this variability is represented in the available data. This might indicate an appropriateness of assessing environmental conditions using a mean across seasons in recognition of the existence of such year-to-year variability in conditions and responses. An additional aspect of the information underlying the E-R functions that was identified as relevant to consider is the extent to which the exposure conditions represented include those associated with O₃ concentrations that meet the current standard, and the extent to which tree seedling growth responses to such conditions may have been found to not be significantly different from responses to the control (*e.g.*, zero O₃) conditions. The extent to which E-R predictions are extrapolated beyond the tested exposure conditions also contributes to uncertainty which the PA indicated may argue for a less precise interpretation, such as an average across multiple seasons.

The experiments from which the functions were derived vary in duration

from periods of 82 to 140 days over a single year to periods of 180 to 555 days across two years, and in whether measurements were made immediately following exposure period or in the subsequent season (PA, section 4.5.1.2, Appendix 4A, Table 4A–5; Lee and Hogsett, 1996). In producing E–R functions of consistent duration across the experiments, the E–R functions were derived first based on the exposure duration of the experiment and then normalized to 3-month (seasonal) periods (see Lee and Hogsett, 1996, section I.3; PA, Appendix 4A). Underlying the adjustment is a simplifying assumption of uniform W126 distribution across the exposure periods and of a linear relationship between duration of cumulative exposure in terms of the W126 index and plant growth response. Some functions for experiments that extended over two seasons were derived by distributing responses observed at the end of two seasons of varying exposures equally across the two seasons (*e.g.*, essentially applying the average to both seasons).

The PA additionally recognizes that the experiment-specific E–R functions for both aspen and ponderosa pine illustrate appreciable variability in response across experiments (PA, Appendix 4A, Figure 4A–10). The PA suggested that reasons for this variability may relate to a number of factors, including variability in seasonal response related to variability in non-O₃ related environmental influences on growth, such as rainfall, temperature and other meteorological variables, as well as biological variability across individual seedlings, in addition to potentially variability in the pattern of O₃ concentrations contributing to similar cumulative exposures (PA, section 4.5.1.2). In recognition of some of the variability in both seasonal environmental conditions in the studies and the associated experimental data, the 11 species-specific E–R functions are based on median responses (derived from experiment-specific functions) across an array of W126 index values (PA, Appendix 4A; Lee and Hogsett, 1996).¹⁷⁷ The number of experiments used in deriving the E–R functions for each species varies. For example, there are 7 experimental studies for wild aspen and 11 for ponderosa pine (PA, Appendix 4A, Table 4A–5), and only two or three for the three species (black cherry, sugar maple and tulip poplar) that exhibit greater sensitivity than aspen and ponderosa pine (PA,

Appendix 4A, section 4A–2, Table 4A–5; 1996 AQCD, Table 5–28; Lee and Hogsett, 1996). Regarding the extent or strength of the database underlying the E–R functions for cumulative exposure levels of interest in the current review, the PA also notes that the data generally appear to be more extensive for relatively higher (*e.g.*, at/above a SUM06 of 30 ppm-hrs), *versus* lower, seasonal exposures (PA, Appendix 4A, Table 4A–6). Additionally, while the evidence is long-standing and robust for growth effects of O₃, the studies available for some species appear to be somewhat limited in the extent to which they include cumulative O₃ exposures commonly occurring with air quality conditions that meet the current standard (*e.g.*, W126 index values below 20 ppm-hrs).¹⁷⁸ The PA concludes the factors identified here to contribute to uncertainty or inexactitude in estimates based on the E–R functions.

The PA recognizes that the evidence that allows for specific evaluation of the predictability of growth impacts from single-year versus multiple-year average exposure estimates is quite limited. Such evidence would include multi-year studies reporting results for each year of the study, which are the most informative to the question of plant annual and cumulative responses to individual years (high and low) over multiple-year periods. The evidence is quite limited with regard to studies of O₃ effects that report seasonal observations across multi-year periods and that also include detailed hourly O₃ concentration records (to allow for derivation of exposure index values). Such a limitation contributes uncertainty and accordingly a lack of precision to our understanding of the quantitative impacts of seasonal O₃ exposure, including its year-to-year variability on tree growth and annual biomass accumulation (PA, section 4.3.4). The PA finds this uncertainty to limit our understanding of the extent to

which tree biomass would be expected to appreciably differ at the end of multi-year exposures for which the overall average exposure is the same, yet for which the individual year exposures varied in different ways (*e.g.*, as analyzed in Appendix 4D of the PA). Thus, the PA notes that the extent of any differences in tree biomass for two multi-year scenarios with the same 3-year average W126 index but differing single-year indices is not clear, including for exposures associated with O₃ concentrations that would meet the current standard (PA, section 4.3.4).¹⁷⁹

One such study, which tracked exposures across six years, is available for aspen (King et al., 2005; 2013 ISA, section 9.6.3.2; ISA, Appendix 8, section 8.13.2).¹⁸⁰ This study was used in a presentation of the 2013 ISA that compared the observed growth response to that predicted from the E–R function for aspen. Specifically, the observed aboveground biomass (and RBL) after each of the six growing seasons was compared to estimates derived from the aspen E–R function based on the cumulative multiple-year average seasonal W126 index values for each year¹⁸¹ (2013 ISA, section 9.6.3.2). The conclusions reached were that the agreement between the set of predictions and the Aspen FACE observations were “very close” and that “the function based on one year of growth was shown to be applicable to subsequent years” (2013 ISA, p. 9–135). The PA observes that such results indicate that when considering O₃ impacts on growing trees across multiple years, a multi-year average index yields predictions close to observed measurements across the multi-year time period (2013 ISA, section 9.6.3.2 and Figure 9–20; PA, Appendix 4A, section 4.A.3). The PA also includes example analyses that use biomass measurements from the multi-year study (King et al., 2005) to estimate aboveground aspen biomass over a multi-year period using the established

¹⁷⁷ This median-based approach is expected to guard against statistical bias in parameter values.

¹⁷⁸ The evidence is unclear on the extent to which six of the 11 species include exposure treatments likely to correspond to W126 index values at or below 20 ppm-hrs (PA, Appendix 4A, Table 4A–5). For five of the species in Table 4A–5 in Appendix 4A, SUM06 index values below 25 ppm-hrs range from 12 to 21.7. In considering these values, we note that an approach used in the 2007 Staff Paper on specific temporal patterns of O₃ concentrations concluded that a SUM06 index value of 25 ppm-hrs would be estimated to correspond to a W126 index value of approximately 21 ppm-hrs (U.S. EPA, 2007, Appendix 7B, p. 7B–2). Accordingly, a SUM06 value of 21 ppm-hrs might be expected to correspond to a W126 index value below 20 ppm-hrs. The PA further notes that for one of the species for which lower exposures were studied, black cherry, the findings for at least one study reported statistical significance only for effects observed for higher exposures (PA, section 4.3.4, Appendix 4A, Table 4A–6).

¹⁷⁹ Variation in annual W126 index values indicates that for the period, 2016–2018, the amount by which annual W126 index values at a site differ from the 3-year average varies is generally below 10 ppm-hrs across all sites and generally below 5 ppm-hrs at sites with design values at or below 70 ppb (PA, Appendix 4D, Figure 4D–7).

¹⁸⁰ A similar comparison is presented in the current ISA (ISA, Appendix 8).

¹⁸¹ Although not emphasized or explained in detail in the 2013 ISA, the W126 estimates used to generate the predicted growth response were cumulative average. To clarify, the cumulative average W126 for year 1 is simply the W126 index for that year (*e.g.*, based on highest 3 months). For year 2, it is the average of the year 1 seasonal W126 and year 2 seasonal W126, and so on. For year 6, it is the average of each of the six year’s seasonal W126 index values.

E–R function for aspen with a constant single-year W126 index, *e.g.*, of 17 ppm-hrs, or with varying annual W126 index values (10, 17 and 24 ppm-hrs) for which the 3-year average is 17 ppm-hrs, and that yield somewhat similar total biomass estimates after multiple years (PA, Appendix 4A, section 4A.3).¹⁸²

Thus, the PA finds that, while the E–R functions are based on strong evidence of seasonal and cumulative seasonal O₃ exposure reducing tree growth, and while they provide for quantitative characterization of the extent of such effects across O₃ exposure levels of appreciable magnitude, there is uncertainty associated with the resulting RBL predictions. Further, the current evidence does not indicate single-year seasonal exposure in combination with the established E–R functions to be a better predictor of RBL than a seasonal exposure based on a multi-year average, or *vice versa* (Appendix 4A, section 4A.3.1). Rather, associated uncertainty contributes or implies an imprecision or inexactitude in the resulting predictions, particularly for the lower W126 index estimates of interest in this review. In light of this, the current evidence does not support concluding there to be an appreciable difference in the effect of three years of exposure held at 17 ppm-hrs compared to a 3-year exposure that averaged 17 ppm-hrs yet varied by 5 to 10 ppm (*e.g.*, 7 ppm-hrs) from 17 ppm-hrs in any of the three years for tree RBL over such multiple-year periods. The PA considered all of the factors identified here, the currently available evidence and recognized limitations, variability and uncertainties, to contribute uncertainty and resulting imprecision or inexactitude to RBL estimates of single-year seasonal W126 index values. The PA found these considerations to indicate there to be no lesser support for use of an average seasonal W126 index derived from multiple years (with their representation of variability in environmental factors), such as for a 3-year period, for estimating median RBL

¹⁸² This example, while simplistic in nature, and with inherent uncertainties, including with regard to broad interpretation given the reliance on data available for the single study, quantitatively illustrates potential differences in growth impacts of W126 index, as a 3-year average, for which individual year values vary while still meeting the value specified for the average, from such impacts from exposure controlled to the same W126 index value annually. The PA suggests that this example indicates based on the magnitude of variation documented for annual W126 index values occurring under the current standard, a quite small magnitude of differences in tree biomass between single-year and multi-year average approaches to controlling cumulative exposure (PA, Appendix 4A, section 4A.3).

using the established E–R functions than for use of a single-year index.

(iii) Visible Foliar Injury

In considering a public welfare protection approach related to visible foliar injury, the PA first notes that some level of visible foliar injury can impact public welfare and thus might reasonably be judged adverse to public welfare.¹⁸³ As summarized in section III.B.2 above, depending on its spatial extent and severity, there are many situations or locations in which visible foliar injury can adversely affect the public welfare. For example, significant, readily perceivable and widespread injury in national parks and wilderness areas can adversely affect the perceived scenic beauty of these areas, harming the aesthetic experience for both outdoor enthusiasts and the occasional park visitor. Such considerations have also been recognized by the Agency in past reviews, in which decisions to revise the O₃ secondary standard emphasized protection of Class I areas, which are areas such as national wilderness areas and national parks given special protections by the Congress (*e.g.*, 73 FR 16496, March 27, 2008, “the Administrator concludes it is appropriate to revise the secondary standard, in part, to provide increased protection against O₃-caused impairment to such protected vegetation and ecosystems”).¹⁸⁴

¹⁸³ As stated in the 2015 decision notice: “both tree growth-related effects and visible foliar injury have the potential to be significant to the public welfare” (80 FR 65377, October 26, 2015); “O₃-induced visible foliar injury also has the potential to be significant to the public welfare through impacts in Class I and other similarly protected areas” (80 FR 65378, October 26, 2015); “[d]epending on the extent and severity, O₃-induced visible foliar injury might be expected to have the potential to impact the public welfare in scenic and/or recreational areas during the growing season, particularly in areas with special protection, such as Class I areas. (80 FR 65379, October 26, 2015); “[t]he Administrator also recognizes the potential for this effect to affect the public welfare in the context of affecting values pertaining to natural forests, particularly those afforded special government protection (80 FR 65407, October 26, 2015).

¹⁸⁴ In the discussion of the need for revision of the 1997 secondary standard, the 2008 decision noted that “[i]n considering what constitutes a vegetation effect that is adverse from a public welfare perspective, . . . the Administrator has taken note of a number of actions taken by Congress to establish public lands that are set aside for specific uses that are intended to provide benefits to the public welfare, including lands that are to be protected so as to conserve the scenic value and the natural vegetation and wildlife within such areas, and to leave them unimpaired for the enjoyment of future generations” (73 FR 16496, March 27, 2008). This passage of the 2008 decision notice clarified that “[s]uch public lands that are protected areas of national interest include national parks and forests, wildlife refuges, and wilderness areas” (73 FR 16496, March 27, 2008).

In establishing the current secondary standard and describing its underlying public welfare protection objectives (as summarized in section III.A.1, above), the Administrator at that time focused primarily on RBL in tree seedlings as a proxy or surrogate for the full array of vegetation related effects of O₃, while additionally concluding that the then-available information on visible foliar injury provided some support for establishing a strengthened standard. In so doing, she took note of the indication of the evidence of the association between O₃ and visible foliar injury, as well as in the declines generally observed in USFS BI scores with reductions in W126 index from well above 20 ppm-hrs to lower levels (80 FR 65407–65408, October 26, 2015). She recognized, however, that the evidence was not conducive to use in identifying a quantitative public welfare protection objective focused specifically on visible foliar injury (based on judgment of the specific extent and severity at which such effects should be considered adverse to the public welfare) due to uncertainties and complexities associated with the available information. In related manner, she specifically recognized significant challenges posed by the lack of clear quantitative relationships (including robust exposure-response functions that addressed the variability observed in the available data, likely associated with the variables creating a predisposing environment), that would allow prediction of visible foliar injury severity and incidence under varying air quality and environmental conditions, as well as the lack of established criteria or objectives that might inform consideration of potential public welfare impacts related to this vegetation effect (80 FR 65407, October 26, 2015).

The PA finds that these challenges are not addressed by the information available in the current review. Beyond the lack of established descriptive quantitative relationships for O₃ concentrations or exposure metrics with incidence or severity of visible foliar injury, summarized in sections III.D.1.a and III.B.3 above, there is a paucity of information clearly relating differing levels of severity and extent of location affected to scenic or aesthetic values (*e.g.*, reflective of visitor enjoyment and likelihood of frequenting such areas) that might inform judgments of public welfare protection from adversity (PA, section 4.5.1). Thus, there remain appreciable limitations of the current information for the purpose of providing a foundation for judgments on public

welfare protection objectives specific to visible foliar injury.

Notwithstanding these limitations with regard to a detailed approach or framework for judging public welfare protection related to impacts of visible foliar injury, the current evidence and analyses are informative to such considerations. For example, the published studies and EPA analyses of the USFS biosite data indicate that incidence and severity of injury are increased at the highest exposures. With regard to the dataset analyzed in the PA, while clear trends in incidence and severity related to increasing W126 index are not evident across the W126 bins below 25 ppm-hrs, the incidence of sites with the more severe classification of injury (e.g., BI score above 15 [“moderate” or “severe”] or 5 [“light,” “moderate,” or “severe”]) is appreciably lower at sites with W126 index values below 25 ppm-hrs than at sites with higher values (e.g., PA, Appendix 4C, Figures 4C–5 and 4C–6 and Table 4C–5). This observation is based primarily on records for the normal soil moisture category, for which is sufficient sample size across the full range of W126 and the largest differences in incidence and average score are observed.¹⁸⁵ Based on these observations and the full analysis, the PA concludes that the currently available information does not support precise conclusions as to the severity and extent of such injury associated with the lower values of W126 index most common at USFS sites during the years of the dataset, 2006–2010.¹⁸⁶ Based on the general pattern observed, however, the PA suggests a reduced severity (average BI score below 5) and incidence of visible foliar injury, as quantified by BI scores, to be expected under conditions that maintain W126 index values below 25 ppm-hrs, (PA, section 4.5.1.3).

Given the evidence regarding the role of peak O₃ concentrations as an influence on occurrence of visible foliar injury separate from that of the cumulative, concentration-weighted, W126 index (summarized in section III.B.3.b above), the PA additionally finds that the conditions associated with visible foliar injury in locations with

sensitive species appear to relate to peak concentration as well as cumulative exposure to generally higher concentrations over the growing season (PA, section 4.5.1.2). Accordingly, the PA also considered the current information with regard to peak concentration metrics. Such information includes the 2007 Staff Paper comparison based on the less extensive USFS dataset of counties grouped by fourth highest annual daily maximum 8-hour concentration. This analysis found a smaller incidence of nonzero BI biosites in counties with a fourth-high metric at or below 74 ppb as compared to counties limited to metric values at or below 84 ppb (U.S. EPA 2007, pp. 7–63 to 7–64). The indication of this finding that the averaging time and form of the current standard, which emphasizes peak concentrations through a short (8-hour) averaging time and a rare-occurrence form (annual fourth highest daily maximum), exert some control on the incidence of sites with visible foliar injury has a conceptual similarity to the finding of the most extensive study of USFS data (1994–2009) that reductions in peak 1-hour concentrations have influenced the declining trend observed in visible foliar injury since 2002 (Smith, 2012).

(iv) Climate Effects

In considering the currently available information for the effects of the global tropospheric abundance of O₃ on radiative forcing, and temperature, precipitation and related climate variables, the PA recognized there to be limitations and uncertainties in the associated evidence bases with regard to assessing potential for occurrence of climate-related effects as a result of varying O₃ concentrations in ambient air of locations in the U.S (as summarized in III.B.3 above). The current evidence is limited with regard to support for such quantitative analyses that might inform considerations related to the current standard. For example, as stated in the ISA, “[c]urrent limitations in climate modeling tools, variation across models, and the need for more comprehensive observational data on these effects represent sources of uncertainty in quantifying the precise magnitude of climate responses to ozone changes, particularly at regional scales” (ISA, section 9.3.1). These are “in addition to the key sources of uncertainty in quantifying ozone RF changes, such as emissions over the time period of interest and baseline ozone concentrations during preindustrial times” (ISA, section IS.9.3.1). Together such uncertainties limit development of quantitative

estimates of climate-related effects in response to earth surface O₃ concentrations at the regional scale, such as in the U.S. While these complexities inhibit our ability to consider tropospheric O₃ effects, such as radiative forcing, we note that our consideration of O₃ growth-related impacts on trees inherently encompasses consideration of the potential for O₃ to reduce carbon sequestration in terrestrial ecosystems (e.g., through reduced tree biomass as a result of reduced growth). That is, limiting the extent of O₃-related effects on growth would be expected to also limit reductions in carbon sequestration, a process that can reduce the tropospheric abundance of CO₂, the greenhouse gas ranked highest in importance as a greenhouse gas and radiative forcing agent (section III.B.3 above; ISA, section 9.1.1).

c. Public Welfare Implications of Air Quality Under the Current Standard

In considering the potential for effects and related public welfare implications of air quality conditions and associated exposures indicated to occur under the current standard, the PA first looked to the air quality analyses particular to cumulative O₃ exposures, in terms of the W126 index, given its established relationship with growth-related effects and specifically RBL as the identified proxy or surrogate for the full array of such effects (PA, section 4.5.1.3, Appendix 4D). In that context, the PA gave relatively greater emphasis to air quality in Class I areas in recognition of the increased significance of effects in such areas that have been accorded special protection, as discussed in section III.B.2 above. In evaluating the extent and magnitude of O₃ exposures, in terms of W126, in such areas that meet the current standard, the PA also considered year to year variability in the index, while recognizing that, with regard to W126 index relationships with RBL, there was uncertainty associated with RBL predictions from a single year W126 estimate (PA, sections 4.3.4 and 4.5.1, Appendix 4A). As discussed in section III.D.1.b above, the evidence does not indicate estimates based on an average of seasonal W126 across three years to be less, or more, predictive of RBL or resulting total plant biomass (PA, sections 4.3.4 and 4.5.1.2). The PA considered the magnitude of W126 index occurring in areas nationwide, and particularly in Class I areas, that meet the current standard, as well as the frequency of the relatively higher index values. Further, the PA evaluated the extent of control of such index values exerted by the current standard, as

¹⁸⁵ Across W126 bins in which at least 1% of the wet soil moisture records are represented, differences of highest bin from lower bins for injury incidence or average score is less than a factor of two (PA, section 4.3.3).

¹⁸⁶ Factors that may contribute to the observed variability in BI scores and lack of a clear pattern with W126 index bin may include uncertainties in assignment of W126 estimates and soil moisture categories to biosite locations, variability in biological response among the sensitive species monitored, and potential role of other aspects of O₃ air quality not captured by the W126 index.

evidence by comparisons of sites with design values at or below the current standard level and sites with higher design values (PA, section 4.4). Lastly, the PA also considered what the currently available information indicated with regard to the incidence and severity of visible foliar injury that might be expected to occur under air quality conditions that meet the current standard, and the potential for impacts on public welfare (PA, sections 4.5.1.2, 4.5.1.3 and 4.5.3).

The air quality analyses of monitoring data at sites across the U.S. that meet the current standard in the most recent 3-year period find that the seasonal W126 index, as assessed by the 3-year average, is at or below 17 ppm-hrs, with just one exception, among 849 locations, where it equaled 18 ppm-hrs. No 3-year average W126 index values exceeded 17 ppm-hrs in or near Class I areas. Further, such W126 exposures are generally well below 17 ppm-hrs across most of the U.S. These findings for sites meeting the current standard, differ dramatically from sites with higher design values. For example, a third of all U.S. sites with design values above 70 ppb in the recent period, and more than 80% of Class I area sites with design values above 70 ppb, have average W126 index values above 17 ppm-hrs. Looking back across the 19 years covered by the full historical dataset, the cumulative exposure estimates, averaged over the design value periods, were virtually all at or below 17 ppm-hrs, with most of the W126 index values below 13 ppm-hrs (PA, Appendix 4D, Table 4D-9).¹⁸⁷

The PA also considered the general occurrence and distribution of relatively higher single-year W126 index values, finding a generally similar pattern to that for averages over the design value period. For example, fewer than two dozen of the 849 sites meeting the current standard in the recent period had a single-year index above 17 ppm-hrs; about a dozen of these sites fall above 19 ppm-hrs, the highest of which just reaches 25 ppm-hrs in downtown Denver, CO.¹⁸⁸ The frequency of such

occurrences is still lower for the Class I area monitors. For example, during the most recent three years, when the average seasonal W126 index is at or below 17 ppm-hrs in all Class I areas meeting the current standard, there were just three single-year W126 index values above 17 ppm-hrs and none above 19 ppm-hrs (PA, Appendix 4D, Table 4D-15).¹⁸⁹ The PA additionally notes that single-year W126 index values in Class I areas over the 19-year dataset evaluated were generally at or below 19 ppm-hrs, particularly in the more recent years (PA, Appendix 4D, section 4D.3.2.3).

In reflecting on the air quality analysis findings summarized here, the PA additionally recognized limitations and uncertainties of the underlying database, noting there to be inherent limitations in any air monitoring network. The monitors for O₃ are distributed across the U.S., covering all NOAA regions and all states although some geographical areas are more densely covered than others, which may have sparse or no data. For example, only about 40% of all Federal Class I Areas have or have had O₃ monitors (with valid design values) within 15 km, thus allowing inclusion in the Class I area analysis. Even so, the dataset for that analysis includes sites in 27 states distributed across all nine NOAA climatic regions across the contiguous U.S., as well as Hawaii and Alaska. While some NOAA regions have far fewer numbers of Class I areas with monitors than others (e.g., the Central, North East, East North Central, and South regions versus other regions), these areas also have appreciably fewer Class 1 areas in general. Thus, the regions with relatively more Class I area are also more well represented in the dataset. For example, the West and Southwest regions (with the largest number of Class I areas) have approximately a third of those areas represented with monitors, which include locations where W126 index values are generally higher, thus playing a prominent role in the analysis.

Another inherent uncertainty is with regard to the extent to which the results will prove to reflect conditions far out into the future as air quality and patterns of O₃ concentrations in ambient air continue to change in response to changing circumstances, such as changes in precursor emissions to meet

the current standard across the U.S. However, findings from these analyses in the current review are largely consistent with those from analyses of the data available in the last review. Further, the analysis of how changes in O₃ patterns in the past have affected the relationship between W126 index and the averaging time and form of the current standard finds a positive, linear relationship between trends in design values and trends in the W126 index (both in terms of single-year W126 index and averages over 3-year design value period), as was also the case for similar analyses conducted for the data available at the time of the last review (Wells, 2015). While this relationship varied across NOAA regions, the regions showing the greatest potential for exceeding W126 index values of interest (e.g., with 3-year average values above 17 and/or 19 ppm-hrs) also showed the greatest improvement in the W126 index per unit decrease in design value over the historical period assessed (PA, Appendix 4D, section 4D.3.2.3). Thus, the available data and this analysis appear to indicate that as design values are reduced to meet the current standard in areas that presently do not, W126 values in those areas would also be expected to decline (PA, Appendix 4D, section 4D.4).

In the last review, the Administrator focused on cumulative exposure estimates derived as the average W126 index over the 3-year design value period, concluding variations of single-year W126 index from the average to be of little significance in assessing public welfare protection. This focus generally reflected the judgment that estimates based on the average adequately, and appropriately reflected the precision of current understanding of O₃-related growth reductions, given the various limitations and uncertainties in such predictions, that have been further evaluated in the current review (as summarized in section III.D.1.b above). Based on the information available in the current review, the PA concludes that, with the year-to-year variation observed in areas meeting the current standard,¹⁹⁰ differences in year-to-year tree growth in response to each year's seasonal exposure from the tree growth estimated from the 3-year average of the single-year values would, given the offsetting impacts of seasonal exposures above and below the average, reasonably be expected to generally be small over

¹⁸⁷ Based on the established E-R functions for tree seedlings of 11 species, the median RBL estimates for such W126 index values are 3.8% or less (PA, Appendix 4A).

¹⁸⁸ These highest W126 index values occur in the South West and West regions in which there are nearly 150 monitor locations meeting the current standard (PA, Figure 4-6, Appendix 4D, Figure 4D-5, Table 4D-1). Across the full 19-year dataset, the downtown Denver site value is just one of six instances in the more than 8,000 design value periods meeting the current standard of a single-year W126 index value at or above 25 ppm-hrs. All but one of these instances were equal to 25 ppm-hrs; the single higher occurrence was equal to 26 ppm-hrs.

¹⁸⁹ Across the full 19-year dataset for Class I area monitors meeting the current standard (58 monitors with at least one such occurrence and approximately 500 total occurrences), there are no more than 15 occurrences of single-year W126 index values above 19 ppm-hrs, all of which date prior to 2013 (PA, Appendix 4D, section 4D.3.2.4).

¹⁹⁰ The current air quality data indicates single-year W126 index values generally to vary by less than 5 ppm-hrs from the 3-year average when the 3-year average is below 20 ppm-hrs, which is the case for locations meeting the current standard (PA, Appendix 4D).

tree lifetimes (PA, section 4.5.1.2). In so doing, the PA takes note of limitations in aspects of the data underlying the E-R functions that contribute to imprecision or inexactitude to estimates of growth impacts associated with multi-year exposures in the relatively lower W126 index values pertinent to air quality under the current standard. The information newly available in the current review does not appreciably address such limitations and uncertainties or improve the certainty or precision in RBL estimates for such exposures (PA, sections 4.3.4, 4.5.1).

Combining the findings of W126 index values (averaged over design value period) likely under the current standard with the established E-R functions for reduced growth in 11 tree seedling species yields a median species RBL for tree seedlings at or below 5.3% for the recent period, with very few exceptions, with the highest estimates occurring in areas not near or within Class I areas. This general pattern is confirmed over the longer time period (2000–2018) for the vast majority of the data, with virtually all RBL estimates below 6%.¹⁹¹ Further, given the variability and uncertainty associated with the data underlying the E-R functions (as summarized in section III.D.1.a above), the few higher single-year occurrences are reasonably considered to be of less significance than 3-year average values. Judgments in the last review (in the context of the framework summarized in section III.D.1.b above) concluded isolated rare occurrences of exposures for which median RBL estimates might be at or just above 6% to not be indicative of conditions adverse to the public welfare, particularly considering the variability in the array of environmental factors that can influence O₃ effects in different systems, and the uncertainties associated with estimates of effects in the natural environment.

With regard to visible foliar injury, the PA observes that the available evidence does not include an approach for characterizing natural areas experiencing some severity or extent injury (e.g., via USFS BI score) with regard to public perception and potential impacts on public enjoyment;

nor does it address this in combination with information on whether air quality conditions in sites with scores of a particular severity level do or do not meet the current standard (PA, section 4.5.1). As summarized in section III.B.2 above, public welfare implications relate largely to effects on scenic and aesthetic values. Accordingly, key considerations of this endpoint in past reviews have generally related to qualitative consideration of potential impacts related to the plant's aesthetic value in protected forested areas and the somewhat general, nonspecific judgment that a more restrictive standard is likely to provide increased protection. The currently available information does not yet address or describe the relationships expected to exist for some level of visible foliar injury severity (below that at which broader physiological effects on plant growth and survival might also be expected) and/or extent of location or site injury (e.g., BI) scores with values held by the public and associated impacts on public uses of the locations.¹⁹² Additionally, no criteria have been established regarding a level or prevalence of visible foliar injury considered to be adverse to the affected vegetation as the current evidence does not provide for determination of a degree of leaf injury that would have significance to the vigor of the whole plant (ISA, Appendix 8, p. 8–24). Nevertheless, while minor spotting on a few leaves of a plant may easily be concluded to be of little public welfare significance, it is reasonable to conclude that cases of widespread and relatively severe injury during the growing season (particularly when sustained across multiple years, and accompanied by obvious impacts on the plant canopy) would likely impact the public welfare in scenic and/or recreational areas, particularly in areas with special protection, such as Class I areas. However, the gaps in our information and tools, as summarized in prior sections, restrict our ability to identify air quality conditions that might be expected to provide a specific level of protection from public welfare effects of this endpoint.

Assessment of any public welfare implications of air quality occurring under the current standard with regard to visible foliar injury is further hampered by the lack of an established quantitative description of the

relationship between O₃ concentrations (or exposure metrics) and injury extent or incidence, as well as severity, that would support estimates of potential injury for varying air quality and environmental conditions (e.g., moisture), most particularly for situations that meet the current standard. Although no such relationship or pertinent metrics for describing exposure are established, the available information, indicates a role for both a cumulative metric of exposure as well as the occurrence of relatively higher concentrations. More specifically, the PA notes the information indicating potential for increased incidence and severity of injury in locations with W126 index above 25 ppm-hrs and with increased occurrence of peak (1-hour) concentrations such as above 100 ppb (PA, section 4.5.1).

The analyses of recent and historical air quality at monitoring sites where the current standard is met do not indicate a tendency for such occurrence of cumulative exposures or peak concentrations (PA, sections 2.4.5 and 4.4, Appendices 2A and 4D). In these analyses, all 3-year average W126 index values are below 25 ppm-hrs, and values above 17 ppm-hrs are rare. In addition, all single-year, W126 index values at Class I area locations meeting the current standard (and virtually all sites across the U.S.) are at or below 25 ppm-hr; even, and values above 19 ppm-hrs are rare, and moreso so in more recent years (PA, section 4.4.2, Appendix 4D). Accordingly, while the current evidence is limited for the purposes of identifying public welfare protection objectives related to visible foliar injury in terms of specific air quality metrics, the PA notes that the current information indicates that the occurrence of injury categorized as more severe than “little” by the USFS categorization (i.e., a BI scores above 5 or above 15) would be expected to be infrequent in areas that meet the current standard.

In light of the evidence regarding a role for peak concentrations, the PA additionally took note of the control of peak concentrations exerted by the form and averaging time of the current standard. For example, daily maximum 1-hour, as well as 8-hour average O₃ concentrations have declined over the past 15 years, a period in which there have been two revisions of the level of the secondary standard, each providing greater stringency, while retaining the same averaging time and form as the current standard (e.g., PA, Figures 2–10, 2–12 and 2–17). Further, during periods when the current standard is met, there is less than one day per site, on average

¹⁹¹ Although potential for effects on crop yield was not given particular emphasis in the last review (for reasons similar to those summarized earlier), we additionally note that combining the exposure levels summarized for areas across the U.S. where the current standard is met with the E-R functions established for 10 crop species indicates a median RYL across crops to be at or below 5.1%, on average, with very few exceptions. Further, estimates based on W126 index at the great majority of the areas are below 5% (PA, Appendices 4A and 4D).

¹⁹² Information with some broadly conceptual similarity to this has been used for judging public welfare implications of visibility effects of PM in setting the PM secondary standard (78 FR 3086, January 15, 2012).

with a maximum hourly concentration at or above 100 ppb. This compares with roughly 40 times as many such days, on average, for sites with design values above the current standard level (PA, Appendix 2A, section 2A.2). The currently available information indicates that the current standard provides appreciable control of peak 1-hour concentrations, as well as W126 index values, and thus, to the extent that such metrics play a role in the occurrence and severity of visible foliar injury, the current standard also provides appreciable control of these.

Thus, although the current information does not establish a metric or combination of metrics that well describes the relationship between occurrence and severity of visible foliar injury across a broad range of O₃ concentration patterns from those more common in the past to those in areas recently meeting the current standard, the PA concludes that the currently available information does not indicate that a situation of widespread and relatively severe visible foliar injury, with apparent implications for the public welfare, is likely associated with air quality that meets the current standard. Based on the USFS dataset presentations as well as the air quality analyses of W126 index values and frequency of 1-hour observations at or above 100 ppb, the prevalence of injury scores categorized as severe, or even moderate, which, depending on spatial extent, might reasonably be concluded to have potential to be adverse to the public welfare do not appear likely to occur under air quality conditions that meet the current standard. Thus, the PA finds, based on the current evidence and currently available air quality information, that the exposure conditions associated with air quality meeting the current standard are not those that might reasonably be concluded to result in the occurrence of significant foliar injury (with regard to severity and extent).

With regard to other vegetation-related effects, including those at the ecosystem scale, such as alteration in community composition or reduced productivity in terrestrial ecosystems, as recognized in section III.D.1.a above, the available evidence is not clear with regard to the risk of such impacts (and their magnitude or severity) associated with the environmental O₃ exposures estimated to occur under air quality conditions meeting the current standard, which primarily include W126 index at or below 17 ppm-hrs. In considering effects on crop yield, the air quality analyses at monitoring locations that meet the current standard indicate

estimates of RYL for such conditions to be at and below 5.1%, based on the median estimate derived from the established E-R functions for 10 crops (PA, Appendix 4A, Table 4A-5). We additionally recognize there to be complexities involved in interpreting the significance of such small RYL estimates in light of the factors also recognized in the last review. These included the extensive management of crops in agricultural areas that may to some degree mitigate potential O₃-related effects, as well as the use of variable management practices to achieve optimal yields, while taking into consideration various environmental conditions. We also recognize that changes in yield of commercial crops and commercial commodities may affect producers and consumers differently, further complicating the question of assessing overall public welfare impacts for such RYL estimates (80 FR 65405, October 26, 2015).

2. CASAC Advice

The CASAC provided its advice regarding the current secondary standard in the context of its review of the draft PA (Cox, 2020a).¹⁹³ In so doing, the CASAC concurred with the PA conclusions, stating that it “finds, in agreement with the EPA, that the available evidence does not reasonably call into question the adequacy of the current secondary ozone standard and concurs that it should be retained” (Cox, 2020a, p. 1). The CASAC additionally stated that it “commends the EPA for the thorough discussion and rationale for the secondary standard” (Cox, 2020, p. 2). The CASAC also provided comments particular to the consideration of climate and growth-related effects.

With regard to O₃ effects on climate, the CASAC recommended quantitative uncertainty and variability analyses, with associated discussion (Cox, 2020a, pp. 2, 22).¹⁹⁴ With regard to growth-

related effects and consideration of the evidence in quantitative exposure analyses, it stated that the W126 index “appears reasonable and scientifically sound,” “particularly [as] related to growth effects” (Cox, 2020a, p. 16). Additionally, with regard to the prior Administrator’s expression of greater confidence in judgments related to public welfare impacts based on a seasonal W126 index estimated by a three-year average and accordingly relying on that metric the CASAC expressed the view that this “appears of reasonable thought and scientifically sound” (Cox, 2020, p. 19). Further, the CASAC stated that “RBL appears to be appropriately considered as a surrogate for an array of adverse welfare effects and based on consideration of ecosystem services and potential for impact to the public as well as conceptual relationships between vegetation growth effects and ecosystem scale effects” and that it agrees “that biomass loss, as reported in RBL, is a scientifically-sound surrogate of a variety of adverse effects that could be exerted to public welfare,” concurring that this approach is not called into question by the current evidence which continues to support “the use of tree seedling RBL as a proxy for the broader array of vegetation related effects, most particularly those related to growth that could be impacted by ozone” (Cox, 2020a, p. 21). The CASAC additionally concurred that the strategy of a secondary standard that generally limits 3-year average W126 index values somewhat below those associated with a 6% RBL in the median species is “scientifically reasonable” and that, accordingly, a W126 index target value of 17 ppm-hrs for generally restricting cumulative exposures “is still effective in particularly protecting the public welfare in light of vegetation impacts from ozone” (Cox, 2020a, p. 21).

With regard to the court’s remand of the 2015 secondary standard to the EPA for further justification or reconsideration (“particularly in relation to its decision to focus on a 3-year average for consideration of the cumulative exposure, in terms of W126, identified as providing requisite public welfare protection, and its decision to not identify a specific level of air quality related to visible foliar injury”), while the CASAC stated that it was not clear whether the draft PA had fully addressed this concern (Cox, 2020a, p. 21), it described there to be a solid

¹⁹³ A limited number of public comments have been received in this review to date, including comments focused on the draft IRP, draft ISA or draft PA. Of the commenters that addressed adequacy of the current secondary O₃ standard, most expressed agreement with staff conclusions in the draft PA, while some expressed the view that the standard should be revised to a W126-based form or that articulation of its rationale should more explicitly address the protection the standard provides for public welfare effects.

¹⁹⁴ As recognized in the ISA, “[c]urrent limitations in climate modeling tools, variation across models, and the need for more comprehensive observational data on these effects represent sources of uncertainty in quantifying the precise magnitude of climate responses to ozone changes, particularly at regional scales” (ISA, section IS.6.2.2, Appendix 9, section 9.3.3, p. 9–22).

These complexities impede our ability to consider specific O₃ concentrations in the U.S. with regard to specific magnitudes of impact on radiative forcing and subsequent climate effects.

scientific foundation for the current secondary standard and also commented on areas related to the remand. With regard to the focus on the 3-year average W126 index, in addition to the comments summarized above, the CASAC concluded, as noted above, that the EPA Administrator's focus on the 3-year average and her judgments in doing so "appears of reasonable thought and scientifically sound" (Cox, 2020a, p. 19). Further, while recognizing the existence of established E-R functions that relate cumulative seasonal exposure of varying magnitudes to various incremental reductions in expected tree seedling growth (in terms of RBL) and in expected crop yield, the CASAC letter also noted that while decades of research also recognizes visible foliar injury as an effect of O₃, "uncertainties continue to hamper efforts to quantitatively characterize the relationship of its occurrence and relative severity with ozone exposures" (Cox, 2020a, p. 20). In summary, the CASAC stated that the approach described in the draft PA to considering the evidence for welfare effects "is laid out very clearly, thoroughly discussed and documented, and provided a solid scientific underpinning for the EPA conclusion leaving the current secondary standard in place" (Cox, 2020a, p. 22).

3. Administrator's Proposed Conclusions

Based on the large body of evidence concerning the welfare effects, and potential for public welfare impacts, of exposure to O₃ in ambient air, and taking into consideration the attendant uncertainties and limitations of the evidence, the Administrator proposes to conclude that the current secondary O₃ standard provides the requisite protection against known or anticipated adverse effects to the public welfare, and should therefore be retained, without revision. In reaching these proposed conclusions, the Administrator has carefully considered the assessment of the available welfare effects evidence and conclusions contained in the ISA, with supporting details in the 2013 ISA and past AQCDs; the evaluation of policy-relevant aspects of the evidence and quantitative analyses in the PA (summarized in section III.D.1 above); the advice and recommendations from the CASAC (summarized in section III.D.2 above); and public comments received to date in this review, as well as the August 2019 decision of the D.C. Circuit remanding the secondary standard established in the last review to the EPA

for further justification or reconsideration.

In the discussion below, the Administrator considers first the evidence base on welfare effects associated with exposure to photochemical oxidants, including O₃, in ambient air. In so doing, he considers the welfare effects evidence newly available in this review, and the extent to which it alters key scientific conclusions. The Administrator additionally considers the quantitative analyses available in this review, including associated limitations and uncertainties, and the extent to which they indicate differing conclusions regarding level of protection indicated to be provided by the current standard from adverse effects to the public welfare. Further, the Administrator considers the key aspects of the evidence and air quality and exposure information emphasized in establishing the now-current standard. He additionally considers uncertainties in the evidence and quantitative information, as part of public welfare policy judgments that are essential and integral to his decision on the adequacy of protection provided by the standard. The Administrator draws on the considerations and conclusions in the PA, taking note of key aspects of the rationale presented for those conclusions. In so doing, he notes the CASAC characterization of the "thorough discussion and rationale for the secondary standard" presented in the PA (Cox, 2020a, p. 2). Further, the Administrator considers the advice of the CASAC regarding the secondary standard, including particularly its overall agreement that the currently available evidence does not call into question the adequacy of the current standard and that it should be retained (Cox, 2020a, p. 1). With attention to all of the above, the Administrator considers the information currently available in this review with regard to the appropriateness of the protection provided by the current standard.

As an initial matter, the Administrator recognizes the continued support in the current evidence for O₃ as the indicator for photochemical oxidants (as recognized in section III.D.1 above). In so doing, he notes that no newly available evidence has been identified in this review regarding the importance of photochemical oxidants other than O₃ with regard to abundance in ambient air, and potential for welfare effects, and that, as stated in the current ISA, "the primary literature evaluating the health and ecological effects of photochemical oxidants includes ozone almost exclusively as an indicator of

photochemical oxidants" (ISA, section IS.1.1). Thus, the Administrator recognizes that, as was the case for previous reviews, the evidence base for welfare effects of photochemical oxidants does not indicate an importance of any other photochemical oxidants. For these reasons, described with more specificity in the ISA and PA, he proposes to conclude it is appropriate to retain the O₃ as the indicator for the secondary NAAQS for photochemical oxidants.

In considering the currently available welfare effects evidence for O₃, the Administrator recognizes the longstanding evidence base for vegetation-related effects, augmented in some aspects since the last review, described in section III.B.1 above. Consistent with the evidence in the last review, the currently available evidence describes an array of effects on vegetation and related ecosystem effects causally or likely to be causally related to O₃ in ambient air, as well as the causal relationship of tropospheric O₃ in radiative forcing and subsequent likely causally related effects on temperature, precipitation and related climate variables. The Administrator also notes the Agency conclusions on three categories of effects with new ISA determinations that the current evidence is sufficient to infer likely causal relationships of O₃ with increased tree mortality, alteration of plant-insect signaling and alteration of insect herbivore growth and reproduction (as summarized in section III.B.1 above). With regard to the current evidence for increased tree mortality, the Administrator notes the PA finding that the evidence does not indicate a potential for O₃ concentrations that occur in locations that meet the current standard to cause increased tree mortality. Accordingly, consistent with the approach in the PA, he finds it appropriate to focus on more sensitive effects, such as tree seedling growth, in his review of the standard. With regard to the two insect-related categories of effects with new ISA determinations in this review, the Administrator takes note of the PA finding that uncertainties in the current evidence, as summarized in section III.B and III.D.1 above, preclude a full understanding of such effects, the air quality conditions that might elicit them, the potential for impacts in a natural ecosystem and, consequently, the potential for such impacts under air quality conditions associated with meeting the current standard; thus, there is insufficient information to judge the current

standard inadequate based on these effects.

In considering the evidence with regard to support for quantitative description of relationships between air quality conditions and response to inform his judgments on the current standard, the Administrator recognizes the supporting evidence for plant growth and yield. The evidence base continues to indicate growth-related effects as sensitive welfare effects, with the potential for ecosystem-scale ramifications. For this category of effects, there are established E-R functions that relate cumulative seasonal exposure of varying magnitudes to various incremental reductions in expected tree seedling growth (in terms of RBL) and in expected crop yield (in terms of RYL). Many decades of research also recognize visible foliar injury as an effect of O₃, although uncertainties continue to hamper efforts to quantitatively characterize the relationship of its occurrence and relative severity with O₃ exposures, as discussed further below (and summarized in sections III.B.3.b and III.D.1.b above).

Before focusing further on the key vegetation-related effects identified above, the Administrator first considers the strong evidence documenting tropospheric O₃ as a greenhouse gas causally related to radiative forcing, and likely causally related to subsequent effects on variables such as temperature and precipitation. In so doing, he takes note of the limitations and uncertainties in the evidence base that affect characterization of the extent of any relationships between O₃ concentrations in ambient air in the U.S. and climate-related effects, and preclude quantitative characterization of climate responses to changes in O₃ concentrations in ambient air at regional (vs global) scales, as summarized in sections III.D.1 and II.B.3 above. As a result, he recognizes the lack of important quantitative tools with which to consider such effects in this context such that it is not feasible to relate different patterns of O₃ concentrations at the regional scale in the U.S. with specific risks of alterations in temperature, precipitation and other climate-related variables. The resulting uncertainty leads the Administrator to conclude that, with respect to radiative forcing and related effects, there is insufficient information available in the current review to judge the existing standard inadequate or to identify an appropriate revision.

The Administrator turns next to consideration of visible foliar injury. In so doing, he considers both the

conclusions of the ISA and the examination and analysis in the PA of the currently available information as to what it indicates and supports with regard to adequacy of protection provided by the current standard, as summarized in section III.D.1 above. As an initial matter, he takes note of the long-standing documentation of visible foliar injury as an effect of O₃ in ambient air under certain conditions. Further, as summarized in section III.B.2 above, the public welfare significance of visible foliar injury of vegetation in areas not closely managed for harvest, particularly specially protected natural areas, has generally been considered in the context of potential effects on aesthetic and recreational values, such as the aesthetic value of scenic vistas in protected natural areas such as national parks and wilderness areas (e.g., 73 FR 16496, March 27, 2008). Based on these considerations, the Administrator recognizes that, depending on its severity and spatial extent, as well as the location(s) and the associated intended use, the impact of visible foliar injury on the physical appearance of plants has the potential to be significant to the public welfare. In this regard, he notes the PA statement that cases of widespread and relatively severe injury during the growing season (particularly when sustained across multiple years and accompanied by obvious impacts on the plant canopy) might reasonably be expected to have the potential to adversely impact the public welfare in scenic and/or recreational areas, particularly in areas with special protection, such as Class I areas, summarized in section III.D.1 above (PA, sections 4.3.2 and 4.5.1). Thus, he considers the PA evaluation of the currently available information with regard to the potential for such an occurrence with air quality conditions that meet the current standard.

In considering the PA evaluations, the Administrator takes note of the PA observation that important uncertainties remain in the understanding of the O₃ exposure conditions that will elicit visible foliar injury of varying severity and extent in natural areas, and particularly in light of the other environmental variables that influence its occurrence, as summarized in sections III.B.3 and III.D.1 above. In so doing, he notes the recognition by the CASAC that “uncertainties continue to hamper efforts to quantitatively characterize the relationship of [visible foliar injury] occurrence and relative severity with ozone exposures,” as summarized in section III.D.2 above.

Notwithstanding, and while being mindful of, such uncertainties with regard to predictive O₃ metric or metrics and a quantitative function relating them to incidence and severity of visible foliar injury in natural areas, as well as interpretation of such incidence and severity in the context of considering protection from such impacts that might reasonably be considered adverse to the public welfare, the Administrator takes note of several findings of the PA. First, he notes that the evidence for visible foliar injury, as well as analyses of data for USFS biosites (sites with O₃-sensitive vegetation assessed for visible foliar injury) indicate there to be associations with cumulative exposure metrics (e.g., SUM06 or W126 index), such metrics do not completely explain the occurrence and severity of injury. Although the availability of detailed analyses that have explored multiple exposure metrics and other influential variables is limited, multiple studies also have indicated a potential role for an additional metric related to the occurrence of days with relatively high concentrations (e.g., number of days with a 1-hour concentration at or above 100 ppb), as summarized in section III.B.3 above (PA, section 4.5.1.2).

The Administrator also notes the PA observation that publications related to the evidence base for the USFS biosite monitoring program document reductions in the incidence of the higher BI scores over the 16-year period of the program (1994 through 2010), especially after 2002, leading to researcher conclusions of a “declining risk of probable impact” on the monitored forests over this period (e.g., Smith, 2012). The PA observes that these reductions parallel the O₃ concentration trend information nationwide that shows clear reductions in cumulative seasonal exposures, as well as in peak O₃ concentrations such as the annual fourth highest daily maximum 8-hour concentration, from 2000 through 2018 (PA, Figure 2–11 and Appendix 4D, Figure 4D–9). These USFS BI score reductions also parallel reductions in the occurrence of 1-hour concentrations above 100 ppb (PA, Appendix 2A, Tables 2A–2 to 2A–4). Thus, the extensive evidence of trends across the past nearly 20 years indicate reductions in severity of visible foliar injury in addition to reductions in peak concentrations that some studies have suggested to be influential in the severity of visible foliar injury, as summarized in section III.D.1 above (PA, section 4.5.1).

The Administrator additionally takes note of the PA recognition of a paucity of established approaches for

interpreting specific levels of severity and extent of foliar injury in protected forests with regard to impacts on public welfare effects, *e.g.*, related to recreational services. The PA notes that injury to whole stands of trees of a severity apparent to the casual observer (*e.g.*, when viewed as a whole from a distance) would reasonably be expected to affect recreational values. However, the available information does not provide for specific characterization of the incidence and severity that would not be expected to have such an impact, nor for clear identification of the pattern of O₃ concentrations that would provide for such a situation. In this context, the Administrator notes the PA description of the scheme developed by the USFS to categorize biosite scores of injury in natural vegetated areas by severity levels (as summarized in section III.B.2 above). He notes the USFS description of scores above 15 as “moderate to severe,” as well as the USFS categorization of lower scores, such as those from zero to just below 5, which are described as “little to no foliar injury” and 5 to just below 10 as “light to moderate.” In so doing, he recognizes the PA consideration of such lower scores as being unlikely to be indicative of injury of such a magnitude or extent that would reasonably be considered significant risks to the public welfare. In light of these considerations, the Administrator takes note of the PA finding that quantitative analyses and evidence are lacking that might support a more precise conclusion with regard to a magnitude of BI score coupled with an extent of occurrence that might be specifically identified as adverse to the public welfare, but that the lower categories of BI scores are indicative of injury of generally lesser risk to the natural area or to public enjoyment. The Administrator also takes note of the D.C. Circuit’s holding that substantial uncertainty about the level at which visible foliar injury may become adverse to public welfare does not necessarily provide a basis for declining to evaluate whether the existing standard provides requisite protection against such effects. See *Murray Energy Corp. v. EPA*, 936 F.3d 597, 619–20 (D.C. Cir. 2019). Consequently, he proposes to judge that occurrence of the lower categories of BI scores does not pose concern for the public welfare, but that findings of BI scores categorized as “moderate to severe” injury by the USFS scheme would be an indication of visible foliar injury occurrence that, depending on extent and severity, may raise public welfare concerns.

With regard to the PA presentations of the USFS data combined with W126 estimates and soil moisture categories, summarized in section III.B.3 above, the Administrator takes note of the PA finding that the incidence of nonzero BI scores, and, particularly of relatively higher scores (such as scores above 15 which are indicative of “moderate to severe” injury in the USFS scheme) appears to markedly increase only with W126 index values above 25 ppm-hrs, as summarized in section III.B.3.b above (PA, section 4.3.3 and Appendix 4C). In so doing, he notes that such a magnitude of W126 index (either as a 3-year average or in a single year) is not seen to occur at monitoring locations (including in or near Class I areas) where the current standard is met, and that values above 17 or 19 ppm-hrs are rare, as summarized in section III.D.1.c above (PA, Appendix 4C, section 4C.3; Appendix 4D, section 4D.3.2.3). Further, the Administrator takes note of the PA consideration of the USFS publications that identify an influence of peak concentrations on BI scores (beyond an influence of cumulative exposure) and the PA observation of the appreciable control of peak concentrations exerted by the form and averaging time of the current standard, as evidenced by the air quality analyses which document reductions in 1-hour daily maximum concentrations with declining design values. For example, the PA finds the average number of 1-hour daily maximum concentrations across monitored sites to be some 40 times lower for sites meeting the current standards compared to sites that do not, as summarized in section III.D.1 above. Based on these considerations, the Administrator agrees with the PA finding that the current standard provides control of air quality conditions that contribute to increased BI scores and to scores of a magnitude indicative of “moderate to severe” foliar injury.

The Administrator further takes note of the PA finding that the current information, particularly in locations meeting the current standard or with W126 index estimates likely to occur under the current standard, does not indicate a significant extent and degree of injury (*e.g.*, based on analyses of BI scores in the PA, Appendix 4C) or specific impacts on recreational or related services for areas, such as wilderness areas or national parks. Thus, he gives credence to the associated PA conclusion that the evidence indicates that areas that meet the current standard are unlikely to have BI scores reasonably considered to

be impacts of public welfare significance. Based on all of the considerations raised here, the Administrator proposes to conclude that the current standard provides sufficient protection of natural areas, including particularly protected areas such as Class I areas, from O₃ concentrations in the ambient air that might be expected to elicit visible foliar injury of such an incidence and severity as would reasonably be judged adverse to the public welfare.

In turning to consideration of the remaining array of vegetation-related effects, the Administrator first takes note of uncertainties in the details and quantitative aspects of relationships between plant-level effects such as growth and reproduction, and ecosystem impacts, the occurrence of which are influenced by many other ecosystem characteristics and processes. These examples illustrate the role of public welfare policy judgments, both with regard to the extent of protection that is requisite and concerning the weighing of uncertainties and limitations of the underlying evidence base and associated quantitative analyses. The Administrator notes that such judgments will inform his decision in the current review, as is common in NAAQS reviews. Public welfare policy judgments play an important role in each review of a secondary standard, just as public health policy judgments have important roles in primary standard reviews. One type of public welfare policy judgment focuses on how to consider the nature and magnitude of the array of uncertainties that are inherent in the scientific evidence and analyses. These judgments are traditionally made with a recognition that current understanding of the relationships between the presence of a pollutant in ambient air and associated welfare effects is based on a broad body of information encompassing not only more established aspects of the evidence but also aspects in which there may be substantial uncertainty. This may be true even of the most robust aspect of the evidence base. In the case of the secondary O₃ standard review, as an example, while recognizing the strength of the established and well-founded E–R functions in predicting the relationship of O₃ in terms of the W126 index cumulative exposure metric across a wide array of exposure levels, the Administrator additionally recognizes increased uncertainty, and associated imprecision or inexactitude in application of the E–R functions with lower cumulative exposures, and in the current understanding of aspects of

relationships of such estimated effects with larger-scale impacts, such as those on populations, communities and ecosystems, as discussed in the PA and summarized in sections III.D.1 above.

The Administrator now turns to the welfare effects of reduced plant growth or yield. In so doing, he takes note of the well-established E-R functions for seedlings of 11 tree species that relate cumulative seasonal O₃ exposures of varying magnitudes to various incremental reductions in expected tree seedling growth (in terms of RBL) and in expected crop yield, that have been recognized across multiple O₃ NAAQS reviews. In so doing, he additionally takes note of uncertainties recognized in the PA, as summarized in section III.D.1.a above, that include the limited information that can address the extent to which the E-R functions for tree seedlings reflect growth impacts in mature trees, and the fact that the 11 species represent a very small portion of the tree species across the U.S. (PA, sections 4.3.4 and 4.5.3). While recognizing these and other uncertainties, RBL estimates based on the median of the 11 species were used as a surrogate in the last review for comparable information on other species and lifestages, as well as a proxy or surrogate for other vegetation-related effects, including larger-scale effects. The Administrator takes note of the PA conclusion and CASAC advice that use of this approach continues to appear to be a reasonable judgment in this review (PA, section 4.5.3). More specifically, the PA concludes that the currently available information continues to support (and does not call into question) the use of RBL as a useful and evidence-based approach for consideration of the extent of protection from the broad array of vegetation-related effects associated with O₃ in ambient air, as summarized in section III.D.1.b above. The Administrator also takes note of the PA conclusions that the currently available evidence, while somewhat expanded since the last review does not indicate an alternative metric for such a use; nor is an alternative approach evident. He further notes the CASAC concurrence that the current evidence continues to support this approach, as summarized in section III.D.2 above. Thus, he finds it appropriate to adopt this approach in the current review.

With regard to the use of RBL and the median RBL estimate based on the established E-R functions for 11 species of tree seedlings, the Administrator takes note of considerations in the PA. For example, while the E-R functions for the 11 species have been derived in terms of a seasonal W126 index, the

experiments from which they were derived vary in duration from less than three months to many more, such that, the adjustment to a 3-month season duration, with its underlying simplifying assumptions of uniform W126 distribution over the exposure period and relationship between duration and response, contributes some imprecision or inexactitude to the resulting functions and estimates derived using it, as discussed in section III.D.1.b above. Additionally, there is greater uncertainty with regard to estimated RBL at lower cumulative exposure levels, as the exposure levels represented in the data underlying the E-R functions are somewhat limited with regard to the relatively lower cumulative exposure levels, such as those most commonly associated with the current standard (e.g., at or below 17 ppm-hrs). Further, he notes the PA observation that some of the underlying studies did not find statistically significant effects of O₃ at the lower exposure levels, indicating some uncertainty in predictions of an O₃-related RBL at those levels. With these considerations regarding the E-R functions and their underlying datasets in mind, he also takes note of variability associated with tree growth in the natural environment (e.g., related to variability in plant, soil, meteorological and other factors), as well as variability associated with plant responses to O₃ exposures in the natural environment, as summarized in section III.D.1 above. The Administrator also considers the issues discussed in the court's remand of the 2015 secondary standard with respect to use of a 3-year average. See *Murray Energy Corp. v. EPA*, 936 F.3d at 617–18. In light of these considerations, the Administrator considers whether aspects of this evidence support making judgments using the E-R functions with W126 index derived as an average across multiple years. The Administrator notes that such averaging would have some conceptual similarity to the assumptions underlying the adjustment made to develop seasonal W126 E-R functions from exposures that extended over multiple seasons (or less than a single). Such averaging, with its reduction of the influence of annual variations in seasonal W126, would give less influence to RBL estimates derived from such potentially variable representations of W126, thus providing an estimate of W126 more suitably paired with the E-R functions. The Administrator additionally takes note of the PA summary of comparisons performed in the 2013 ISA and current

ISA of RBL estimates based on either cumulative average multi-year W126 index or single-year W126 with estimates derived from information in a multi-year O₃ exposure study, summarized in section III.D.1.b(ii) above (PA, section 4.5.1 and Appendix 4A, section 4A.3.1). He notes the PA finding that these comparisons illustrate the variability inherent in the magnitude of growth impacts of O₃ and in the quantitative relationship of O₃ exposure and RBL, while also providing general agreement of predictions (based on either metric) with observations. The Administrator finds these considerations particularly informative in considering the evidence with regard to the appropriateness of a focus on a multi-year (e.g., 3-year) average seasonal W126 index in assessing protection using RBL as a proxy or surrogate of the broader array of effects to obscure cumulative seasonal exposures of concern, a point discussed by the court in its 2019 remand of the 2015 secondary standard to EPA (*Murray Energy Corp. v. EPA*, 936 F.3d at 617–18).

In light of the above considerations, the Administrator agrees with the PA finding that such factors as those identified here (also summarized in section III.D.1.b(ii) above), and discussed in the PA (PA, sections 4.5.1.2 and 4.5.3), including the currently available evidence and its recognized limitations, variability and uncertainties, contribute uncertainty and resulting imprecision or inexactitude to RBL estimates of single-year seasonal W126 index values, thus supporting a conclusion that it is reasonable to use a seasonal RBL averaged over multiple years, such as a 3-year average. The Administrator additionally takes note of the CASAC advice reaffirming the EPA's focus on a 3-year average W126, concluding such a focus to be reasonable and scientifically sound, as summarized in section III.D.2 above. In light of these considerations, the Administrator finds there to be support for use of an average seasonal W126 index derived from multiple years (with their representation of variability in environmental factors), concluding the use of such averaging to provide an appropriate representation of the evidence and attention to considerations summarized above. In so doing, he finds that a reliance on single year W126 estimates for reaching judgments with regard to magnitude of O₃ related RBL and associated judgments of public welfare protection would ascribe a greater specificity and certainty to such estimates than supported by the current

evidence. Thus, the Administrator proposes to conclude that it is appropriate to use a seasonal W126 averaged over a 3-year period, which is the design value period for the current standard, to estimate median RBL using the established E–R functions for purposes in this review of considering the public welfare protection provided by the standard.

Thus, the Administrator recognizes a number of public welfare policy judgments important to his review of the current standard. Those judgments include adoption of the median tree seedling RBL estimate for the studied species as a surrogate for the broad array of vegetation related effects that extend to the ecosystem scale, and identification of cumulative seasonal exposures (in terms of the average W126 index across the 3-year design period for the standard) for assessing O₃ concentrations in areas that meet the standard with regard to the extent of protection afforded by the standard. In reflecting on these judgments, the current evidence presented in the ISA and the associated evaluations in the PA, the Administrator proposes to conclude that the currently available information supports such judgments, additionally noting the CASAC concurrence with regard to the scientific support for these judgments (Cox 2020, p. 21). Accordingly, the Administrator proposes to conclude that the current evidence base and available information (qualitative and quantitative) continues to support consideration of the potential for O₃-related vegetation impacts in terms of the RBL estimates from established E–R functions as a quantitative tool within a larger framework of considerations pertaining to the public welfare significance of O₃ effects. Such consideration includes effects that are associated with effects on vegetation, and particularly those that conceptually relate to growth, and that are causally or likely causally related to O₃ in ambient air, yet for which there are greater uncertainties affecting estimates of impacts on public welfare. The Administrator additionally notes that this approach to weighing the available information in reaching judgments regarding the secondary standard additionally takes into account uncertainties regarding the magnitude of growth impact that might be expected in mature trees, and of related, broader, ecosystem-level effects for which the available tools for quantitative estimates are more uncertain and those for which the policy foundation for consideration of public welfare impacts is less well established.

In his consideration of the adequacy of protection provided by the current standard, the Administrator also notes judgments of the prior Administrator in considering the public welfare significance of small magnitude estimates of RBL and associated unquantified potential for larger-scale related effects. As with visible foliar injury, the Administrator does not consider every possible instance of an effect on vegetation growth from O₃ to be adverse to public welfare, although he recognizes that, depending on factors including extent and severity, such vegetation-related effects have the potential to be adverse to public welfare. In this context, the Administrator notes that the 2015 decision set the standard with an “underlying objective of a revised secondary standard that would limit cumulative exposures in nearly all instances to those for which the median RBL estimate would be somewhat lower than 6%” (80 FR 65407, October 26, 2015). With this objective, the prior Administrator did not additionally find that a cumulative seasonal exposure, for which such a magnitude of median species RBL was estimated, represented conditions that were adverse to the public welfare. Rather, the 2015 decision noted that “the Administrator does not judge RBL estimates associated with marginal higher exposures [at or above 19 ppm-hrs] in isolated, rare instances to be indicative of adverse effects to the public welfare” (80 FR 65407, October 26, 2015). Comments from the current CASAC, in the context of its review of the draft PA, expressed the view that the strategy described by the prior Administrator for the secondary standard established in 2015 with its W126 index target of 17 ppm-hrs (in terms of a 3-year average), at or below which the 2015 standard was expected to generally restrict cumulative seasonal exposure, is “still effective in particularly protecting the public welfare in light of vegetation impacts from ozone” (Cox, 2020, p. 21). In light of this advice and based on the current evidence as evaluated in the PA, the Administrator proposes to conclude that this approach or framework, with its focus on controlling air quality such that cumulative exposures at or above 19 ppm-hrs, in terms of a 3-year average W126 index, are isolated and rare, is appropriate for a secondary standard that provides the requisite public welfare protection and proposes to use such an approach in this review.

With this approach and protection target in mind, the Administrator further considers the analyses available

in this review of recent air quality at sites across the U.S., particularly including those sites in or near Class I areas, and also the analyses of historical air quality. In so doing, the Administrator recognizes that these analyses are distributed across all nine NOAA climate regions and 50 states, although some geographic areas within specific regions and states may be more densely covered and represented by monitors than others, as summarized in section III.C above. The Administrator notes that the findings from both the analysis of the air quality data from the most recent period and from the larger analysis of historical air quality data extending back to 2000, as presented in the PA and summarized in section III.C above, are consistent with the air quality analyses available in the last review. That is, in virtually all design value periods and all locations at which the current standard was met across the 19 years and 17 design value periods (in more than 99.9% of such observations), the 3-year average W126 metric was at or below 17 ppm-hrs. Further, in all such design value periods and locations the 3-year average W126 index was at or below 19 ppm-hrs. The Administrator additionally considers the protection provided by the current standard from the occurrence of O₃ exposures within a single year with potentially damaging consequences, such as a significantly increased incidence of areas with visible foliar injury that might be judged moderate to severe. In so doing, he takes notes of the PA analyses, summarized in section III.D.1 above, of USFS BI scores, giving particular focus to scores above 15 (termed “moderate to severe injury” by the USFS categorization scheme). He notes the PA finding that incidence of sites with BI scores above 15 markedly increases with W126 index estimates above 25 ppm-hrs. In this context, he additionally takes note of the air quality analysis finding of a scarcity of single-year W126 index values above 25 ppm-hrs at sites that meet the current standard, with just a single occurrence across all U.S. sites with design values meeting the current standard in the 19-year historical dataset dating back to 2000 (PA, section 4.4 and Appendix 4D). Further, in light of the evidence indicating that peak short-term concentrations (*e.g.*, of durations as short as one hour) may also play a role in the occurrence of visible foliar injury, the Administrator additionally takes note of the PA presentation of air quality data over the past 20 years, as summarized in section III.D.1 above, that shows a declining trend in 1-hour daily maximum concentrations

mirroring the declining trend in design values, and the associated PA conclusion that the form and averaging time of the current standard provides appreciable control of peak 1-hour concentrations. As further evidence of the level of control exerted, the PA notes there to be less than one day per site, on average (among sites meeting the current standard), with a maximum hourly concentration at or above 100 ppb, compared to roughly 40 times as many such days, on average, for sites with design values above the current standard level (PA, Appendix 2A, section 2A.2). In light of these findings from the air quality analyses and considerations in the PA, summarized in section III.D.1 above, both with regard to 3-year average W126 index values at sites meeting the current standard and the rarity of such values at or above 19 ppm-hrs, and with regard to single-year W126 index values at sites meeting the current standard, and the rarity of such values above 25 ppm-hrs, as well as with regard to the appreciable control of 1-hour daily maximum concentrations, the Administrator proposes to judge that the current standard provides adequate protection from air quality conditions with the potential to be adverse to the public welfare.

In reaching his proposed conclusion on the current secondary O₃ standard, the Administrator recognizes, as is the case in NAAQS reviews in general, his decision depends on a variety of factors, including science policy judgments and public welfare policy judgments, as well as the currently available information. With regard to the current review, the Administrator gives primary attention to the principal effects of O₃ as recognized in the current ISA, the 2013 ISA and past AQCDs, and for which the evidence is strongest (e.g., growth, reproduction, and related larger-scale effects, as well as, visible foliar injury). As discussed above, the Administrator notes that the currently available information on visible foliar injury and with regard to air quality analyses that may be informative with regard to air quality conditions associated with appreciably increased incidence and severity of BI scores at USFS biomonitoring sites indicates a sufficient degree of protection from such conditions. Further, the currently available evidence for natural areas across the U.S., such as studies of USFS biosites, does not indicate widespread incidence of significant visible foliar injury, and analyses of USFS biosite scores in the PA do not indicate marked increases in scores categorized by the USFS as

“moderate” or “severe” for W126 index values generally occurring at sites that meet the current standard. The Administrator finds this information does not indicate a potential for public welfare impacts of concern under air quality conditions that meet the current standard. In light of these and other considerations discussed more completely above, and with particular attention to Class I and other areas afforded special protection, the Administrator proposes to conclude that the evidence regarding visible foliar injury and air quality in areas meeting the current standard indicates that the current standard provides adequate protection for this effect.

The Administrator additionally considers O₃ effects on crop yield. In so doing, he takes note of the long-standing evidence, qualitative and quantitative, of the reducing effect of O₃ on the yield of many crops, as summarized in the PA and current ISA and characterized in detail in past reviews (e.g., 2013 ISA, 2006 AQCD, 1997 AQCD, 2014 WREA). He additionally notes the established E-R functions for 10 crops and the estimates of RYL derived from them, as presented in the PA (PA, Appendix 4A, section 4A.1, Table 4A-4), and the potential public welfare significance of reductions in crop yield, as summarized in section III.B.2 above. However, he additionally recognizes that not every effect on crop yield will be adverse to public welfare and in the case of crops in particular there are a number of complexities related to the heavy management of many crops to obtain a particular output for commercial purposes, and related to other factors, that contribute uncertainty to predictions of potential O₃-related public welfare impacts, as summarized in sections III.B.2 and III.D.1 above (PA, sections 4.5.1.3 and 4.5.3). Thus, in judging the extent to which the median RYL estimated for the W126 index values generally occurring in areas meeting the current standard would be expected to be of public welfare significance, he recognizes the potential for a much larger influence of extensive management of such crops, and also considers other factors recognized in the PA and summarized in section III.D.1 above, including similarities in median estimates of RYL and RBL (PA, sections 4.5.1.3 and 4.5.3). With this in mind, the Administrator does not find that the information for crop yield effects leads him to identify this endpoint as requiring separate consideration or to provide a more appropriate focus for the standard than RBL, in its role as a proxy or surrogate for the broader array of

vegetation-related effects, as discussed above. Rather, in light of these considerations, he proposes to judge that a decision based on RBL as a proxy for other vegetation-related effects will provide adequate protection against crop related effects. In light of the current information and considerations discussed more completely above, the Administrator further proposes to conclude that the evidence regarding RBL, and its use as a proxy or surrogate for the broader array of vegetation-related effects, in combination with air quality in areas meeting the current standard, provide adequate protection for these effects.

In reaching his proposed conclusion on the current standard, the Administrator also considers the extent to which the current information may provide support for an alternative standard. In so doing, he notes the longstanding evidence documenting the array of welfare effects associated with O₃ in ambient air, as summarized in section III.B.1 above. He additionally recognizes the robust quantitative evidence for growth-related effects and the E-R functions for RBL, which he considers as a proxy for the broader array of effects in reaching his proposed decision. He takes note of the air quality analyses that show an appreciably greater occurrence of higher levels of cumulative exposure, in terms of the W126 index, as well as an appreciably greater occurrence of peak concentrations (both hourly and 8-hour average concentrations) in areas that do not meet the current standard, as summarized in section III.C above for areas with design values above 70 ppb. He proposes to conclude that such occurrences contribute to air quality conditions that would not provide the appropriate protection of public welfare in light of the potential for adverse effects on the public welfare.

Further, the Administrator recognizes that public comments thus far in this review have suggested that an alternative standard, such as one based solely on the W126 metric, is required to provide adequate protection of the public welfare. Such a point was raised in the litigation challenging the 2015 secondary standard, although the court did not resolve this issue in its decision. In considering this issue, the Administrator recognizes that, as summarized in section III.B.3.a above, concentration-weighted, cumulative exposure metrics, including the W126 index, have been identified as quantifying exposure in a way that relates to reduced plant growth (ISA, Appendix 8, section 8.13.1). The W126 index is the metric used with the 11

established E-R functions discussed above, which provide estimates of RBL that the Administrator considers appropriately used as a proxy or surrogate for the broader array of vegetation-related effects. The Administrator additionally notes, however, that the evidence indicates there to be aspects of O₃ air quality not captured by measures of cumulative exposure, such as W126 index, that may pose a risk of harm to the public welfare. For example, as discussed above, the current evidence indicates a role for peak concentrations in the occurrence of visible foliar injury. With this in mind, the Administrator notes that an ambient air quality standard established in terms of the W126 index, while giving greater weight to generally higher concentrations, would not explicitly limit the occurrence of hourly concentrations at or above specific magnitudes. For example, two records of air quality may have the same W126 index while differing appreciably in patterns of hourly concentrations, including in the frequency of occurrence of peak concentrations (e.g., number of hours above 100 ppb). The Administrator notes, however, as discussed above, that the current standard, with its 8-hour averaging time and fourth-highest daily maximum form (averaged over three years), can provide control of both peak concentrations and concentration-weighted cumulative exposures, as illustrated by the substantially limited occurrence of hourly concentrations of magnitudes at or above 100 ppb and of cumulative exposures at or above 19 ppm-hrs in areas that meet the current standard (PA, section 2.4.5, Appendix 2A, section 2A.2 and Appendix 4D). Thus, in light of the information available in this review, summarized in the sections above and including that related to a role of peak concentrations in posing risk of visible foliar injury to sensitive vegetation, the Administrator proposes to conclude that such an alternative standard in terms of a W126 index would be less likely to provide sufficient protection against such occurrences and accordingly would not provide the requisite control of aspects of air quality that pose risk to the public welfare. As indicated above, he proposes to judge that the current information indicates that the requisite control of such aspects of air quality is provided by the current standard.

In summary, the Administrator recognizes that his proposed decision on the public welfare protection afforded by the secondary O₃ standard from identified O₃-related welfare

effects, and from their potential to present adverse effects to the public welfare, is based in part on judgments regarding uncertainties and limitations in the available information, such as those identified above. In this context, he has considered what the available evidence and quantitative information indicate with regard to the protection provided from the array of O₃ welfare effects. He finds that the information, as summarized above, and presented in detail in the ISA and PA, does not indicate the current standard to allow air quality conditions with implications of concern for the public welfare. He additionally takes note of the advice from the CASAC in this review, including its finding “that the available evidence does not reasonably call into question the adequacy of the current secondary ozone standard and concurs that it should be retained” (Cox, 2020a, p. 1). Based on all of the above considerations, including his consideration of the currently available evidence and quantitative exposure/risk information, the Administrator proposes to conclude that the current secondary standard provides the requisite protection against known or anticipated effects to the public welfare, and thus that the current standard should be retained, without revision. The Administrator solicits comment on this proposed conclusion.

Having reached the proposed decision described here based on interpretation of the welfare effects evidence, as assessed in the ISA, and the quantitative analyses presented in the PA; the evaluation of policy-relevant aspects of the evidence and quantitative analyses in the PA; the advice and recommendations from the CASAC; public comments received to date in this review; and the public welfare policy judgments described above, the Administrator recognizes that other interpretations, assessments and judgments might be possible. Therefore, the Administrator solicits comment on the array of issues associated with review of this standard, including public welfare and science policy judgments inherent in the proposed decision, as described above, and the rationales upon which such views are based.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

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

The Office of Management and Budget (OMB) has determined that this action is a significant regulatory action and it was submitted to OMB for review. Any changes made in response to OMB recommendations have been documented in the docket. Because this action does not propose to change the existing NAAQS for O₃, it does not impose costs or benefits relative to the baseline of continuing with the current NAAQS in effect. EPA has thus not prepared a Regulatory Impact Analysis for this action.

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

This action is not expected to be an Executive Order 13771 regulatory action. There are no quantified cost estimates for this proposed action because EPA is proposing to retain the current standards.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. There are no information collection requirements directly associated with a decision to retain a NAAQS without any revision under section 109 of the CAA, and this action proposes to retain the current O₃ NAAQS without any revisions.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Rather, this action proposes to retain, without revision, existing national standards for allowable concentrations of O₃ in ambient air as required by section 109 of the CAA. See also *American Trucking Associations v. EPA*, 175 F.3d 1027, 1044–45 (D.C. Cir. 1999) (NAAQS do not have significant impacts upon small entities because NAAQS themselves impose no regulations upon small entities), *rev'd in part on other grounds, Whitman v. American Trucking Associations*, 531 U.S. 457 (2001).

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in the UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no

enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications, as specified in Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes. This action does not change existing regulations; it proposes to retain the current O₃ NAAQS, without revision. Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. The health effects evidence and risk assessment information for this action, which focuses on children and people (of all ages) with asthma as key at-risk populations, is summarized in sections II.B and II.C above and described in the ISA and PA, copies of which are in the public docket for this action.

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

This action is not subject to Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The purpose of this document is to propose to retain the current O₃ NAAQS. This proposal does not change existing requirements. Thus, the EPA concludes that this proposal does not constitute a significant energy action as defined in Executive Order 13211.

J. National Technology Transfer and Advancement Act

This action does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental

effects on minority, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The action proposed in this document is to retain without revision the existing O₃ NAAQS based on the Administrator's proposed conclusions that the existing primary standard protects public health, including the health of sensitive groups, with an adequate margin of safety, and that the existing secondary standard protects public welfare from known or anticipated adverse effects. As discussed in section II above, the EPA expressly considered the available information regarding health effects among at-risk populations in reaching the proposed decision that the existing standard is requisite.

L. Determination Under Section 307(d)

Section 307(d)(1)(V) of the CAA provides that the provisions of section 307(d) apply to "such other actions as the Administrator may determine." Pursuant to section 307(d)(1)(V), the Administrator determines that this action is subject to the provisions of section 307(d).

V. References

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List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Andrew Wheeler,
Administrator.

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Part VI

The President

Proclamation 10060—Adjusting Imports of Aluminum Into the United States

Presidential Documents

Title 3—

Proclamation 10060 of August 6, 2020

The President

Adjusting Imports of Aluminum Into the United States

By the President of the United States of America

A Proclamation

1. On January 19, 2018, the Secretary of Commerce (Secretary) transmitted to me a report on his investigation into the effect of imports of aluminum articles on the national security of the United States under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). The Secretary found and advised me of his opinion that aluminum articles were being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States.

2. In Proclamation 9704 of March 8, 2018 (Adjusting Imports of Aluminum Into the United States), I concurred in the Secretary's finding that aluminum articles were being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States, and decided to adjust the imports of aluminum articles, as defined in clause 1 of Proclamation 9704, by imposing a 10 percent ad valorem tariff on such articles imported from most countries. I further stated that any country with which we have a security relationship is welcome to discuss with the United States alternative ways to address the threatened impairment of the national security caused by imports from that country, and noted that, should the United States and any such country arrive at a satisfactory alternative means to address the threat to the national security such that I determine that imports from that country no longer threaten to impair the national security, I may remove or modify the restriction on aluminum articles imports from that country and, if necessary, adjust the tariff as it applies to other countries as the national security interests of the United States require.

3. In Proclamation 9893 of May 19, 2019 (Adjusting Imports of Aluminum Into the United States), I noted that the United States had successfully concluded discussions with Canada on satisfactory alternative means to address the threatened impairment of the national security posed by aluminum imports from Canada. In particular, the United States agreed on a range of measures with Canada that were expected to allow imports of aluminum from Canada to remain stable at historical levels without meaningful increases, thus permitting the domestic capacity utilization to remain reasonably commensurate with the target level recommended in the Secretary's report. These included measures to monitor for and avoid import surges.

4. In light of this agreement, I determined that, under the framework in the agreement, imports of aluminum from Canada would no longer threaten to impair the national security, and thus I decided to exclude Canada from the tariff proclaimed in Proclamation 9704, as amended. I noted that the United States would monitor the implementation and effectiveness of the measures agreed upon with Canada in addressing our national security needs, and that I may revisit this determination as appropriate.

5. In Proclamation 9704, I also directed the Secretary to monitor imports of aluminum articles and inform me of any circumstances that in the Secretary's opinion might indicate the need for further action under section

232 of the Trade Expansion Act of 1962, as amended, with respect to such imports.

6. The Secretary has now advised me that imports of non-alloyed unwrought aluminum from Canada, which accounted for 59 percent of total aluminum imports from Canada during June 2019 through May 2020, increased substantially in the twelve months following my decision to exclude, on a long-term basis, Canada from the tariff proclaimed in Proclamation 9704. Imports of non-alloyed unwrought aluminum from Canada during June 2019 through May 2020 increased 87 percent compared to the prior twelve-month period and exceeded the volume of any full calendar year in the previous decade. Moreover, imports of these articles from Canada continue to increase, reaching in June of this year the highest level of any month since I decided to adjust imports of aluminum articles in Proclamation 9704. The increase in imports of these articles from Canada is principally responsible for the 27 percent increase in total aluminum imports from Canada during June 2019 through May 2020.

7. Canada is the largest source of United States imports of non-alloyed unwrought aluminum, accounting for nearly two-thirds of total imports of these articles from all countries in 2019 and approximately 75 percent of total imports in the first five months of 2020. The surge in imports of these articles from Canada coincides with a decrease in imports of these articles from other countries and threatens to harm domestic aluminum production and capacity utilization.

8. In light of the Secretary's information, I have determined that the measures agreed upon with Canada are not providing an effective alternative means to address the threatened impairment to our national security from imports of aluminum from Canada. Thus, I have determined that it is necessary and appropriate to re-impose the 10 percent ad valorem tariff proclaimed in Proclamation 9704, as amended, on imports of non-alloyed unwrought aluminum articles from Canada, commensurate with the tariff imposed on such articles imported from most countries.

9. The United States will continue to monitor the implementation and effectiveness of the measures agreed upon with Canada in addressing our national security needs, including with respect to imports of other aluminum articles. In particular, the United States will monitor for import surges of articles that continue to be exempt from the tariff proclaimed in Proclamation 9704, to ensure that exports of non-alloyed unwrought aluminum to the United States are not simply reoriented into increased exports of alloyed, further processed, or wrought aluminum articles.

10. Section 232 of the Trade Expansion Act of 1962, as amended, authorizes the President to adjust the imports of an article and its derivatives that are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

11. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTSUS) the substance of statutes affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States of America, including section 232 of the Trade Expansion Act of 1962, as amended, section 301 of title 3, United States Code, and section 604 of the Trade Act of 1974, as amended, do hereby proclaim as follows:

(1) Clause 2 of Proclamation 9704, as amended, is further amended in the second sentence by deleting "and" before "(d)" and inserting before the period at the end: ", (e) on or after 12:01 a.m. eastern daylight time on August 16, 2020, from all countries except Argentina, Australia, and Mexico; and (f) on or after 12:01 a.m. eastern daylight time on August

16, 2020, from Canada, except with respect to imports of non-alloyed unwrought aluminum provided for in subheading 7601.10, which shall be subject to the additional 10 percent ad valorem rate of duty”.

(2) The Secretary, in consultation with U.S. Customs and Border Protection and other relevant executive departments and agencies, shall revise the HTSUS so that it conforms to the amendments and effective dates directed in this proclamation. The Secretary shall publish any such modification to the HTSUS in the *Federal Register*.

(3) The modifications made by clause 1 of this proclamation shall be 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 16, 2020, and shall continue in effect, unless such actions are expressly reduced, modified, or terminated.

(4) Any exclusion of aluminum articles from Canada granted by the Secretary of Commerce pursuant to clause 3 of Proclamation 9704, as amended, that has not expired shall be valid under the modifications to the HTSUS made by this proclamation. Previously granted exclusions that have expired may be renewed.

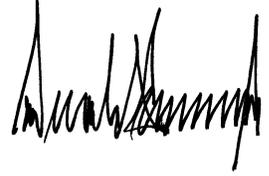
(5) Any imports of non-alloyed unwrought aluminum articles from Canada provided for in subheading 7601.10 that were admitted into a United States foreign trade zone under “privileged foreign status” as defined in 19 CFR 146.41 prior to 12:01 a.m. eastern daylight time on August 16, 2020, shall be subject upon entry for consumption on or after such time and date to the 10 percent ad valorem rate of duty imposed by Proclamation 9704, as amended. Any imports of non-alloyed unwrought aluminum articles from Canada provided for in subheading 7601.10, except any articles that are eligible for admission under “domestic status” as defined in 19 CFR 146.43, that are admitted into a United States foreign trade zone on or after 12:01 a.m. eastern daylight time on August 16, 2020, shall be admitted only as “privileged foreign status” as defined in 19 CFR 146.41, and shall be subject upon entry for consumption on or after such time and date to the 10 percent ad valorem rate of duty imposed by Proclamation 9704, as amended.

(6) Non-alloyed unwrought aluminum articles provided for in subheading 7601.10 shall not be subject upon entry for consumption to the duty established in clause 2 of Proclamation 9704, as amended, merely by reason of manufacture in a U.S. foreign trade zone. However, non-alloyed unwrought aluminum articles provided for in subheading 7601.10 admitted to a U.S. foreign trade zone in “privileged foreign status” pursuant to clause 5 of this proclamation, shall retain that status consistent with 19 CFR 146.41(e).

(7) No drawback shall be available with respect to the duties imposed pursuant to this proclamation.

(8) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of August, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.

A handwritten signature in black ink, appearing to be "Donald Trump", located in the upper right quadrant of the page.

ANNEX

TO MODIFY CHAPTER 99 OF THE HARMONIZED TARIFF
SCHEDULE OF THE UNITED STATES

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 [X], subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified:

1. by inserting the following new heading 9903.85.21 in numerical sequence with the material in these provisions inserted in the columns labeled "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively:

Heading/ Subheading	Article Description	Rates of Duty		
		1		2
		General	Special	
"9903.85.21	Aluminum products of Canada enumerated in U.S. note 19(a)(iv) to this subchapter. . . .	The duty provided in the applicable subheading + 10%	The duty provided in the applicable subheading + 10% (CA, MX, S)	The duty provided in the applicable subheading + 10%

2. by inserting the following new subdivision in U.S. note 19(a) to subchapter III of chapter 99 in numerical sequence:

"(iv) Heading 9903.85.21 provides the ordinary customs duty treatment of certain aluminum products enumerated herein that are the product of Canada. The certain aluminum products are unwrought aluminum, non-alloyed, provided for in subheading 7601.10. For any such products that are eligible for special tariff treatment under any of the free trade agreements or preference programs listed in general note 3(c)(i) to the tariff schedule, the duty provided in heading 9903.85.21 shall be collected in addition to any special rate of duty otherwise applicable under the appropriate tariff subheading, except where prohibited by law. Goods for which entry is claimed under a provision of chapter 98 and which are subject to the additional duties prescribed herein shall be eligible for and subject to the terms of such provisions and applicable CBP regulations, except that duties under subheading 9802.00.60 shall be assessed based upon the full value of the imported article. No claim for entry or for any duty exemption or reduction shall be allowed for the aluminum products enumerated in this paragraph under a provision of chapter 99 that may set forth a lower rate of duty or provide duty-free treatment,

taking into account information supplied by CBP, but any additional duty prescribed in any provision of this subchapter or subchapter IV of chapter 99 shall be imposed in addition to the duty in heading 9903.85.21.”;

3. by amending the first sentence of U.S. note 19(a) by deleting, “enumerated in subdivision (b) of this note or described in subdivision (a)(iii) of this note” and inserting, “described in subdivision (a)(iii) or (a)(iv) or enumerated in subdivision (b) of this note” in lieu thereof;

4. by amending the first sentence of U.S. note 19(c) to subchapter III by deleting “and 9903.85.03” and inserting “, 9903.85.03, and 9903.85.21” in lieu thereof and by inserting “, subdivision (a)(iv),” after “by subdivision (a)(iii)”;

5. by amending the first sentence of U.S. note 19(d) to subchapter III by inserting “or heading 9903.85.21” after “heading 9903.85.01”; and

6. by amending the Article Description of heading 9903.85.01 to insert, “or heading 9903.85.21” after “Except for products described in heading 9903.85.03”.

[FR Doc. 2020–17977

Filed 8–13–20; 11:15 a.m.]

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FEDERAL REGISTER

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Part VII

The President

Executive Order 13944—Combating Public Health Emergencies and Strengthening National Security by Ensuring Essential Medicines, Medical Countermeasures, and Critical Inputs Are Made in the United States

Executive Order 13945—Fighting the Spread of COVID-19 by Providing Assistance to Renters and Homeowners

Notice of August 13, 2020—Continuation of the National Emergency With Respect to Export Control Regulations

Presidential Documents

Title 3—

Executive Order 13944 of August 6, 2020

The President

Combating Public Health Emergencies and Strengthening National Security by Ensuring Essential Medicines, Medical Countermeasures, and Critical Inputs Are Made in the United States

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 United States must protect our citizens, critical infrastructure, military forces, and economy against outbreaks of emerging infectious diseases and chemical, biological, radiological, and nuclear (CBRN) threats. To achieve this, the United States must have a strong Public Health Industrial Base with resilient domestic supply chains for Essential Medicines, Medical Countermeasures, and Critical Inputs deemed necessary for the United States. These domestic supply chains must be capable of meeting national security requirements for responding to threats arising from CBRN threats and public health emergencies, including emerging infectious diseases such as COVID-19. It is critical that we reduce our dependence on foreign manufacturers for Essential Medicines, Medical Countermeasures, and Critical Inputs to ensure sufficient and reliable long-term domestic production of these products, to minimize potential shortages, and to mobilize our Nation's Public Health Industrial Base to respond to these threats. It is therefore the policy of the United States to:

(a) accelerate the development of cost-effective and efficient domestic production of Essential Medicines and Medical Countermeasures and have adequate redundancy built into the domestic supply chain for Essential Medicines, Medical Countermeasures, and Critical Inputs;

(b) ensure long-term demand for Essential Medicines, Medical Countermeasures, and Critical Inputs that are produced in the United States;

(c) create, maintain, and maximize domestic production capabilities for Critical Inputs, Finished Drug Products, and Finished Devices that are essential to protect public safety and human health and to provide for the national defense; and

(d) combat the trafficking of counterfeit Essential Medicines, Medical Countermeasures, and Critical Inputs over e-commerce platforms and from third-party online sellers involved in the government procurement process.

I am therefore directing each executive department and agency involved in the procurement of Essential Medicines, Medical Countermeasures, and Critical Inputs (agency) to consider a variety of actions to increase their domestic procurement of Essential Medicines, Medical Countermeasures, and Critical Inputs, and to identify vulnerabilities in our Nation's supply chains for these products. Under this order, agencies will have the necessary flexibility to increase their domestic procurement in appropriate and responsible ways, while protecting our Nation's service members, veterans, and their families from increases in drug prices and without interfering with our Nation's ability to respond to the spread of COVID-19.

Sec. 2. Maximizing Domestic Production in Procurement. (a) Agencies shall, as appropriate, to the maximum extent permitted by applicable law, and in consultation with the Commissioner of Food and Drugs (FDA Commissioner) with respect to Critical Inputs, use their respective authorities under section 2304(c) of title 10, United States Code; section 3304(a) of title 41,

United States Code; and subpart 6.3 of the Federal Acquisition Regulation, title 48, Code of Federal Regulations, to conduct the procurement of Essential Medicines, Medical Countermeasures, and Critical Inputs by:

(i) using procedures to limit competition to only those Essential Medicines, Medical Countermeasures, and Critical Inputs that are produced in the United States; and

(ii) dividing procurement requirements among two or more manufacturers located in the United States, as appropriate.

(b) Within 90 days of the date of this order, the Director of the Office of Management and Budget (OMB), in consultation with appropriate agency heads, shall:

(i) review the authority of each agency to limit the online procurement of Essential Medicines and Medical Countermeasures to e-commerce platforms that have:

(A) adopted, and certified their compliance with, the applicable best practices published by the Department of Homeland Security in its Report to the President on “Combating Trafficking in Counterfeit and Pirated Goods,” dated January 24, 2020; and

(B) agreed to permit the Department of Homeland Security’s National Intellectual Property Rights Coordination Center to evaluate and confirm their compliance with such best practices; and

(ii) report its findings to the President.

(c) Within 90 days of the date of this order, the head of each agency shall, in consultation with the FDA Commissioner, develop and implement procurement strategies, including long-term contracts, consistent with law, to strengthen and mobilize the Public Health Industrial Base in order to increase the manufacture of Essential Medicines, Medical Countermeasures, and Critical Inputs in the United States.

(d) No later than 30 days after the FDA Commissioner has identified, pursuant to section 3(c) of this order, the initial list of Essential Medicines, Medical Countermeasures, and Critical Inputs, the United States Trade Representative shall, to the extent permitted by law, take all appropriate action to modify United States Federal procurement product coverage under all relevant Free Trade Agreements and the World Trade Organization Agreement on Government Procurement to exclude coverage of Essential Medicines, Medical Countermeasures, and Critical Inputs. The United States Trade Representative shall further modify United States Federal procurement product coverage, as appropriate, to reflect updates by the FDA Commissioner. After the modifications to United States Federal procurement coverage take effect, the United States Trade Representative shall make any necessary, corresponding modifications of existing waivers under section 301 of the Trade Agreements Act of 1979. The United States Trade Representative shall notify the President, through the Director of OMB, once it has taken the actions described in this subsection.

(e) No later than 60 days after the FDA Commissioner has identified, pursuant to section 3(c) of this order, the initial list of Essential Medicines, Medical Countermeasures, and Critical Inputs, and notwithstanding the public interest exception in subsection (f)(i)(1) of this section, the Secretary of Defense shall, to the maximum extent permitted by applicable law, use his authority under section 225.872–1(c) of the Defense Federal Acquisition Regulation Supplement to restrict the procurement of Essential Medicines, Medical Countermeasures, and Critical Inputs to domestic sources and to reject otherwise acceptable offers of such products from sources in Qualifying Countries in instances where considered necessary for national defense reasons.

(f) Subsections (a), (d), and (e) of this section shall not apply:

(i) where the head of the agency determines in writing, with respect to a specific contract or order, that (1) their application would be inconsistent with the public interest; (2) the relevant Essential Medicines, Medical Countermeasures, and Critical Inputs are not produced in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or (3) their application would cause the cost of the procurement to increase by more than 25 percent, unless applicable law requires a higher percentage, in which case such higher percentage shall apply;

(ii) with respect to the procurement of items that are necessary to respond to any public health emergency declared under section 319 of the Public Health Service Act (42 U.S.C. 247d), any major disaster or emergency declared under the Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), or any national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*).

(g) To the maximum extent permitted by law, any public interest determination made pursuant to section 2(f)(i)(1) of this order shall be construed to maximize the procurement and use of Essential Medicines and Medical Countermeasures produced in the United States.

(h) The head of an agency who makes any determination pursuant to section 2(f)(i) of this order shall submit an annual report to the President, through the Director of OMB and the Assistant to the President for Trade and Manufacturing Policy, describing the justification for each such determination.

Sec. 3. Identifying Vulnerabilities in Supply Chains. (a) Within 180 days of the date of this order, the Secretary of Health and Human Services, through the FDA Commissioner and in consultation with the Director of OMB, shall take all necessary and appropriate action, consistent with law, to identify vulnerabilities in the supply chain for Essential Medicines, Medical Countermeasures, and Critical Inputs and to mitigate those vulnerabilities, including by:

(i) considering proposing regulations or revising guidance on the collection of the following information from manufacturers of Essential Medicines and Medical Countermeasures as part of the application and regulatory approval process:

(A) the sources of Finished Drug Products, Finished Devices, and Critical Inputs;

(B) the use of any scarce Critical Inputs; and

(C) the date of the last FDA inspection of the manufacturer's regulated facilities and the results of such inspection;

(ii) entering into written agreements, pursuant to section 20.85 of title 21, Code of Federal Regulations, with the National Security Council, Department of State, Department of Defense, Department of Veterans Affairs, and other interested agencies, as appropriate, to disclose records regarding the security and vulnerabilities of the supply chains for Essential Medicines, Medical Countermeasures, and Critical Inputs;

(iii) recommending to the President any changes in applicable law that may be necessary to accomplish the objectives of this subsection; and

(iv) reviewing FDA regulations to determine whether any of those regulations may be a barrier to domestic production of Essential Medicines, Medical Countermeasures, and Critical Inputs, and by advising the President whether such regulations should be repealed or amended.

(b) The Secretary of Health and Human Services, through the FDA Commissioner, shall take all appropriate action, consistent with applicable law, to:

(i) accelerate FDA approval or clearance, as appropriate, for domestic producers of Essential Medicines, Medical Countermeasures, and Critical

Inputs, including those needed for infectious disease and CBRN threat preparedness and response;

(ii) issue guidance with recommendations regarding the development of Advanced Manufacturing techniques;

(iii) negotiate with countries to increase site inspections and increase the number of unannounced inspections of regulated facilities manufacturing Essential Medicines, Medical Countermeasures, and Critical Inputs; and

(iv) refuse admission, as appropriate, to imports of Essential Medicines, Medical Countermeasures, and Critical Inputs if the facilities in which they are produced refuse or unreasonably delay an inspection.

(c) Within 90 days of the date of this order, and periodically updated as appropriate, the FDA Commissioner, in consultation with the Director of OMB, the Assistant Secretary for Preparedness and Response in the Department of Health and Human Services, the Assistant to the President for Economic Policy, and the Director of the Office of Trade and Manufacturing Policy, shall identify the list of Essential Medicines, Medical Countermeasures, and their Critical Inputs that are medically necessary to have available at all times in an amount adequate to serve patient needs and in the appropriate dosage forms.

(d) Within 180 days of the date of this order, the Secretary of Defense, in consultation with the Director of OMB, shall take all necessary and appropriate action, consistent with law, to identify vulnerabilities in the supply chain for Essential Medicines, Medical Countermeasures, and Critical Inputs necessary to meet the unique needs of the United States Armed Forces and to mitigate the vulnerabilities identified in subsection (a) of this section. The Secretary of Defense shall provide to the Secretary of Health and Human Services, the FDA Commissioner, the Director of OMB, and the Director of the Office of Trade and Manufacturing Policy a list of defense-specific Essential Medicines, Medical Countermeasures, and Critical Inputs that are medically necessary to have available for defense use in adequate amounts and in appropriate dosage forms. The Secretary of Defense shall, as appropriate, periodically update this list.

Sec. 4. Streamlining Regulatory Requirements. Consistent with law, the Administrator of the Environmental Protection Agency shall take all appropriate action to identify relevant requirements and guidance documents that can be streamlined to provide for the development of Advanced Manufacturing facilities and the expeditious domestic production of Critical Inputs, including by accelerating siting and permitting approvals.

Sec. 5. Priorities and Allocation of Essential Medicines, Medical Countermeasures, and Critical Inputs. The Secretary of Health and Human Services shall, as appropriate and in accordance with the delegation of authority under Executive Order 13603 of March 16, 2012 (National Defense Resources Preparedness), use the authority under section 101 of the Defense Production Act of 1950, as amended (50 U.S.C. 4511), to prioritize the performance of Federal Government contracts or orders for Essential Medicines, Medical Countermeasures, or Critical Inputs over performance of any other contracts or orders, and to allocate such materials, services, and facilities as the Secretary deems necessary or appropriate to promote the national defense.

Sec. 6. Reporting. (a) No later than December 15, 2021, and annually thereafter, the head of each agency shall submit a report to the President, through the Director of OMB and the Assistant to the President for Trade and Manufacturing Policy, detailing, for the preceding three fiscal years:

(i) the Essential Medicines, Medical Countermeasures, and Critical Inputs procured by the agency;

(ii) the agency's annual itemized and aggregated expenditures for all Essential Medicines, Medical Countermeasures, and Critical Inputs;

(iii) the sources of these products and inputs; and

(iv) the agency's plan to support domestic production of such products and inputs in the next fiscal year.

(b) Within 180 days of the date of this order, the Secretary of Commerce shall submit a report to the Director of OMB, the Assistant to the President for National Security Affairs, the Director of the National Economic Council, and the Director of the Office of Trade and Manufacturing Policy, describing any change in the status of the Public Health Industrial Base and recommending initiatives to strengthen the Public Health Industrial Base.

(c) To the maximum extent permitted by law, and with the redaction of any information protected by law from disclosure, each agency's report shall be published in the *Federal Register* and on each agency's official website.

Sec. 7. Definitions. As used in this order:

(a) "Active Pharmaceutical Ingredient" has the meaning set forth in section 207.1 of title 21, Code of Federal Regulations.

(b) "Advanced Manufacturing" means any new medical product manufacturing technology that can improve drug quality, address shortages of medicines, and speed time to market, including continuous manufacturing and 3D printing.

(c) "API Starting Material" means a raw or intermediate material that is used in the manufacturing of an API, that is incorporated as a significant structural fragment into the structure of the API, and that is determined by the FDA Commissioner to be relevant in assessing the safety and effectiveness of Essential Medicines and Medical Countermeasures.

(d) "Critical Inputs" means API, API Starting Material, and other ingredients of drugs and components of medical devices that the FDA Commissioner determines to be critical in assessing the safety and effectiveness of Essential Medicines and Medical Countermeasures.

(e) "Essential Medicines" are those Essential Medicines deemed necessary for the United States pursuant to section 3(c) of this order.

(f) "Finished Device" has the meaning set forth in section 820.3(l) of title 21, Code of Federal Regulations.

(g) "Finished Drug Product" has the meaning set forth in section 207.1 of title 21, Code of Federal Regulations.

(h) "Healthcare and Public Health Sector" means the critical infrastructure sector identified in Presidential Policy Directive 21 of February 12, 2013 (Critical Infrastructure Security and Resilience), and the National Infrastructure Protection Plan of 2013.

(i) An Essential Medicine or Medical Countermeasure is "produced in the United States" if the Critical Inputs used to produce the Essential Medicine or Medical Countermeasures are produced in the United States and if the Finished Drug Product or Finished Device, are manufactured, prepared, propagated, compounded, or processed, as those terms are defined in section 360(a)(1) of title 21, United States Code, in the United States.

(j) "Medical Countermeasures" means items that meet the definition of "qualified countermeasure" in section 247d-6a(a)(2)(A) of title 42, United States Code; "qualified pandemic or epidemic product" in section 247d-6d(i)(7) of title 42, United States Code; "security countermeasure" in section 247d-6b(c)(1)(B) of title 42, United States Code; or personal protective equipment described in part 1910 of title 29, Code of Federal Regulations.

(k) "Public Health Industrial Base" means the facilities and associated workforces within the United States, including research and development facilities, that help produce Essential Medicines, Medical Countermeasures, and Critical Inputs for the Healthcare and Public Health Sector.

(l) "Qualifying Countries" has the meaning set forth in section 225.003, Defense Federal Acquisition Regulation Supplement.

Sec. 8. Rule of Construction. Nothing in this order shall be construed to impair or otherwise affect:

(a) the ability of State, local, tribal, or territorial governments to timely procure necessary resources to respond to any public health emergency declared under section 319 of the Public Health Service Act (42 U.S.C. 247d), any major disaster or emergency declared under the Stafford Act (42 U.S.C. 5121 *et seq.*), or any national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*);

(b) the ability or authority of any agency to respond to the spread of COVID-19; or

(c) the authority of the Secretary of Veterans Affairs to take all necessary steps, including those necessary to implement the policy set forth in section 1 of this order, to ensure that service members, veterans, and their families continue to have full access to Essential Medicines at reasonable and affordable prices.

Sec. 9. Severability. If any provision of this order, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of any of its other provisions to any other persons or circumstances shall not be affected thereby.

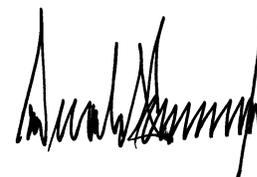
Sec. 10. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order 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.



THE WHITE HOUSE,
August 6, 2020.

Presidential Documents

Executive Order 13945 of August 8, 2020

Fighting the Spread of COVID–19 by Providing Assistance to Renters and Homeowners

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. Purpose. The 2019 novel coronavirus (COVID–19) pandemic, which originated in the People’s Republic of China, continues to pose a significant threat to the health of Americans throughout the United States. As we have since January 2020, with the proactive decision to limit travel from China and the passage of three massive economic relief packages, my Administration will take whatever steps are necessary to reduce the spread of COVID–19 and maintain economic prosperity.

The Centers for Disease Control and Prevention (CDC) of the Department of Health and Human Services have concluded that “growing and disproportionate unemployment rates for some racial and ethnic minority groups during the COVID–19 pandemic may lead to greater risk of eviction and homelessness or sharing of housing.”

This trend is concerning for many reasons, including that homeless shelters have proven to be particularly susceptible to outbreaks of COVID–19. CDC has observed that “[h]omelessness poses multiple challenges that can exacerbate and amplify the spread of COVID–19. Homeless shelters are often crowded, making social distancing difficult. Many persons experiencing homelessness are older or have underlying medical conditions, placing them at higher risk for severe COVID–19–associated illness.” Increased shared housing is also potentially problematic to the extent it results in increased in-person interactions between older, higher-risk individuals and their younger relatives or friends.

My Administration has taken bold steps to help renters and homeowners have safe and secure places to call home during the COVID–19 crisis. Prior to passage of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Public Law 116–136), the Secretary of Housing and Urban Development implemented a foreclosure and eviction moratorium for all single-family mortgages insured by the Federal Housing Administration. Furthermore, prior to passage of the CARES Act, the Federal Housing Finance Agency (FHFA) announced that it had instructed the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (the Enterprises) to suspend foreclosures for at least 60 days. FHFA has since announced that the Enterprises will extend the foreclosure suspension until at least August 31, 2020.

The CARES Act imposed a temporary moratorium on evictions of certain renters subject to certain conditions. That moratorium has now expired, and there is a significant risk that this will set off an abnormally large wave of evictions. With the failure of the Congress to act, my Administration must do all that it can to help vulnerable populations stay in their homes in the midst of this pandemic. Those who are dislocated from their homes may be unable to shelter in place and may have more difficulty maintaining a routine of social distancing. They will have to find alternative living arrangements, which may include a homeless shelter or a crowded family home and may also require traveling to other States.

In addition, evictions tend to disproportionately affect minorities, particularly African Americans and Latinos. Unlike the Congress, I cannot sit idly and refuse to assist vulnerable Americans in need. Under my Administration, minorities achieved the lowest unemployment rates on record, and we will not let COVID-19 erase these gains by causing short-term dislocations that could well have long-term consequences.

Accordingly, my Administration, to the extent reasonably necessary to prevent the further spread of COVID-19, will take all lawful measures to prevent residential evictions and foreclosures resulting from financial hardships caused by COVID-19.

Sec. 2. Policy. It is the policy of the United States to minimize, to the greatest extent possible, residential evictions and foreclosures during the ongoing COVID-19 national emergency.

Sec. 3. Response to Public Health Risks of Evictions and Foreclosures. (a) The Secretary of Health and Human Services and the Director of CDC shall consider whether any measures temporarily halting residential evictions of any tenants for failure to pay rent are reasonably necessary to prevent the further spread of COVID-19 from one State or possession into any other State or possession.

(b) The Secretary of the Treasury and the Secretary of Housing and Urban Development shall identify any and all available Federal funds to provide temporary financial assistance to renters and homeowners who, as a result of the financial hardships caused by COVID-19, are struggling to meet their monthly rental or mortgage obligations.

(c) The Secretary of Housing and Urban Development shall take action, as appropriate and consistent with applicable law, to promote the ability of renters and homeowners to avoid eviction or foreclosure resulting from financial hardships caused by COVID-19. Such action may include encouraging and providing assistance to public housing authorities, affordable housing owners, landlords, and recipients of Federal grant funds in minimizing evictions and foreclosures.

(d) In consultation with the Secretary of the Treasury, the Director of FHFA shall review all existing authorities and resources that may be used to prevent evictions and foreclosures for renters and homeowners resulting from hardships caused by COVID-19.

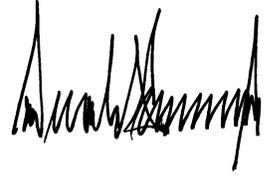
Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(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 order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order 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.

A handwritten signature in black ink, appearing to be a stylized name, possibly "Donald Trump", written in a cursive script.

THE WHITE HOUSE,
August 8, 2020.

[FR Doc. 2020-18015
Filed 8-13-20; 11:15 am]
Billing code 3295-F0-P

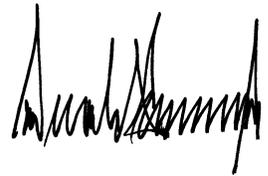
Presidential Documents

Notice of August 13, 2020

Continuation of the National Emergency With Respect to Export Control Regulations

On August 17, 2001, the President issued Executive Order 13222 pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). In that order, the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States related to the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. 4601 *et seq.*). Because the implementation of certain sanctions authorities, including sections 11A, 11B, and 11C of such Export Administration Act of 1979, consistent with section 1766(b) of Public Law 115–232 (50 U.S.C. 4601 note), is to be carried out under the International Emergency Economic Powers Act, the national emergency declared on August 17, 2001, must continue in effect beyond August 17, 2020. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13222, as amended by Executive Order 13637 of March 8, 2013.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
August 13, 2020.

Reader Aids

Federal Register

Vol. 85, No. 158

Friday, August 14, 2020

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