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U.S. GOVERNMENT
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FEDERAL REGISTER

Vol. 86 Tuesday,

No. 7 January 12, 2021

Pages 2243–2526

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF ENERGY

10 CFR Part 590

Including Short-Term Export Authority in Long-Term Authorizations for the Export of Natural Gas on a Non-Additive Basis

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Policy statement.

SUMMARY: The Department of Energy's (DOE) Office of Fossil Energy (FE) is discontinuing its practice of issuing separate long-term and short-term authorizations for exports of domestically produced natural gas from the same facility (or facilities). DOE is instead establishing a practice that certain long-term authorizations to export domestically produced natural gas—including liquefied natural gas (LNG), compressed natural gas, and compressed gas liquid—include additional authority to export the same approved volume pursuant to transactions with terms of less than two years on a non-additive basis (including non-additive commissioning volumes). By consolidating this authority in a single authorization without any increase in total approved export volumes, this action will streamline DOE's regulatory process and reduce administrative burdens. This policy statement affects only future long-term export authorizations issued by DOE under the Natural Gas Act (NGA). DOE is concurrently issuing a blanket order amending existing export authorizations consistent with this policy statement.

DATES: This policy statement is effective on January 12, 2021.

FOR FURTHER INFORMATION CONTACT: Amy Sweeney, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585; (202) 586–2627; *amy.sweeney@hq.doe.gov;* Bill Cody, U.S. Department of Energy (GC–70), Associate General Counsel, Forrestal Building, Room 6B–222, 1000 Independence Avenue SW, Washington, DC 20585; (202) 586–6918; email: *bill.cody@hq.doe.gov;* Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6D–033, 1000 Independence Avenue SW, Washington, DC 20585; (202) 586–9793; email: *cassandra.bernstein@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations. Frequently used acronyms and abbreviations are set forth below for reference.

DOE U.S. Department of Energy
EA Environmental Assessment
EIS Environmental Impact Statement
FE Office of Fossil Energy
FTA Free Trade Agreement
LNG Liquefied Natural Gas
NEPA National Environmental Policy Act of 1969
NGA Natural Gas Act

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I. Statutory Background

DOE is responsible for authorizing exports of domestically produced natural gas—including LNG, compressed natural gas, and compressed gas liquid [1]—to foreign countries under section 3 of the NGA.[2] Under section 3(c) of the NGA, exports of natural gas to countries with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries) are ''deemed to be consistent with the public interest.'' [3] Therefore, applications authorizing exports of natural gas to FTA countries must be granted ''without modification or delay.'' [4] Section 3(a) of the NGA governs exports to any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries).[5] DOE, as affirmed by the U.S. Court of Appeals for the District of Columbia Circuit, has consistently interpreted NGA section 3(a) as creating a rebuttable presumption that a proposed export of natural gas is in the public interest.[6] Accordingly, DOE will conduct an informal adjudication and grant a non-FTA application unless DOE finds that the proposed exportation will not be consistent with the public interest.[7]

Before reaching a final decision on a non-FTA application, DOE must also comply with the National Environmental Policy Act of 1969 (NEPA).[8] DOE's environmental review process under NEPA may result in the preparation or adoption of an environmental impact statement (EIS) or environmental assessment (EA) describing the potential environmental impacts associated with the application.[9] In other cases, DOE may

[1] In referring to natural gas in this policy statement, DOE refers primarily, but not exclusively, to LNG. Several DOE proceedings have involved other types of natural gas: Compressed natural gas (or CNG) in FE Docket Nos. 13–157–CNG and 20–57–CNG, and compressed gas liquid (or CGL) in FE Docket Nos. 14–83–CGL, 16–22–CGL, and 19–147–CGL. *See* 15 U.S.C. 717a(5) (definition of natural gas); 10 CFR 590.102(i) (same).

[2] 15 U.S.C. 717b. The authority to regulate the imports and exports of natural gas, including LNG, under NGA section 3 has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00–002.04G, issued on June 4, 2019.

[3] *Id.* at 15 U.S.C. 717b(c). The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

[4] *Id.*

[5] *Id.* at 15 U.S.C. 717b(a).

[6] *See Sierra Club* v. *U.S. Dep't of Energy,* 867 F.3d 189, 203 (D.C. Cir. 2017) (''We have construed [NGA section 3(a)] as containing a 'general presumption favoring [export] authorization.' '') (quoting *W. Va. Pub. Serv. Comm'n* v. *U.S. Dep't of Energy,* 681 F.2d 847, 856 (D.C. Cir. 1982)).

[7] *See id.* (''there must be 'an affirmative showing of inconsistency with the public interest' to deny the application'' under NGA section 3(a)) (quoting *Panhandle Producers & Royalty Owners Ass'n* v. *Econ. Regulatory Admin.,* 822 F.2d 1105, 1111 (D.C. Cir. 1987)). Additionally, qualifying small-scale exports of natural gas to non-FTA countries are deemed to be consistent with the public interest under NGA section 3(a). *See* 10 CFR 590.102(p); 10 CFR 590.208(a); *see also* U.S. Dep't of Energy, Small-Scale Natural Gas Exports; Final Rule, 83 FR 35106 (July 25, 2018).

[8] 42 U.S.C. 4321 *et seq.*

[9] Typically, the federal agency responsible for permitting the export facility—either the Federal Energy Regulatory Commission or the U.S. Department of Transportation's Maritime Administration—serves as the lead agency in the

Continued

determine that an application is eligible for a categorical exclusion from the preparation or adoption of an EIS or EA, pursuant to DOE's regulations implementing NEPA.[10]

II. Regulatory Background

A. DOE Regulations Involving Contract Terms

DOE's regulations implementing section 3 of the NGA are codified in 10 CFR part 590. In relevant part, any person applying to export natural gas from the United States or to amend an existing export authorization[11] is required to provide DOE with ''a copy of all relevant contracts and purchase agreements''[12] and to identify any ''contract volumes'' related to the supply of natural gas to be exported.[13] DOE's regulations, however, do not address the terms of contracts for the supply or export of natural gas, or distinguish between types of export authorizations based on the contract term.

B. Long-Term Export Authority

Because of the time, complexity, and expense of commercializing, financing, and constructing LNG export terminals, authorization holders typically apply to DOE for long-term authority to export LNG (or other types of natural gas) from their export facility to FTA and non-FTA countries.[14] Since 2010, DOE has issued more than 100 long-term authorizations approving the export of natural gas in the form of LNG, compressed natural gas, or compressed gas liquid to either FTA countries, non-FTA countries, or both under consolidated FTA and non-FTA orders. These long-term authorizations—which originally ranged in duration from 20 to 30 years (depending on the type of order) and which now may extend through the year 2050[15]—are supported by the authorization holders' natural gas supply and sales contracts that often have similarly lengthy terms. In the long-term orders issued to date, DOE specifies that the authorization holder is authorized to export the natural gas ''pursuant to one or more long-term contracts (a contract greater than two years).''[16]

C. Short-Term Export Authority

In 2015, DOE received the first application requesting short-term (or ''blanket'') authorization to export domestically produced LNG over a two-year period to both FTA and non-FTA countries under NGA section 3.[17] In the application, filed by Sabine Pass Liquefaction, LLC (Sabine Pass), Sabine Pass noted that it held (at that time) two long-term FTA orders and one long-term non-FTA order authorizing it to export domestically produced LNG from the Sabine Pass Liquefaction Project, then under construction in Cameron Parish, Louisiana.[18] Sabine Pass requested to export a subset of its total export volume approved under its long-term authorizations for the two-year period. Sabine Pass explained that, in anticipation of the start of liquefaction operations at the Liquefaction Project, it sought ''to engage in short-term exports of LNG produced both prior to commercial operations as well as subsequent to commercial operations if and when appropriate market opportunities arise.''[19] Sabine Pass further stated that the requested short-term authorization would provide it with ''enhanced operational flexibility and the ability to export produced LNG cargoes that may be rejected by customers under one or more long-term contracts.''[20]

In January 2016, in DOE/FE Order No. 3767, DOE granted Sabine Pass's application to export LNG by vessel ''on a short-term or spot market basis'' from the Sabine Pass Liquefaction Project.[21] In evaluating the non-FTA portion of the application, DOE stated that it already had ''conducted a full public interest review under NGA section 3(a)'' for Sabine Pass's long-term non-FTA authorization.[22] Next, DOE noted that Sabine Pass was seeking only to export a non-additive portion of its total export volume over the two-year period. DOE found:

> Provided that the volumes proposed for export . . . when added to any volumes exported under Sabine Pass' long-term export authorization, do not exceed [the approved long-term export volume] on an annual (*i.e.,* consecutive 12 month) basis, *the public interest impacts of the total exports will not increase as a consequence of our approval of the Application in this proceeding.*[23]

On this basis, DOE concluded that ''no additional public interest review beyond that conducted in the earlier non-FTA export proceedings is warranted.''[24]

In the ordering paragraphs for Sabine Pass's short-term order, DOE specified that Sabine Pass was authorized to export the requested LNG ''pursuant to transactions that have terms of no longer than two years.''[25] DOE also required that ''[t]he volume of LNG authorized for export to non-FTA countries in this Order, when combined with the volume of LNG approved for export in [Sabine Pass's long-term non-FTA order] shall not exceed [the total approved non-FTA volume] during any consecutive 12-month period.''[26]

Under this framework, DOE has issued 13 additional short-term authorizations to supplement one or more existing long-term authorizations for the same facility (or facilities) and authorization holder. To maintain this export authority, authorization holders are required to apply for new short-term orders—and DOE is required to process and review those applications—every two years.[27] Five of these short-term orders are currently active, including Sabine Pass's most recent short-term

NEPA review process, and DOE serves as a cooperating agency. Where no other federal agency is responsible for permitting the export facility, DOE serves as the lead agency in the NEPA review process.

[10] *See* 10 CFR part 1021, subpart D, appendix B (listing of categorical exclusions from preparation of either an EA or EIS under NEPA).

[11] 10 CFR 590.201(a). For purposes of this policy statement, DOE uses the terms ''authorization'' and ''order'' interchangeably.

[12] *Id.* at 10 CFR 590.202(c).

[13] *Id.* at 10 CFR 590.202(b)(2).

[14] This policy statement does not apply to long-term export authorizations involving modes of transport other than by marine vessel, including but not limited to orders authorizing exports of natural gas by pipeline.

[15] Effective August 25, 2020, DOE discontinued its practice of granting a standard 20-year export term for long-term authorizations to export domestically produced natural gas from the lower-48 states to non-FTA countries. DOE adopted a term through December 31, 2050, as the standard export term for long-term non-FTA authorizations, unless a shorter term is requested by the applicant. *See* U.S. Dep't of Energy, Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050, Notice of Final Policy Statement and Response to Comments, 85 FR 52237 (Aug. 25, 2020) [hereinafter Term Extension Policy Statement].

[16] *See, e.g., Epcilon LNG LLC,* DOE/FE Order No. 4629, FE Docket No. 20–31–LNG, Opinion and Order Granting Long-Term Authorization to Export Natural Gas to Mexico for Liquefaction, and to Re-Export U.S.-Sourced Natural Gas in the Form of Liquefied Natural Gas from Mexico to Free Trade Agreement and Non-Free Trade Agreement Nations, at 55 (Dec. 8, 2020) (Ordering Para. A).

[17] Sabine Pass Liquefaction, LLC, FE Docket No. 15–171–LNG, Application for Blanket Authorization to Export Liquefied Natural Gas (Nov. 6, 2015).

[18] *Id.* at 2–3.

[19] *Id.* at 4.

[20] *Id.* at 6.

[21] *Sabine Pass Liquefaction, LLC,* DOE/FE Order No. 3767, FE Docket No. 15–171–LNG, Order Granting Blanket Authorization to Export Liquefied Natural Gas by Vessel from the Sabine Pass LNG Terminal Located in Cameron Parish, Louisiana, at 2 (Jan. 13, 2016).

[22] *Id.* at 9.

[23] *Id.* at 9–10 (emphasis added).

[24] *Id.* at 10.

[25] *Id.* at 13 (Ordering Para. A).

[26] *Id.* at 13–14 (Ordering Para. B).

[27] *See* U.S. Dep't of Energy, Office of Fossil Energy, ''How to Obtain Authorization to Import and/or Export Natural Gas and LNG—Types of Authorizations and Requests,'' *available at: https://www.energy.gov/fe/services/natural-gas-regulation/how-obtain-authorization-import-andor-export-natural-gas-and-lng.*

order issued in January 2020.[28] As indicated, each of these orders approves the requested short-term exports on a non-additive basis to the previously approved long-term exports for each authorization holder—meaning without any increase in the total export volume for the respective facility (or facilities).

Additionally, in every short-term order issued for non-FTA exports under NGA section 3(a), DOE has evaluated its obligations under NEPA. In each order, DOE determined that the approval of the application ''will not result in any incremental environmental impacts as compared to the environmental impacts previously reviewed'' for the corresponding long-term authorization(s).[29] DOE also found that approval of each application would not require additional construction or modification to the previously approved facilities.[30] Accordingly, in every short-term order for non-FTA exports to date, DOE has granted the non-FTA portion of the application, in part, based on a categorical exclusion from the preparation of an EA or EIS under NEPA [31] (specifically, categorical exclusion B5.7 under DOE's regulations at 10 CFR part 1021, subpart D, appendix B).[32]

III. Policy Statement

Nearly five years ago, in January 2016, DOE issued its first short-term LNG export authorization to Sabine Pass to supplement its existing long-term LNG export authorizations.[33] Since that time, the U.S. market for natural gas—and, in particular, the LNG export market—has matured, as has DOE's understanding of the administrative burdens associated with implementing its regulatory program under NGA section 3. Upon review, DOE has determined that it is no longer necessary to issue separate long-term and short-term authorizations to export natural gas from the same facility (or facilities) for the same authorization holder. If an authorization holder has a long-term export order tied to contracts of two years or longer, but wishes to export a subset of that approved volume on a short-term or spot market basis under transactions with terms of less than two years (including commissioning volumes prior to the start of a facility's commercial operations [34]), DOE finds that it is beneficial to provide both types of authority in a single consolidated order going forward.

As an initial matter, DOE's regulations implementing NGA section 3 do not address the terms of an applicant's natural gas supply or sales contracts, nor do they distinguish between types of export authority on this basis.[35] Therefore, there is no legal requirement for DOE to continue issuing separate short-term and long-term authorizations on a non-additive basis from the same facility.

DOE also finds that there are no practical benefits to continuing to separate these types of authorizations. DOE developed this approach in 2016 during a rapidly evolving regulatory period for exports of LNG and other forms of natural gas. At this point, however, DOE's regulatory practice is well established, U.S. companies have been exporting domestically produced LNG from the lower 48-states around the globe for nearly five years,[36] and the need for U.S. exporters to have operational flexibility to compete in the global marketplace is greater than ever.[37] Based on its analysis of the U.S. natural gas market, DOE/FE believes this action is in the public interest under NGA section 3.

Accordingly, under this policy statement, DOE is establishing that certain long-term authorizations to export domestically produced natural gas—including LNG, compressed natural gas, and compressed gas liquid—will include authority to export the same approved volume pursuant to transactions with terms of less than two years on a non-additive basis (including non-additive commissioning volumes to be exported prior to the start of a facility's commercial operations).

This policy statement applies only to future long-term authorizations to export natural gas.[38] Concurrently with this policy statement, DOE is issuing a blanket order that (i) amends existing long-term export authorizations to include short-term export authority under NGA section 3(a) and (c), and (ii) vacates DOE's existing short-term orders (and short-term export authority granted in other orders) in light of DOE's action to consolidate this authority in each corresponding long-term authorization.[39] DOE has included a list of the affected export authorizations in that order.

IV. Administrative Benefits

In this policy statement, DOE is not proposing any new requirements for applicants or authorization holders under 10 CFR part 590. Rather, DOE's objective to streamline DOE's administrative process and to minimize administrative burdens and uncertainty on the U.S. natural gas industry by conserving resources that would be utilized to apply for and process short-term export authorizations, respectively, without any incremental benefit to the public.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this policy statement.

Signing Authority

This document of the Department of Energy was signed on December 18, 2020, by Steven Winberg, Assistant Secretary, Office of Fossil 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

[28] *Sabine Pass Liquefaction, LLC,* DOE/FE Order No. 4487, FE Docket No. 19–133–LNG, Order Granting Blanket Authorization to Export Liquefied Natural Gas to Free Trade Agreement and Non-Free Trade Agreement Nations, at 14–15 (Jan. 15, 2020) (Ordering Paras. A, B).

[29] *See, e.g., id.* at 12.

[30] *See, e.g., id.* at 12–13.

[31] *See, e.g., id.* at 12–13, 14 (Findings Para. (3)).

[32] 10 CFR part 1021, Subpt. D, App. B, Categorical Exclusion B5.7) (providing a categorical exclusion where approvals or disapprovals of authorizations to import or export natural gas under NGA section 3 involve minor operational changes, but not new construction). DOE notes that, on January 4, 2021, an amended form of this B5.7 categorical exclusion will take effect. *See* U.S. Dep't of Energy, National Environmental Policy Act Implementing Procedures; Final Rule, 85 FR 78197 (Dec. 4, 2020) (effective date of Jan. 4, 2021).

[33] *See supra* note 21.

[34] *Cf.* U.S. Dep't of Energy, Office of Fossil Energy, *LNG Monthly,* at 38 (Nov. 2020), *available at: https://www.energy.gov/sites/prod/files/2020/11/f80/LNG%20Monthly%202020_4.pdf* (defining ''commissioning cargoes'' as ''pre-commercial cargos loaded while export facility operations are still undergoing final testing and inspection,'' and stating that ''[c]ommissioning cargos may occur multiple times for the same facility as individual LNG trains enter service'').

[35] *See supra* § II.A (discussing DOE's regulations implementing NGA section 3 at 10 CFR part 590).

[36] Indeed, after four years exporting at market-based levels, the United States has become one of the top three LNG exporters in the world. *See* Term Extension Policy Statement, 85 FR 52244 (Aug. 25, 2020).

[37] DOE recently discussed the benefits associated with increasing operational flexibility for U.S. exporters, including but not limited to providing economic benefits and improving energy security for the United States and its allies. *See id.* at 85 FR 52244 (Aug. 25, 2020).

[38] As noted, this policy statement does not apply to long-term export authorizations involving modes of transport other than by marine vessel, including but not limited to orders authorizing exports of natural gas by pipeline.

[39] *See* U.S. Dep't of Energy, DOE/FE Order No. 4641, FE Docket Nos. 10–85–LNG, *et al.,* Order Amending Long-Term Authorizations for the Export of Natural Gas to Include Short-Term Export Authority on a Non-Additive Basis, and Vacating Related Short-Term Authority in Separate Orders (Dec. 18, 2020).

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 December 21, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–28599 Filed 1–11–21; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

RIN 3064–AF69

FDIC Rules of Practice and Procedure; Technical Revisions

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending its rules of practice and procedure to codify the agency's longstanding practice of having certain adjudicative functions performed by an inferior officer of the United States appointed by the FDIC's Board of Directors (Board). Additionally, the FDIC is making other technical edits to its rules of practice and procedure to update references to certain positions within the FDIC Legal Division whose titles are outdated.

DATES: The final rule is effective on January 12, 2021.

FOR FURTHER INFORMATION CONTACT: Romulus A. Johnson, Counsel, Legal Division, (202) 898–3820, *romjohnson@fdic.gov;* Josephine M. Bahn, Senior Attorney, Legal Division, (202) 898–6576, *jbahn@fdic.gov;* or Nicholas S. Kazmerski, Counsel, Legal Division, (202) 898–3524, *nkazmerski@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Administrative enforcement proceedings brought by the FDIC are subject to the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* and the FDIC Rules of Practice and Procedure, 12 CFR part 308. Under part 308, evidentiary hearings and related proceedings are generally presided over by an Administrative Law Judge (ALJ). *See generally,* 5 U.S.C. 556; 12 CFR 308.5, and 308.3. Additionally, part 308 provides that certain procedural and adjudicative functions are reserved to the Executive Secretary of the FDIC. These functions include but are not limited to: (1) Serving in place of an ALJ when no ALJ has jurisdiction over an administrative proceeding; (2) issuing rulings in certain administrative proceedings; and (3) serving as the custodian of records for administrative proceedings. *See generally,* 12 CFR 308.102(b) and 308.105.

On June 21, 2018, the U.S. Supreme Court held that the ALJs employed by the U.S. Securities and Exchange Commission (SEC) were ''inferior officers'' of the United States under the Appointments Clause of the United States Constitution because these ALJs hold a continuing office established by law, and they exercise ''significant discretion'' in connection with certain ''important functions'' when presiding over administrative hearings. *Lucia* v. *SEC,* 138 S. Ct. 2044, 2053–2054 (2018) (*Lucia*). As inferior officers, the Supreme Court held that the SEC's ALJs are ''subject to the Appointments Clause and as such, can only be appointed by the President, ''Courts of Law'' or ''Heads of Departments.'' *See, Lucia,* 138 S. Ct. 2044, 2046.

Although the *Lucia* decision did not directly affect the FDIC or the ALJs for the FDIC, the Board nevertheless elected to formally appoint the ALJs that preside over FDIC enforcement proceedings. The ALJs who were serving at the time of the *Lucia* decision were appointed by the Board on July 19, 2018. *See* FDIC Board Resolution 085152. Since that time, the Board has appointed all ALJs that preside over FDIC enforcement proceedings.

Since the *Lucia* decision, the FDIC has received questions regarding whether the FDIC's Executive Secretary was also appointed in a manner consistent with the Supreme Court's ruling in *Lucia.* In fact, the Board duly appointed the FDIC's current Executive Secretary as an inferior officer on June 22, 1997, pursuant to Article II of the United States Constitution and 12 U.S.C. 1819(a) (Fifth) (allowing the FDIC to ''appoint by its Board of Directors such officers and employees as are not otherwise provided for in this chapter''). Nonetheless, in the interest of transparency and to assuage any outstanding concerns about this issue, we are amending part 308 to clarify and to expressly provide that such adjudicative functions will continue to be performed by an inferior officer of the United States (Administrative Officer) that has been duly appointed by the Board.

In addition to clarifying that these adjudicative functions are performed by an Administrative Officer that is duly appointed by the Board, the FDIC is making technical changes to part 308 to update outdated references to certain position titles.

II. Exemption From Public Notice and Comment

Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553) sets forth requirements for providing the general public notice of, and the opportunity to comment on, proposed agency rules. However, unless notice or hearing is required by statute, those requirements do not apply to interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(A).

The FDIC is updating part 308, its rules of practice and procedure, to substitute the Administrative Officer for the Executive Secretary in multiple places. Since the changes relate to agency organization, procedure, or practice, the rules are being published in final form without public notice and comment.

III. Regulatory Analysis

A. Congressional Review Act

Under the Congressional Review Act (CRA), ''[b]efore a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—(i) a copy of the rule; (ii) a concise general statement relating to the rule, including whether it is a major rule; and (iii) the proposed effective date of the rule.'' [1] The CRA further defines the term ''rule'' as having ''the meaning given such term in section 551, except that such term does not include—(A) any rule of particular applicability . . . ; (B) any rule relating to agency management or personnel; or (C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.'' [2]

The FDIC is updating part 308, its rules of practice and procedure, to clarify that certain adjudicative functions, specified in part 308 as being performed by the FDIC's Executive Secretary or Assistant Executive Secretary, will be performed by an ''Administrative Officer'' or ''Assistant Administrative Officer'' who has been duly appointed by the Board. Additionally, the FDIC is updating outdated references to certain position titles in part 308. These amendments do not constitute substantive changes, but merely conform the titles in the

[1] 5 U.S.C. 801(a)(1)(A).

[2] 5 U.S.C. 804(3).

regulation to the current titles of these positions.

The clarifications relate to agency management and personnel, and to agency practice and procedure. Further, to the extent that non-agency parties are impacted by the amended rules (*i.e.,* they may be required to submit requests and documents to the attention of the Administrative Officer rather than the Executive Secretary), their rights and obligations will not be substantially affected. As such, submission to Congress and the Comptroller General is not required for the rules to become effective.

B. Paperwork Reduction Act

This rule does not propose new or revisions to existing ''collection[s] of information'' as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. (5 U.S.C. 603 and 604). As noted previously, the FDIC has determined that it is unnecessary to publish a notice of proposed rulemaking for the final rule amending part 308. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply to this rulemaking for part 308.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[3] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that the regulations would place on depository institutions, including small depository institutions and customers of depository institutions, as well as the benefits of the regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[4] The FDIC has determined that the rule would not impose additional reporting, disclosure, or other requirements; therefore the requirements of the RCDRIA do not apply.

E. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[5] requires the Federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. In light of this requirement, the FDIC has sought to present the final rule in a simple and straightforward manner.

List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Claims, Crime, Equal access to justice, Fraud, Investigations, Lawyers, Penalties, Savings associations.

12 CFR Chapter III

Authority and Issuance

For the reasons stated in the preamble, the FDIC amends 12 CFR part 308 as follows:

PART 308—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1464, 1467(d), 1467a, 1468, 1815(e), 1817, 1818, 1819, 1820, 1828, 1829, 1829(b), 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717, 5412(b)(2)(C), 5414(b)(3); 15 U.S.C. 78(h) and (i), 78o(c)(4), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Pub. L. 104–134, sec. 31001(s), 110 Stat. 1321; Pub. L. 109–351, 120 Stat. 1966; Pub. L. 111–203, 124 Stat. 1376; Pub. L. 114–74, sec. 701, 129 Stat. 584.

■ 2. Amend § 308.3 by:

■ a. Removing the first-level paragraph designations from paragraphs (a) through (s);

■ b. Adding definitions of ''Administrative Officer'' and ''Assistant Administrative Officer'' in alphabetical order;

■ c. Revising the definition of ''Decisional employee'';

■ d. Removing the definition of ''Executive Secretary''; and

■ e. Revising the definition of ''Person''.

The additions and revisions read as follows:

§ 308.3 Definitions.

* * * * *

Administrative Officer means an inferior officer of the Federal Deposit Insurance Corporation, duly appointed by the Board of Directors of the Federal Deposit Insurance Corporation to serve as the Board's designee to hear certain motions or requests in an adjudicatory proceeding and to be the official custodian of the record for the Federal Deposit Insurance Corporation.

* * * * *

Assistant Administrative Officer means an inferior officer of the Federal Deposit Insurance Corporation, duly appointed by the Board of Directors of the Federal Deposit Insurance Corporation to serve as the Board's designee to hear certain motions or requests in an adjudicatory proceeding upon the designation or unavailability of the Administrative Officer.

* * * * *

Decisional employee means any member of the Federal Deposit Insurance Corporation's or administrative law judge's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Board of Directors, the administrative law judge, or the Administrative Officer, or the Assistant Administrative Officer, in preparing orders, recommended decisions, decisions, and other documents under the Uniform Rules.

* * * * *

Person means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency, or other entity or organization, including an institution as defined in this section.

* * * * *

■ 3. Amend § 308.18 by revising paragraph (a)(1)(ii) to read as follows:

§ 308.18 Commencement of proceeding and contents of notice.

(a) * * *

(1) * * *

(ii) The notice must be served by Enforcement Counsel upon the respondent and given to any other appropriate financial institution supervisory authority where required by law.

* * * * *

■ 4. Amend § 308.23 by revising paragraphs (c) and (d) to read as follows:

§ 308.23 Motions.

* * * * *

(c) *Filing of motions.* Motions must be filed with the administrative law judge, except that following the filing of the recommended decision, motions must

[3] 12 U.S.C. 4802(a).

[4] 12 U.S.C. 4802.

[5] 12 U.S.C. 4809.

be filed with the Administrative Officer for disposition by the Board of Directors.

(d) *Responses.* (1) Except as otherwise provided in this paragraph (d), within ten days after service of any written motion, or within such other period of time as may be established by the administrative law judge or the Administrative Officer, any party may file a written response to a motion. The administrative law judge shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed a consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

* * * * *

■ 5. Amend § 308.33 by revising paragraph (a) to read as follows:

§ 308.33 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the FDIC, in its discretion, determines that holding an open hearing would be contrary to the public interest. Within 20 days of service of the notice or, in the case of change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), within 20 days from service of the hearing order, any respondent may file with the Administrative Officer a request for a private hearing, and any party may file a reply to such a request. A party must serve on the administrative law judge a copy of any request or reply the party files with the Administrative Officer. The form of, and procedure for, these requests and replies are governed by § 308.23. A party's failure to file a request or a reply constitutes a waiver of any objections regarding whether the hearing will be public or private.

* * * * *

■ 6. Revise § 308.38 to read as follows:

§ 308.38 Recommended decision and filing of record.

(a) *Filing of recommended decision and record.* Within 45 days after expiration of the time allowed for filing reply briefs under § 308.37(b), the administrative law judge shall file with and certify to the Administrative Officer, for decision, the record of the proceeding. The record must include the administrative law judge's recommended decision, recommended findings of fact, recommended conclusions of law, and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The administrative law judge shall serve upon each party the recommended decision, findings, conclusions, and proposed order.

(b) *Filing of index.* At the same time the administrative law judge files with and certifies to the Administrative Officer for final determination the record of the proceeding, the administrative law judge shall furnish to the Administrative Officer a certified index of the entire record of the proceeding. The certified index shall include, at a minimum, an entry for each paper, document or motion filed with the administrative law judge in the proceeding, the date of the filing, and the identity of the filer. The certified index shall also include an exhibit index containing, at a minimum, an entry consisting of exhibit number and title or description for: Each exhibit introduced and admitted into evidence at the hearing; each exhibit introduced but not admitted into evidence at the hearing; each exhibit introduced and admitted into evidence after the completion of the hearing; and each exhibit introduced but not admitted into evidence after the completion of the hearing.

■ 7. Amend § 308.39 by revising paragraph (a) to read as follows:

§ 308.39 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, findings, conclusions, and proposed order under § 308.38, a party may file with the Administrative Officer written exceptions to the administrative law judge's recommended decision, findings, conclusions, or proposed order, to the admission or exclusion of evidence, or to the failure of the administrative law judge to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

* * * * *

■ 8. Amend § 308.40 by revising paragraphs (a) and (b) to read as follows:

§ 308.40 Review by Board of Directors.

(a) *Notice of submission to Board of Directors.* When the Administrative Officer determines that the record in the proceeding is complete, the Administrative Officer shall serve notice upon the parties that the proceeding has been submitted to the Board of Directors for final decision.

(b) *Oral argument before the Board of Directors.* Upon the initiative of the Board of Directors or on the written request of any party filed with the Administrative Officer within the time for filing exceptions, the Board of Directors may order and hear oral argument on the recommended findings, conclusions, decision, and order of the administrative law judge. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the Board of Directors' final decision. Oral argument before the Board of Directors must be on the record.

* * * * *

■ 9. Amend § 308.102 by revising the section heading and paragraphs (a), (b) heading, (b)(1), and (b)(2) introductory text to read as follows:

§ 308.102 Authority of Board of Directors and Administrative Officer.

(a) *The Board of Directors.* (1) The Board of Directors may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of, any act which could be done or ordered by the Administrative Officer.

(2) Nothing contained in this part shall be construed to limit the power of the Board of Directors granted by applicable statutes or regulations.

(b) *The Administrative Officer.* (1) When no administrative law judge has jurisdiction over a proceeding, the Administrative Officer may act in place of, and with the same authority as, an administrative law judge, except that the Administrative Officer may not hear a case on the merits or make a recommended decision on the merits to the Board of Directors.

(2) Pursuant to authority delegated by the Board of Directors, the Administrative Officer and Assistant Administrative Officer, upon the advice and recommendation of the Deputy General Counsel for Litigation or, in his absence, the Assistant General Counsel for General Litigation, may issue rulings in proceedings under sections 7(j), 8, 18(j), 19, 32 and 38 of the FDIA (12 U.S.C. 1817(j), 1818, 1828(j), 1829, 1831i and 1831*o*) concerning:

* * * * *

■ 10. Amend § 308.103 by revising paragraph (b)(1) to read as follows:

§ 308.103 Appointment of administrative law judge.

* * * * *

(b) * * *

(1) The Enforcement Counsel shall promptly after issuance of the notice file

the matter with the Office of Financial Institution Adjudication (''OFIA'') which shall secure the appointment of an administrative law judge to hear the proceeding.

* * * * *

■ 11. Revise § 308.104 to read as follows:

§ 308.104 Filings with the Board of Directors.

(a) *General rule.* All materials required to be filed with or referred to the Board of Directors in any proceedings under this part shall be filed with the Administrative Officer, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

(b) *Scope.* Filings to be made with the Administrative Officer include pleadings and motions filed during the proceeding; the record filed by the administrative law judge after the issuance of a recommended decision; the recommended decision filed by the administrative law judge following a motion for summary disposition; referrals by the administrative law judge of motions for interlocutory review; motions and responses to motions filed by the parties after the record has been certified to the Board of Directors; exceptions and requests for oral argument; and any other papers required to be filed with the Board of Directors under this part.

■ 12. Revise § 308.105 to read as follows:

§ 308.105 Custodian of the record.

The Administrative Officer is the official custodian of the record when no administrative law judge has jurisdiction over the proceeding. As the official custodian, the Administrative Officer shall maintain the official record of all papers filed in each proceeding.

■ 13. Amend § 308.109 by revising paragraphs (b)(2) and (3) to read as follows:

§ 308.109 Suspension and disbarment.

* * * * *

(b) * * *

(2) Any person appearing or practicing before the FDIC who is the subject of an order, judgment, decree, or finding of the types set forth in paragraph (b)(1) of this section shall promptly file with the Administrative Officer a copy thereof, together with any related opinion or statement of the agency or tribunal involved. Any person who fails to so file a copy of the order, judgment, decree, or finding within 30 days after the entry of the order, judgment, decree, or finding or the date such person initiates practice before the FDIC, for that reason alone may be disqualified from practicing before the FDIC until such time as the appropriate filing shall be made. Failure to file any such paper shall not impair the operation of any other provision of this section.

(3) A suspension or disbarment under paragraph (b)(1) of this section from practice before the FDIC shall continue until the applicant has been reinstated by the Board of Directors for good cause shown, provided that any person suspended or disbarred under paragraph (b)(1) of this section shall be automatically reinstated by the Administrative Officer, upon appropriate application, if all the grounds for suspension or disbarment under paragraph (b)(1) of this section are subsequently removed by a reversal of the conviction (or the passage of time since the conviction) or termination of the underlying suspension or disbarment. An application for reinstatement on any other grounds by any person suspended or disbarred under paragraph (b)(1) of this section may be filed no sooner than one year after the suspension or disbarment, and thereafter, a new request for reinstatement may be made no sooner than one year after the counsel's most recent reinstatement application. The application must comply with the requirements of § 303.3 of this chapter. An applicant for reinstatement under this provision may, in the Board of Directors' sole discretion, be afforded a hearing.

* * * * *

■ 14. Amend § 308.112 by revising paragraph (a)(2)(ii) to read as follows:

§ 308.112 Notice of disapproval.

(a) * * *

(2) * * *

(ii) Indicate that a hearing may be requested by filing a written request with the Administrative Officer within ten days after service of the notice of disapproval; and if a hearing is requested, that an answer to the notice of disapproval, as required by § 308.113, must be filed within 20 days after service of the notice of disapproval.

* * * * *

■ 15. Revise § 308.139 to read as follows:

§ 308.139 Application for exemption.

Any interested person may file a written application for an exemption under this subpart with the Administrative Officer, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. The application shall specify the exemption sought and the reason therefor, and shall include a statement indicating why the exemption would be consistent with the public interest or the protection of investors.

■ 16. Amend § 308.140 by revising paragraph (a) to read as follows:

§ 308.140 Newspaper notice.

(a) *General rule.* If the Board of Directors or its designee, in its sole discretion, decides to further consider an application for exemption, there shall be served upon the applicant instructions to publish one notification in a newspaper of general circulation in the community where the main office of the issuer is located. The applicant shall furnish proof of such publication to the Administrative Officer or such other person as may be directed in the instructions.

* * * * *

■ 17. Revise § 308.141 to read as follows:

§ 308.141 Notice of hearing.

Within ten days after expiration of the period for receipt of comments pursuant to § 308.140, the Administrative Officer shall serve upon the applicant and any person who has requested an opportunity to be heard written notification indicating the place and time of the hearing. The hearing shall be held not later than 30 days after service of the notification of hearing. The notification shall contain the name and address of the presiding officer designated by the Administrative Officer and a statement of the matters to be considered.

■ 18. Amend § 308.154 by revising paragraph (c)(1) to read as follows:

§ 308.154 Decision on review.

* * * * *

(c) * * *

(1) Inform the petitioner that a written request for a hearing, stating the relief desired and the grounds therefore, may be filed with the Administrative Officer within 15 days after the receipt of the denial; and

* * * * *

■ 19. Amend § 308.155 by revising paragraphs (a), (c)(1) and (9), and (f) to read as follows:

§ 308.155 Hearing.

(a) *Hearing dates.* The Administrative Officer shall order a hearing to be commenced within 30 days after receipt of a request for a hearing filed pursuant to § 308.154. Upon request of the petitioner or the FDIC, the presiding

officer or the Administrative Officer may order a later hearing date.

* * * * *

(c) * * *

(1) The hearing shall be held in Washington, DC or at another designated place, before a presiding officer designated by the Administrative Officer. * * *

(9) The presiding officer shall forward his or her recommendation to the Administrative Officer who shall promptly certify the entire record, including the recommendation to the Board of Directors or its designee. The Administrative Officer's certification shall close the record.

* * * * *

(f) *Decision by Board of Directors or its designee.* Within 45 days following the Administrative Officer's certification of the record to the Board of Directors or its designee, the Board of Directors or its designee shall notify the affected individual whether the denial of the notice will be continued, terminated, or otherwise modified. The notification shall state the basis for any decision of the Board of Directors or its designee that is adverse to the petitioner. The Board of Directors or its designee shall promptly rescind or modify the denial where the decision is favorable to the petitioner.

■ 20. Revise § 308.157 to read as follows:

§ 308.157 Denial of applications.

If an application is denied under 12 CFR part 303, subpart L, then the applicant may request a hearing under this subpart. The applicant will have 60 days after the date of the denial to file a written request with the Administrative Officer. In the request, the applicant shall state the relief desired, the grounds supporting the request for relief, and provide any supporting evidence that the applicant believes is responsive to the grounds for the denial.

■ 21. Amend § 308.158 by revising paragraphs (a), (c)(1) and (9), and (f) to read as follows:

§ 308.158 Hearings.

(a) *Hearing dates.* The Administrative Officer shall order a hearing to be commenced within 60 days after receipt of a request for hearing on an application filed under § 308.157. Upon the request of the applicant or FDIC enforcement counsel, the presiding officer or the Administrative Officer may order a later hearing date.

* * * * *

(c) * * *

(1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Administrative Officer. * * *

(9) The presiding officer shall forward his or her recommendation to the Administrative Officer who shall promptly certify the entire record, including the recommendation to the Board of Directors or its designee. The Administrative Officer certification shall close the record.

* * * * *

(f) *Decision by Board of Directors or its designee.* Within 60 days following the Administrative Officer's certification of the record to the Board of Directors or its designee, the Board of Directors or its designee shall notify the affected person whether the person shall remain barred under section 19. The notification shall state the basis for any decision of the Board of Directors or its designee that is adverse to the applicant.

■ 22. Amend § 308.163 by revising paragraphs (c)(1) and (d) introductory text to read as follows:

§ 308.163 Notice of suspension or prohibition, and orders of removal or prohibition.

* * * * *

(c) * * *

(1) Inform the institution-affiliated party that a written request for a hearing, stating the relief desired and grounds therefore, and any supporting evidence, may be filed with the Administrative Officer within 30 days after service of the written notice or order; and

* * * * *

(d) To obtain a hearing, the institution-affiliated party shall file with the Administrative Officer a written request for a hearing within 30 days after service of the notice of suspension or prohibition or the order of removal or prohibition, which shall:

* * * * *

■ 23. Amend § 308.164 by revising paragraphs (a), (b)(1) and (9), and (e) to read as follows:

§ 308.164 Hearings.

(a) *Hearing dates.* The Administrative Officer shall order a hearing to be commenced within 30 days after receipt of a request for hearing filed pursuant to § 308.163. Upon the request of the institution-affiliated party, the presiding officer or the Administrative Officer may order a later hearing date.

* * * * *

(b) * * *

(1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Administrative Officer. * * *

(9) The presiding officer shall forward his or her recommendation to the Administrative Officer who shall promptly certify the entire record, including the recommendation to the Board of Directors. The Administrative Officer's certification shall close the record.

* * * * *

(e) *Decision by Board of Directors or its designee.* Within 60 days following the Administrative Officer's certification of the record to the Board of Directors or its designee, the Board of Directors or its designee shall notify the institution-affiliated party whether the notice of suspension or prohibition or the order of removal or prohibition will be continued, terminated, or otherwise modified. The notification shall state the basis for any decision of the Board of Directors or its designee that is adverse to the institution-affiliated party. The Board of Directors or its designee shall promptly rescind or modify a notice of suspension or prohibition or an order of removal or prohibition where the decision is favorable to the institution-affiliated party.

■ 24. Amend § 308.170 by revising paragraphs (a) introductory text and (d) to read as follows:

§ 308.170 Filing, content, and service of documents.

(a) *Time to file.* An application and any other pleading or document related to the application shall be filed with the Administrative Officer within 30 days after service of the final order of the Board of Directors in disposition of the proceeding whenever:

* * * * *

(d) *Referral.* Upon receipt of an application, the Administrative Officer shall refer the matter to the administrative law judge who heard the underlying adversary proceeding, provided that if the original administrative law judge is unavailable, or the Administrative Officer determines, in his or her sole discretion, that there is cause to refer the matter to a different administrative law judge, the matter shall be referred to a different administrative law judge.

■ 25. Amend § 308.171 by revising paragraph (a)(1) to read as follows:

§ 308.171 Responses to application.

(a) * * *

(1) Within 20 days after service of an application, counsel for the FDIC may file with the Administrative Officer and serve on all parties an answer to the application. Unless counsel for the FDIC requests and is granted an extension of

time for filing or files a statement of intent to negotiate under § 308.179, failure to file an answer within the 20-day period will be treated as a consent to the award requested.

* * * * *

■ 26. Revise § 308.179 to read as follows:

§ 308.179 Settlement negotiations.

If counsel for the FDIC and the applicant believe that the issues in a fee application can be settled, they may jointly file with the Administrative Officer with a copy to the administrative law judge a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer under § 308.171 for an additional 30 days, and further extensions may be granted by the administrative law judge upon the joint request of counsel for the FDIC and the applicant.

■ 27. Revise § 308.181 to read as follows:

§ 308.181 Recommended decision.

The administrative law judge shall file with the Administrative Officer a recommended decision on the fee application not later than 90 days after the filing of the application or 30 days after the conclusion of the hearing, whichever is later. The recommended decision shall include written proposed findings and conclusions on the applicant's eligibility and its status as a prevailing party and an explanation of the reasons for any difference between the amount requested and the amount of the recommended award. The recommended decision shall also include, if at issue, proposed findings on whether the FDIC's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. The administrative law judge shall file the record of the proceeding on the fee application and, at the same time, serve upon each party a copy of the recommended decision, findings, conclusions, and proposed order.

■ 28. Revise § 308.182 to read as follows:

§ 308.182 Board of Directors action.

(a) *Exceptions to recommended decision.* Within 20 days after service of the recommended decision, findings, conclusions, and proposed order, the applicant or counsel for the FDIC may file with the Administrative Officer written exceptions thereto. A supporting brief may also be filed.

(b) *Decision of Board of Directors.* The Board of Directors shall render its decision within 60 days after the matter is submitted to it by the Administrative Officer. The Administrative Officer shall furnish copies of the decision and order of the Board of Directors to the parties. Judicial review of the decision and order may be obtained as provided in 5 U.S.C. 504(c)(2).

■ 29. Revise § 308.183 to read as follows:

§ 308.183 Payment of awards.

An applicant seeking payment of an award made by the Board of Directors shall submit to the Administrative Officer a statement that the applicant will not seek judicial review of the decision and order or that the time for seeking further review has passed and no further review has been sought. The FDIC will pay the amount awarded within 30 days after receiving the applicant's statement, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

■ 30. Amend § 308.602 by revising paragraphs (c)(3) through (6) to read as follows:

§ 308.602 Removal, suspension, or debarment.

* * * * *

(c) * * *

(3) *Petition to stay.* Any accountant or accounting firm immediately suspended from performing audit services in accordance with paragraph (c)(1) of this section may, within 10 calendar days after service of the notice of immediate suspension, file a petition with the Administrative Officer for a stay of such immediate suspension. If no petition is filed within 10 calendar days, the immediate suspension shall remain in effect.

(4) *Hearing on petition.* Upon receipt of a stay petition, the Administrative Officer will designate a presiding officer who will fix a place and time (not more than 10 calendar days after receipt of the petition, unless extended at the request of petitioner) at which the immediately suspended party may appear, personally or through counsel, to submit written materials and oral argument. Any FDIC employee engaged in investigative or prosecuting functions for the FDIC in a case may not, in that or a factually related case, serve as a presiding officer or participate or advise in the decision of the presiding officer or of the FDIC, except as witness or counsel in the proceeding. In the sole discretion of the presiding officer, upon a specific showing of compelling need, oral testimony of witnesses also may be presented. Enforcement counsel may represent the agency at the hearing. In hearings held pursuant to this paragraph (c)(4) there shall be no discovery, and the provisions of §§ 308.6 through 308.12, 308.16, and 308.21 will apply.

(5) *Decision on petition.* Within 30 calendar days after the hearing, the presiding officer will issue a decision. The presiding officer will grant a stay upon a demonstration that a substantial likelihood exists of the respondent's success on the issues raised by the notice of intention and that, absent such relief, the respondent will suffer immediate and irreparable injury, loss, or damage. In the absence of such a demonstration, the presiding officer will notify the parties that the immediate suspension will be continued pending the completion of the administrative proceedings pursuant to the notice of intention. The presiding officer will serve a copy of the decision on, and simultaneously certify the record to, the Administrative Officer.

(6) *Review of presiding officer's decision.* The parties may seek review of the presiding officer's decision by filing a petition for review with the Administrative Officer within 10 calendar days after service of the decision. Replies must be filed within 10 calendar days after the petition filing date. Upon receipt of a petition for review and any reply, the Administrative Officer will promptly certify the entire record to the Board of Directors. Within 60 calendar days of the Administrative Officer's certification, the Board of Directors will issue an order notifying the affected party whether or not the immediate suspension should be continued or reinstated. The order will state the basis of the Board's decision.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on December 15, 2020.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2020–27944 Filed 1–11–21; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 742

[Docket No. 201214–0341]

RIN 0694–AI13

Change to the License Review Policy for Unmanned Aerial Systems (UAS) To Reflect Revised United States UAS Export Policy

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: Consistent with President Donald J. Trump's July 24, 2020 announcement of a change in U.S. policy regarding the export of Unmanned Aerial Systems (UAS), the Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) licensing review policy with respect to certain UAS that are controlled for Missile Technology (MT) reasons. UAS that have a range and payload capability equal to or greater than 300 kilometers (km)/500 kilograms (kg) are identified on the Missile Technology Control Regime (MTCR) Annex as Category I items. Pursuant to this amendment, BIS will review export and reexport license applications involving UAS that fall within these parameters and a maximum true airspeed of less than 800 km/hour (hr) for export licensing review purposes on a case-by-case basis under the more flexible review policy generally applied to MTCR Category II items under the EAR. BIS will also review MT items for the design, development, production, or use in such UAS on a case-by-case basis. This policy change reflects a reasonable approach to technological change and the protection of the national security and economic interests of the United States, while simultaneously remaining committed to the MTCR and its core nonproliferation objectives.

DATES: This rule is effective January 12, 2021.

FOR FURTHER INFORMATION CONTACT: Sharon Bragonje, Nuclear and Missile Technology Controls Division, Bureau of Industry and Security, Phone: (202) 482–0434; Email: *sharon.bragonje@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Missile Technology Control Regime (MTCR or Regime) is an export control arrangement among 35 nations, including most of the world's suppliers of advanced missiles and missile-related equipment, materials, software and technology. The Regime establishes a common list of controlled items and a common export control policy that member countries implement in accordance with their national export controls. The MTCR seeks to limit the risk of proliferation of weapons of mass destruction (WMD) by controlling exports of goods and technologies that could make a contribution to delivery systems (other than manned aircraft) for such weapons. The United States became a member at the Regime's founding in 1987.

In 1993, the MTCR's original focus on missiles for nuclear weapons delivery was expanded to include the proliferation of missiles for the delivery of all types of WMD, *i.e.,* nuclear, chemical, and biological weapons. Such proliferation has been identified as a threat to international peace and security. One way to address this threat is to maintain vigilance over the transfer of missile equipment, material, and related technologies usable for systems capable of delivering WMD. MTCR members voluntarily pledge to adopt the Regime's Guidelines for Sensitive Missile-Relevant Transfers (MTCR Guidelines) and to restrict the transfer of items contained in the Regime's Equipment, Software, and Technology Annex. The Annex consists of Category I and Category II items, with Category I including items of greatest sensitivity. Category I items include rocket systems and unmanned aerial vehicle systems with a range capability of 300 km and greater and a payload capability of 500 kg and greater, and production facilities and major sub-systems for such items. Category II items include rocket systems and unmanned aerial vehicle systems with a range of 300 km or greater but below a payload capability of 500 kg. Category II also includes a wide range of equipment, material, and technologies, most of which have uses other than for systems capable of delivering WMD.

Pursuant to the MTCR Guidelines, transfers (including exports and reexports) of Category I items are subject to a ''strong presumption of denial.'' *See* MTCR Guidelines, Paragraph 2. Transfers of Category II Items are subject to a more flexible case-by-case review policy.

The MTCR Guidelines are implemented through the national export control laws, regulations and policies of Regime members. The United States has implemented in § 742.5 of the EAR missile technology controls and policies that are consistent with the MTCR Guidelines, including by imposing licensing requirements that apply to MTCR Category I and Category II items. As a Regime member, the United States exercises sovereign national discretion in making implementing decisions.

Background on the Revised U.S. UAS Policy

The U.S. Government remains committed to the goals of the MTCR, including the objective of limiting the proliferation of unmanned delivery systems for WMD. At the same time, the U.S. Government is cognizant of rapid advances in the uses of Unmanned Aerial Systems (UAS), including growing commercial uses for UAS that meet the MTCR Category I control criteria, as well as the need to protect U.S. national security and economic security interests. An inflexible approach to implementing the MTCR's strong presumption of denial that applies to Category I items creates a competitive disadvantage for the United States and other MTCR partners by restraining industry globally from fully participating in the expanding commercial UAS market, which increasingly includes suppliers outside of the MTCR. Additionally, the U.S. Government recognizes the need to enhance security relationships with countries that wish to collaborate on counter-terrorism, border control, and other mutual security interests. Accordingly, the U.S. Government has recognized the need to update its treatment of UAS that meet the 300 km/500 kg threshold as MTCR Category I items for the implementation of the MTCR's strong presumption of denial and export licensing review purposes to ensure U.S. economic, national security, and foreign policy interests are appropriately addressed.

The United States has been working with its MTCR partners on this issue since 2017, in the interest of updating UAS controls to address the ongoing revolution in both UAS technology and its applications. At the MTCR October 2019 Plenary in Auckland, New Zealand the United States put forward a revised proposal to increase flexibility for export control purposes on a certain subset of MTCR Category I UAS, based primarily on a speed value, and thus not subject their transfer to the Regime's strong presumption of denial. However, the MTCR partners have not achieved consensus on this proposal.

Unilateral Modification to U.S. Licensing Policy for UAS

To address the national security and economic security concerns described above, on July 24, 2020, President

Trump announced a change in the policy of the United States regarding exports of UAS (July 24, 2020 Revised UAS Export Policy). In this final rule, consistent with this revised policy, the U.S. Government is amending the licensing policy of the United States to allow greater flexibility in the export or reexport of certain MTCR Category I UAS subject to the Export Administration Regulations (EAR). Pursuant to this revision, the United States will invoke its national discretion on the implementation of the MTCR's strong presumption of denial to treat a subset of MTCR Category I UAS, *i.e.,* those that have a range and payload capability equal to or greater than 300 km/500 kg but a maximum true airspeed of less than 800 km/hr, as Category II UAS for export licensing review purposes, which are generally subject to a more flexible case-by-case review. BIS is accordingly amending § 742.5 (Missile Technology) of the EAR to review license applications involving such UAS, as well as MT items for the design, development, production, or use in such systems, under a case-by-case review policy.

While the updated policy of the United States refers to the term UAS, the MTCR and the EAR use the term ''Unmanned Aerial Vehicle (UAV)''. The change in licensing policy set forth in revised § 742.5 of the EAR consequently uses the term UAV.

In making this licensing review policy change, the U.S. Government is exercising its national discretion as a member of the MTCR. This change will strengthen U.S. national security by improving the capabilities of U.S. partners and will increase U.S. economic security by opening the expanding UAS market to U.S. industry. The U.S. Government is implementing the July 24, 2020 Revised UAS Policy as a responsible and reasonable approach to technological change, establishing a systematic framework for implementation of the MTCR's strong presumption of denial for export licensing review purposes as applied to a particular subset of MTCR Category I UAS. This subset of UAS is widely used in intelligence, surveillance, and reconnaissance (ISR) missions and various commercial and other applications not involving WMD delivery, so a case-by-case license review policy is warranted.

The United States takes seriously both its nonproliferation commitments and its responsibility to ensure that exports and reexports and subsequent use of all U.S.-origin UAS are conducted responsibly, with appropriate end users and for appropriate end uses. To this end, UAS that fall within this subset of Category I UAS will continue to be subject to a strong presumption of denial if they are intended for use as WMD delivery systems, or if they present a risk of diversion to such an end use.

This approach will maintain particular restraint on exports and reexports of those UAS that present higher risk for WMD delivery—such as cruise missiles, hypersonic aerial vehicles, and advanced unmanned combat aerial vehicles—without unduly impeding exports for growing commercial and conventional military applications. Finally, the United States notes that while all MTCR-related concerns are considered when reviewing a potential export or reexport of all UAS, the decision to approve—or not approve—such an export or reexport is a whole-of-government decision that takes into account all relevant factors and policies, including U.S. national security, nonproliferation, and foreign policy objectives, as well as the recipient country's capability and willingness to effectively and responsibly use and safeguard U.S.-origin items, including technology, in accordance with U.S. laws and policies.

Amendments to the Export Administration Regulations (EAR)

This final rule revises the EAR's missile technology controls to reflect the July 24, 2020 Revised UAS Export Policy. Specifically, in § 742.5 of the EAR (Missile technology), this final rule revises paragraph (b)(1) to add a new licensing review policy for UAVs with a specified range, payload, and maximum true airspeed by adding a new Note to paragraph (b)(1). The new Note to paragraph (b)(1) added by this final rule specifies that UAV systems that have a range and payload capability equal to or greater than 300 km/500 kg, but a maximum true airspeed of less than 800 km/hr, and MT items for use in UAV systems that meet these parameters, will not be subject to a policy of denial. Instead, such UAV systems will be reviewed on a case-by-case basis to determine whether the export or reexport will be used in support of WMD activities or military activities contrary to U.S. national security, or whether there is a risk of diversion to such activities. In addition, the same, more flexible, review policy will apply under the new note to MT-controlled ''parts'' and ''components'' and other MT items for the design, ''development,'' ''production,'' or ''use'' (*see* § 772.1 of the EAR (15 CFR part 772—Definitions of Terms)) of UAV systems that meet these parameters, including foreign-made UAV systems that do so (whether or not the foreign-made systems are or will be subject to the EAR).

BIS estimates that this licensing review policy change will result in an increase of twenty license applications submitted annually to BIS. This increase is anticipated because certain exporters that previously may have been deterred from applying for a license as a result of the more restrictive license review policy in place prior to this rule may now be motivated to apply for licenses under the new case-by-case license review policy. In addition, in making this estimate, BIS took into account the fact that the current number of commercial U.S. UAVs with the capability described in this final rule is rather small. Consequently, under the new, more flexible license review policy, the anticipated increase in the number of license applications will be minimal.

This final rule also makes a conforming technical change by revising the second sentence in paragraph (b)(1) of § 742.5 to add double quotation marks around the term parts (''part'' is a defined term in the EAR) and to add after it the term ''components'' (''component'' is also a defined term in the EAR). These technical edits clarify that the review standard applies to replacement ''parts'' and ''components'' for use in the specified applications (*i.e.,* manned aircraft, satellite, land vehicle, or marine vessel).

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Executive Order Requirements

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a ''significant regulatory action'' under Executive Order 12866.

Commerce estimates that this rule will result in a minimal increase to the number of license requests submitted to BIS annually.

This rule does not contain policies with federalism implications as that term is defined under E.O. 13132.

For the purposes of E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' this rule is issued with respect to a national security function of the United States. The cost-benefit analysis indicates that the rule is intended to improve national security as its primary direct benefit. The U.S. Government is acting to protect U.S. national security interests, which are directly related to U.S. economic security interests. An inflexible approach to implementing the MTCR's strong presumption of denial for the subset of UAS specified in this rule presents a competitive disadvantage for the United States, and other MTCR partners, by restraining industry from fully participating in the expanding commercial UAS market. Additionally, the U.S. Government needs to meet the growing demand for key tools, and capabilities and the development and enhancement of security relationships from countries that want to work with the U.S. on counter-terrorism, border control, and other mutual security interests. The revised U.S. national policy announced on July 24, 2020, is consistent with U.S. national security interests, as the United States will continue to maintain specific controls on transfers of UAS that present higher risks of use in or support for WMD delivery—such as cruise missiles, hypersonic aerial vehicles, and advanced unmanned combat aerial vehicles—while not unduly impeding exports for growing commercial and conventional military applications. Accordingly, this rule meets the requirements set forth in the April 5, 2017 OMB guidance implementing E.O. 13771 and is exempt from the requirements of E.O. 13771.

Paperwork Reduction Act Requirements

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule involves the following OMB approved collections of information subject to the PRA: 0694–0088, ''Multi-Purpose Application'', which carries a burden hour estimate of 29.6 minutes for a manual or electronic submission; 0694–0096 ''Five Year Records Retention Period'', which carries a burden hour estimate of less than 1 minute; and 0607–0152 ''Automated Export System (AES) Program'', which carries a burden hour estimate of 3 minutes per electronic submission. This rule changes the respondent burden by increasing the estimated number of submissions by 20. Specific license application submission estimates are further discussed in the preamble of this rule where the regulatory revision is explained. The additional burden falls within the estimated burden approved by OMB for the information collections 0694–0088, 0694–0096, and 0607–0152.

Any comments regarding these collections of information, including suggestions for reducing the burden, may be submitted online at *https://www.reginfo.gov/public/do/PRAMain.* Find the particular information collection by using the search function and entering either the title of the collection or the OMB Control Number.

Administrative Procedure Act and Regulatory Flexibility Act Requirements

Pursuant to Section 4821 of ECRA, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 15 CFR Part 742

Exports, Terrorism.

Accordingly, part 742 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 742—[AMENDED]

■ 1. The authority citation for part 742 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 12, 2020, 85 FR 72897 (November 13, 2020).

■ 2. Section 742.5 is amended by revising paragraph (b)(1) to read as follows:

§ 742.5 Missile technology.

* * * * *

(b) * * *

(1) Applications to export and reexport items identified in ECCNs on the CCL as MT Column No. 1 in the Country Chart column of the ''License Requirements'' section will be considered on a case-by-case basis to determine whether the export or reexport would make a material contribution to the proliferation of missiles. Applications for exports and reexports of such items contained in Category 7A or described by ECCN 9A101 on the CCL will be considered favorably if such exports or reexports are destined to a manned aircraft, satellite, land vehicle, or marine vessel, in quantities appropriate for replacement ''parts'' and ''components'' for such applications. When an export or reexport is deemed to make a material contribution to the proliferation of missiles, the license will be denied.

Note 1 to paragraph (b)(1): Applications to export and reexport an Unmanned Aerial Vehicle (UAV) that has a range and payload capability equal to or greater than 300 km/500 kg but a maximum true airspeed of less than 800 km/hr, and items controlled for Missile Technology reasons for the design, development, production, or use of UAV systems that meet these parameters, will not be subject to a policy of denial but will instead be reviewed on a case-by-case basis to determine whether the export or reexport will be used in support of WMD activities or military activities contrary to U.S. national security, or whether there is a risk of diversion to support such activities.

* * * * *

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2020–27983 Filed 1–11–21; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 21–01]

RIN 1515–AE59

Extension of Import Restrictions Imposed on Categories of Archaeological Material of Italy

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends U.S. Customs and Border Protection (CBP) regulations to reflect an extension of import restrictions on certain categories of archaeological material of the Italian Republic (Italy). The restrictions, which were originally imposed by Treasury Decision 01–06 and last extended by CBP Decision (CBP Dec.) 16–02, are due to expire on January 12, 2021. The Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has made the requisite determination for extending the import restrictions that previously existed and entered into a new Memorandum of Understanding (MOU) with Italy to reflect the extension of these import restrictions. The new MOU supersedes the existing MOU that was entered into on January 19, 2001, and previously extended, most recently until January 12, 2021. Accordingly, these import restrictions will remain in effect for an additional five years, and the CBP regulations are being amended to reflect this extension until January 12, 2026. CBP Dec. 11–03 contains the amended Designated List of archaeological material of Italy to which the restrictions apply.

DATES: Effective on January 12, 2021.

FOR FURTHER INFORMATION CONTACT: For legal aspects, Lisa L. Burley, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325–0300, *ot-otrrculturalproperty@cbp.dhs.gov.* For operational aspects, Genevieve S. Dozier, Management and Program Analyst, Commercial Targeting and Analysis Center, Trade Policy and Programs, Office of Trade, (202) 945–2942, *CTAC@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the Convention on Cultural Property Implementation Act, Public Law 97–446, 19 U.S.C. 2601 *et seq.* (hereinafter, ''the Cultural Property Implementation Act'') which implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)), the United States entered into a bilateral agreement with the Italian Republic (Italy) on January 19, 2001, concerning the imposition of import restrictions on archaeological material representing the pre-Classical, Classical, and Imperial Roman periods (''the prior MOU'').

On January 23, 2001, the former U.S. Customs Service (now U.S. Customs and Border Protection (CBP)) published Treasury Decision 01–06 in the **Federal Register** (66 FR 7399), which amended § 12.104g(a) of Title 19 of the Code of Federal Regulations (19 CFR 12.104g(a)) to reflect the imposition of these restrictions and included a list covering certain types of archaeological material.

Import restrictions listed in 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists.

Since the final rule was published on January 23, 2001, the import restrictions that became effective on January 19, 2001, have been extended three times pursuant to exchanges of diplomatic notes as reflected in subsequent final rules. First, on January 19, 2006, CBP published CBP Decision (CBP Dec.) 06–01 in the **Federal Register** (71 FR 3000) which amended 19 CFR 12.104g(a) to reflect the extension for an additional period of five years. Second, on January 19, 2011, CBP published CBP Dec. 11–03 in the **Federal Register** (76 FR 3012) to extend the import restrictions for an additional five-year period. CBP Dec. 11–03 also reflects an amendment to the Designated List to include the subcategory ''Coins of Italian Types'' as part of the category entitled ''Metal,'' pursuant to 19 U.S.C. 2604. Third, on January 15, 2016, CBP published CBP Dec. 16–02 in the **Federal Register** (81 FR 2086) to further extend the import restrictions. This extension was pursuant to the exchange of diplomatic notes that took place between the United States and Italy, with entry into force on January 12, 2016, thus the extension of the import restrictions was implemented for an additional five-year period ending on January 12, 2021. *See* 19 CFR 12.104g(a); 81 FR 2086.

On September 29, 2020, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, after consultation with and recommendation by the Cultural Property Advisory Committee, determined that the cultural heritage of Italy continues to be in jeopardy from pillage of certain archaeological material representing the pre-Classical, Classical, and Imperial Roman periods and that the import restrictions should be extended for an additional five years. Subsequently, a new MOU was concluded between the United States and Italy on October 29, 2020. The new MOU supersedes and replaces the prior MOU of January 19, 2001, as amended and extended. The new MOU extends the import restrictions that went into effect under the prior MOU, as amended and extended, for five years from entry into force of the new MOU on January 12, 2021. The new MOU is titled: ''Memorandum of Understanding between the Government of the United States of America and the Government of the Italian Republic Concerning the Imposition of Import Restrictions on Categories of Archaeological Material of Italy.'' Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of the import restrictions.

The restrictions on the importation of categories of archaeological material of Italy are to continue in effect until January 12, 2026. Importation of such materials from Italy continues to be restricted until that date unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

The Designated List of pre-Classical, Classical and Imperial Roman period archaeological material from Italy covered by these import restrictions is set forth in CBP Dec. 11–03. The Designated List and additional information may also be found at the following website address: *https://eca.state.gov/cultural-heritage-center/cultural-property-advisory-committee/current-import-restrictions* by selecting the materials for ''Italy.''

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure under 5 U.S.C. 553(a)(1). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Orders 12866 and 13771

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 or Executive Order 13771 because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866 and section 4(a) of Executive Order 13771.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his/her delegate) to approve regulations related to customs revenue functions.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, and Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

§ 12.104g [Amended]

■ 2. In § 12.104g, amend the table in paragraph (a), in the entry for Italy, by removing the words ''CBP Dec. 16–02'' and adding in their place the words ''CBP Dec. 21–01''.

Mark A. Morgan, the Chief Operating Officer and Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, is delegating the authority to electronically sign this notice document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

Robert F. Altneu,

Director, Regulations & Disclosure Law Division, Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.

Approved: January 7, 2021.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2021–00499 Filed 1–11–21; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2020–0652]

RIN 1625–AA87

Security Zone; Potomac River and Anacostia River, and Adjacent Waters; Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Notice of Enforcement of Regulation.

SUMMARY: The Coast Guard will enforce a security zone along the Potomac River and Anacostia River, and adjacent waters at Washington, DC, for activities associated with the 59th Presidential Inauguration. The zone will be enforced on the days leading up to and through the cessation of activities associated with the 59th Presidential Inauguration taking place on January 20, 2021. This action is necessary to protect government officials, mitigate potential terrorist acts and incidents, and enhance public and maritime safety and security immediately before, during, and after these activities. During the enforcement period, entry into or remaining within the zone is prohibited unless authorized by the Captain of the Port or his designated representative.

DATES: The regulations in 33 CFR 165.508 will be enforced from 8 a.m. on January 17, 2021, through 8 a.m. on January 25, 2021, for the zone identified in 33 CFR 165.508(a)(6).

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email MST2 Shaun Landante, U.S. Coast Guard Sector Maryland-National Capital Region (Waterways Management Division); telephone 410–576–2570, email *Shaun.C.Landante@uscg.mil.*

SUPPLEMENTARY INFORMATION: On October 2, 2020, the Coast Guard was notified by the event organizer that the anticipated dates for the activities associated with the 59th Presidential Inauguration are scheduled from January 17, 2021, to January 25, 2021. The Coast Guard will enforce regulations in 33 CFR 165.508 for the zone identified in paragraph (a)(6). This action is being taken to protect government officials, mitigate potential terrorist acts and incidents, and enhance public and maritime safety and security immediately before, during, and after this event.

Our regulations for Security Zone; Potomac River and Anacostia River, and adjacent waters; Washington, DC, § 165.508, specifies the location for this security zone as an area that includes all navigable waters described in paragraphs (a)(1) through (a)(3). This zone includes (1) Security Zone 1; all navigable waters of the Potomac River, from shoreline to shoreline, bounded to the north by the Francis Scott Key (US–29) Bridge, at mile 113, and bounded to the south by a line drawn from the Virginia shoreline at Ronald Reagan Washington National Airport, at 38°51′21.3″ N, 077°02′00.0″ W, eastward across the Potomac River to the District of Columbia shoreline at Hains Point at position 38°51′24.3″ N, 077°01′19.8″ W, including the waters of the Boundary Channel, Pentagon Lagoon, Georgetown Channel Tidal Basin, and Roaches Run. (2) Security Zone 2; all navigable waters of the Anacostia River, from shoreline to shoreline, bounded to the north by the John Philip Sousa (Pennsylvania Avenue) Bridge, at mile 2.9, and bounded to the south by a line drawn from the District of Columbia shoreline at Hains Point at position 38°51′24.3″ N, 077°01′19.8″ W, southward across the Anacostia River to the District of Columbia shoreline at Giesboro Point at position 38°50′52.4″ N, 077°01′10.9″ W, including the waters of the Washington Channel. (3) Security Zone 3 all navigable waters of the Potomac River, from shoreline to shoreline, bounded to the north by a line drawn from the Virginia shoreline at Ronald Reagan Washington National Airport, at 38°51′21.3″ N, 077°02′00.0″ W, eastward across the Potomac River to the District of Columbia shoreline at Hains Point at position 38°51′24.3″ N, 077°01′19.8″ W, thence southward across the Anacostia River to the District of Columbia shoreline at Giesboro Point at position 38°50′52.4″ N, 077°01′10.9″ W, and bounded to the south by the Woodrow Wilson Memorial (I–95/I–495) Bridge, at mile 103.8.

As specified in § 165.508 (b), during the enforcement period, entry into or remaining in the zone is prohibited unless authorized by the Coast Guard Captain of the Port Maryland-National

Capital Region. Public vessels and vessels already at berth at the time the security zone is implemented do not have to depart the security zone. All vessels underway within the security zone at the time it is implemented are to depart the zone at the time the security zone is implemented. To seek permission to transit the zone, the Captain of the Port Maryland-National Capital Region can be contacted at telephone number (410) 576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Coast Guard vessels enforcing this zone can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). The Coast Guard may be assisted by other Federal, state or local law enforcement agencies in enforcing this regulation. If the Captain of the Port or his designated on-scene patrol personnel determines the security zone need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to suspend enforcement and grant general permission to enter the security zone.

This notice of enforcement is issued under authority of 33 CFR 165.508 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: December 28, 2020.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2020–28985 Filed 1–11–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 75

RIN 0991–AC16

Health and Human Services Grants Regulation

AGENCY: Office of the Assistant Secretary for Financial Resources, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This final rule repromulgates and adopts changes to certain provisions in the Department's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS awards (UAR). This rule repromulgates sections of the UAR dealing with payments, access to records, indirect allowable cost requirements, and a portion of the provision dealing with shared responsibility payments under the Affordable Care Act. This rule also amends sections dealing with national policy requirements to bring them into compliance with the authority under which the UAR is promulgated and OMB guidance, as well as to reflect those nondiscrimination requirements that have been adopted by Congress.

DATES: This rule is effective February 11, 2021.

FOR FURTHER INFORMATION CONTACT: Johanna Nestor at *Johanna.Nestor@hhs.gov* or 202–205–5904.

SUPPLEMENTARY INFORMATION:

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II. Background
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I. Introduction

This rule repromulgates provisions of Part 75 that were originally published late in 2016 in a rulemaking which the Department had serious concerns about compliance with certain requirements of the Regulatory Flexibility Act. This rule also finalizes proposed changes to § 75.300, on statutory and national policy requirements to bring them into alignment with the Department's statutory authorities, including those underlying part 75. The Department is committed to the principle that every person must be treated with dignity and respect and afforded all of the protections of the Constitution and statutes enacted by Congress—and to fully enforcing such civil rights protections and requirements. The Department has determined, however, that the public policy requirements it imposed in the existing § 75.300(c) and (d) disrupted the balance struck by Congress with respect to nondiscrimination requirements applicable to grant recipients and, as evidenced by the requests for accommodations and lawsuits, will violate the Religious Freedom Restoration Act, 42 U.S.C. 2000bb–2000bb–4 (RFRA), in some circumstances.[1] The Department also believes that these requirements have sowed uncertainty that, over time, could decrease the effectiveness of Department-funded programs by deterring participation in them.

Given the careful balancing of rights, obligations, and goals in the public-private partnerships in Federal grant programs, the Department believes it appropriate to impose only those nondiscrimination requirements required by the Constitution and federal statutes applicable to the Department's grantees. But such authorities do not support the application of some of the requirements in existing § 75.300(c) and (d) to all recipients of Departmental assistance or to all Department-funded programs. Accordingly, the Department revises § 75.300(c) to recognize the public policy requirement that otherwise eligible persons not be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of programs and services where such actions are prohibited by federal statute. The Department also revises § 75.300(d) to state clearly that the Department will follow all applicable Supreme Court decisions in the administration of the Department's award programs.[2]

With respect to the other provisions in the 2016 rulemaking, the Department repromulgates § 75.305(a), which addressed the applicability of certain payment provisions to states; § 75.365, which authorized the grant agency to require recipients to permit public access to various materials produced under a grant, but authorized the agency to place restrictions on grantees' ability to make public any personally identifiable information or other information that would be exempt from disclosure under FOIA; § 75.414(c)(1)(i) through (iii) and (f), which established limits on the amount of indirect costs allowable under certain types of grants; and § 75.477, which established that recipients could not include, in allowable costs under HHS grants, any tax payment imposed on an employer for failure to comply with the Affordable Care Act's employer shared responsibility provisions, but does not repromulgate the exclusion from allowable costs in grants of penalties due for failing to comply with the individual shared responsibility provision because such tax penalty has been reduced to zero except for tax penalties associated with failure to maintain minimum essential coverage prior to January 1, 2019.

[1] Some non-Federal entities and commenters argued that the Department lacked the legal authority to promulgate existing § 75.300(c) and (d). While the Department is concerned about its statutory authority for these existing provisions, it does not need to resolve the issue definitively because the Department believes that amending these provisions is warranted in light of the other reasons set forth in this preamble.

[2] The final rule also does not repromulgate, and removes, § 75.101(f); with the amendments to § 75.300(c) and (d), the provision is not necessary.

II. Background

The December 2014 Adoption of the UAR

On December 26, 2013, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), 2 CFR part 200, that ''set standard requirements for financial management of Federal awards across the entire federal government.'' 78 FR 78590 (Dec. 26, 2013). OMB's purpose in promulgating the Uniform Guidance was to (1) streamline guidance in making federal awards to ease administrative burden and (2) strengthen financial oversight over federal funds to reduce risks of fraud, waste, and abuse. 78 FR 78590 (Dec. 26, 2013); 85 FR 3766 (Jan. 22, 2020).

In December of 2014, the Department, in conjunction with OMB and two dozen other federal departments and agencies adopted Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (UAR). 79 FR 75871 (Dec. 19, 2014). The Department adopted ''OMB's final guidance with certain amendments, based on existing HHS regulations, to supplement the guidance as needed for the Department.'' 79 FR at 75875.

As promulgated by OMB, the statutory authorities for the cost and audit principles in the Uniform Guidance and the UAR include the Chief Financial Officer's Act, 31 U.S.C. 503, the Budget and Accounting Act, 31 U.S.C. 1101–1125, the Single Audit Act, 31 U.S.C. 6101–6106, and several Executive Orders dictating internal government practice. 2 CFR 200.103. Similarly, as adopted—and as currently in force—these same authorities underlie HHS's UAR regulations. 45 CFR 75.103. These laws provide broad authority for the financial management and administration of federal awards (grants and cooperative agreements). The Chief Financial Officers Act, for example, provides that OMB shall ''oversee, periodically review, and make recommendations to heads of agencies on the administrative structure of agencies with respect to their financial management activities.'' 5 U.S.C. 503(a)(6). Similarly, the Single Audit Act directs each agency, pursuant to guidance issued by OMB, to ''(1) monitor non-federal entity use of federal awards, and (2) assess the quality of audits conducted under this chapter.'' 31 U.S.C. 7504. These statutes include rulemaking delegations, *see, e.g.,* 31 U.S.C. 7505, and for decades have provided unquestioned authority for the financial management and oversight of federal grants. But that authority is limited to requirements associated with the financial management and oversight of federal grants.

As initially promulgated, Statutory and National Policy Requirements, 2 CFR 200.300 (and 45 CFR 75.300), was a notice provision. It directed the Federal awarding agency ''to communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award.'' 2 CFR 200.300(a). *See also* Appendix I, F.2 to Part 200—Full Text of Notice of Funding Opportunity (describing requirement to inform applicants of national policy requirements: ''Providing this information lets a potential applicant identify any requirements with which it would have difficulty complying if its application is successful . . . . Doing so will alert applicants that have received Federal awards from the Federal awarding agency previously and might not otherwise expect different terms and conditions.''). The section, Statutory and National Policy Requirements, was not intended to be an independent basis for, or to establish, new substantive conditions, nondiscrimination or otherwise.

In adopting the Uniform OMB guidance, the Department supplemented it with HHS specific amendments to account for the Department's particular functions and programs. 79 FR 75871, 75889 (Dec. 19, 2014). However, the Department did not add to the authorities beyond § 75.103 and the Housekeeping Statute as the basis for Part 75.

In § 75.300, Statutory and National Policy Requirements, HHS adopted OMB's Uniform Guidance nearly verbatim. Under § 75.300(a), the HHS agency awarding a grant is required to manage and administer the Federal award so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements. The regulation specifically identifies those statutory and public policy requirements as including those protecting public welfare, the environment, and prohibiting discrimination. Section 75.300(a) also requires the HHS awarding agency to communicate to recipients all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award.

The OMB Uniform Guidance and the Department's UAR apply to the recipients (and, as provided, subrecipients) of Federal financial assistance from the Department, whether such assistance is provided in the form of grants or cooperative agreements, with such recipients and subrecipients referenced, collectively, as ''non-Federal entities.'' In this preamble, for ease of reference, the Department uses the term ''grant'' in place of ''Federal financial assistance'' or ''Federal award,'' the terms used in the UAR and defined in § 75.2. Similarly, the term ''grantmaking agency'' is used to reference ''Federal awarding agency'' or ''HHS awarding agency,'' as those terms are defined in § 75.2. Finally, in this preamble, the Department uses ''grantee'' and ''subgrantee'' interchangeably with ''recipient'' and ''subrecipient,'' respectively, as those terms are also defined in § 75.2.

The Department's Additions to the UAR in December 2016

In July 2016, the Department proposed certain amendments to the UAR, and in December 2016, the Department finalized amendments to modify its UAR to incorporate certain directives ''not previously codified in regulation.'' 81 FR 89393 (December 12, 2016) (2016 Rule). These amendments included changes to a State payment provision, access to records, indirect allowable cost requirements, exclusion from allowable costs of employer and individual shared responsibility payments under the Affordable Care Act, and policy requirements dealing with discrimination and Supreme Court decisions on same-sex marriage. Specifically, the 2016 Rule adopted:

- Section 75.300(c) and (d), which required recipients not to discriminate on the basis of certain specified factors, regardless of whether those factors had been incorporated into nondiscrimination statutes applicable to the specific grants and recipients (and § 75.101(f), which exempted the Temporary Assistance for Needy Families from such requirements), and required recipient compliance with two specific Supreme Court decisions.
- Section 75.305(a), which addressed the applicability of certain payment provisions to states.
- Section 75.365, which authorized the grant agency both to require recipients to permit public access to various materials produced under a grant and to place restrictions on recipients' ability to make public any personally identifiable information or

other information that would be exempt from disclosure under FOIA.

- Section 75.414(c)(1)(i) through (iii) and (f), which established limits on the amount of indirect costs allowable under certain types of grants.
- Section 75.477, which established that recipients could not include, in allowable costs under HHS grants, any tax penalty/payment imposed on an individual or on the employer for failure to comply with the individual or employer shared responsibility provisions, respectively.[3]

These new requirements became effective January 11, 2017.

The Department's November 2019 Notice of Exercise of Enforcement Discretion and Proposed Rule

As States and other recipients and subrecipients became aware of these new regulatory requirements, some began to complain to the Department about certain elements of § 75.300(c) and (d), contending, among other things, that application of some of the requirements in those provisions (1) unlawfully interfered with certain faith-based organizations' protected speech and religious exercise, in violation of the Religious Freedom Restoration Act (RFRA), 42 U.S.C. 2000bb, *et seq.,* or the U.S. Constitution, (2) exceeded the Department's statutory authority, and (3) reduced the effectiveness of programs funded by the Department by excluding certain entities from participating in those programs. These communications, requests for exemptions or deviations, and complaints[4] caused the Department to look more closely at the 2016 rulemaking by which these and other provisions in the UAR were adopted. The Department's examination raised serious concerns about compliance with certain requirements of the Regulatory Flexibility Act, and caused the Department to decide not to enforce the provisions added by the 2016 Rule, pending repromulgation. The Department issued that Notice of Exercise of Enforcement Discretion on November 1, 2019. *See https://www.hhs.gov/about/news/2019/11/01/hhs-issues-proposed-rule-to-align-grants-regulation.html* (issuance of proposed rule ''follows same-day issuance of a Notice of Nonenforcement of certain regulatory provisions''); it was published in the **Federal Register** on November 19, 2019. Notice of Exercise of Enforcement Discretion, 84 FR 63809 (Nov. 19, 2019).[5]

The Notice of Proposed Rulemaking

The Department simultaneously published a proposed rule to repromulgate or revise the provisions of the UAR that had been adopted through the 2016 Rule. It proposed to repromulgate, without change, §§ 75.305(a), 75.365, and 75.414(c)(1)(i)–(iii) and (f). With respect to § 75.477, the Department proposed to repromulgate only the exclusion from allowable costs of any employer payments for failure to offer health coverage to employees as required by 26 U.S.C. 4980H; it did not propose to repromulgate the provision with respect to shared responsibility payments for individuals because such tax penalty had been reduced to zero.

The Department proposed to amend § 75.300 because it had received communication and complaints, requests for exceptions (under 45 CFR 75.102), and lawsuits concerning § 75.300(c) and (d). It noted that it was preliminarily enjoined from enforcing § 75.300(c) in the State of Michigan as to a particular subgrantee's protected religious exercise. *Buck* v. *Gordon,* 429 F. Supp. 3d 447 (W.D. Mich. 2019). It also described concerns expressed by some non-federal entities that requiring compliance with certain nonstatutory requirements of those paragraphs violates the Religious Freedom Restoration Act (RFRA), 42 U.S.C. 2000bb, *et seq.,* or the U.S. Constitution, exceeds the Department's statutory authority, or reduces the effectiveness of programs, for example, by reducing foster care placements in the Title IV–E program of HHS's Administration for Children and Families. The Department explained that these complaints and legal actions indicated that § 75.300(c) and (d) imposed regulatory burden and created a lack of predictability and stability for both the Department and stakeholders with respect to these provisions' viability and enforcement.[6] The Department also noted that some federal grantees had stated that they would require their subgrantees to comply with § 75.300(c) and (d), even if it meant some subgrantees with religious objections would leave the program(s) and cease providing services. Such grantees and subgrantees provide a substantial percentage of services in some Department-funded programs and are effective partners of federal and state governments in providing such services. As noted in the proposed rule, the Department believes that the departure of such grantees and subgrantees from Department-funded programs could likely reduce the effectiveness of those programs.

Accordingly, as an exercise of its discretion to establish requirements for its grant programs and to establish enforcement priorities for those programs, the Department proposed to amend § 75.300(c) and (d). It proposed to amend § 75.300(c) to require compliance with all applicable statutory nondiscrimination requirements. It also proposed to amend § 75.300(d) to specify its commitment to complying with all applicable Supreme Court decisions in administering its award programs, instead of singling out two specific Supreme Court decisions.

As the Department noted in the proposed rule, it had received several requests for exceptions from § 75.300(c) and (d) under 45 CFR 75.102(b) (allowing exceptions to part 75 requirements on a case-by-case basis). In January of 2019, the Department granted the State of South Carolina an exception from the provision in § 75.300(c) that required the State to prohibit subgrantees from selecting among prospective foster parents on the basis of religion, to the extent that such prohibition conflicts with a subgrantee's religious exercise, conditioned on the referral of potential foster parents who do not adhere to the subgrantee's religious beliefs to other subgrantees, or to the South Carolina foster care program. The State's request for a deviation or waiver from § 75.300(c) and (d) noted that the child placing agencies working with South Carolina comply with the requirements of Social Security Act Title IV–E, including the provision that they may not deny a person the right to become an adoptive or foster

[3] The Department had proposed, but did not finalize, a revision to § 75.102, relating to requirements related to the Indian Self Determination and Education Assistance Act. Apart from this provision, which generated a significant number of comments, the Department received few comments on the proposed rule.

[4] In addition to those specifically mentioned in the proposed rule, the Department received communications from individuals and organizations such as Senators and Members of Congress, state legislators, religious leaders (including all of the Catholic Bishops of Pennsylvania), faith-based charities and charities operated by churches and religious orders, and public interest groups.

[5] The Department received several comments on the enforcement discretion notice. These comments primarily criticized the Department for ignoring the statements of Regulatory Flexibility Act compliance within the 2016 rule, and for not engaging in notice and comment prior to amending the rule. As this notice responds to comments and finalizes the proposed rule, those concerns are no longer at issue.

[6] In response to a request for information in 2017, some members of the public submitted comments to the Department citing possible burdens created by paragraphs (c) and (d) as they were included in the 2016 Rule. *See https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&s=75.300&dct=PS&D=HHS-OS-2017-0002.*

parent on the basis of ''race, color, or national origin,'' 42 U.S.C. 671(a)(18), and contended that the Department had unlawfully expanded such statutory provisions through those regulatory provisions.[7] The State also argued that the provisions violated the Constitution and RFRA because they require certain child placing agencies to abandon their religious beliefs or forgo the available public licensure and funding. In granting the exception, the Department, through its Office for Civil Rights (OCR) and the Administration for Children and Families (ACF), respectively, found that requiring the State's subgrantee to comply with the religious nondiscrimination provision would substantially burden its religious beliefs in violation of RFRA [8] and that application of the regulatory requirement would cause a significant programmatic burden for South Carolina's foster care program by impeding the placement of children into foster care.[9] Finding that other foster care agencies were available to facilitate adoptions for those who did not share the particular subrecipient's religious beliefs, the Department granted South Carolina's request for an exception with respect to the particular subgrantee and other similarly situated subgrantees, in order to facilitate the participation of faith-based entities in the recruitment of families for South Carolina's foster care program. The Department also reviewed § 75.300(c) and concluded that it likely exceeded the nondiscrimination provisions for the foster care program specifically enacted by Congress.[10]

The State of Texas also expressed concerns about the legality of § 75.300(c) and (d). The Texas Attorney General first sent a letter to the Secretary and to several components of the Department from which it received grants, notifying them that it considered the gender-identity and sexual-orientation nondiscrimination requirements of § 75.300(c), and the treatment of same-sex-marriage requirement of § 75.300(d), to be contrary to law and that it did not intend to comply with such provisions in the operation of its programs funded with Department grants. In a subsequent communication, the Texas Attorney General's Office stated that § 75.300(c) and (d) suffer from various legal flaws, asked the Department to repeal the provisions, and, in the alternative, requested that ACF grant an exception from the application of those provisions for any faith-based, child-welfare service provider in Texas's Title IV–E foster care and adoption program. Another letter reiterated the arguments and requests made in the preceding letters. The Department, through ACF and OCR, reached out to the State on several occasions, but was unable to determine whether specific faith-based organizations were being affected by the provisions. One day before the Department posted the proposed rule in this rulemaking to its website, *see https://www.hhs.gov/about/news/2019/11/01/hhs-issues-proposed-rule-to-align-grants-regulation.html,* Texas, joined by the Archdiocese of Galveston-Houston, instituted a lawsuit challenging the regulations under the Administrative Procedure Act (APA), RFRA, the First Amendment, and the Spending Clause. Texas and the Archdiocese alleged that the application of § 75.300(c) and (d) to the State's Title IV–E Foster Care and Adoption Assistance program violates RFRA because it requires current and potential program participants, including the Archdiocese, which seeks to participate in Texas's Title IV–E program, to refrain from discriminating on the basis of sexual orientation, gender identity, and same-sex-marriage status as a condition of participation in the program. *Texas* v. *Azar,* 3:19–cv–0365 (S.D. Tex 2019).[11]

Pursuant to the Department's motion to dismiss, on August 5, 2020, the district court dismissed the complaint as moot and entered judgment for the Department. *Texas* v. *Azar,* 2020 WL 4499128 (Aug. 5, 2020).

In addition to the litigation referenced above, the Department has also been subject to several other lawsuits concerning these provisions. As noted, in *Buck* v. *Gordon,* 429 F.Supp.3d 447 (W.D. Mich. 2019), a district court preliminarily enjoined the Department from enforcing § 75.300(c) with respect to plaintiffs. One of the plaintiffs in that lawsuit, a Catholic charity, was willing to place children for adoption with same-sex couples once they were certified by the State or another agency, but could not, consistent with its religious beliefs, provide such certifications. Michigan had not sought an exception, but had required subrecipients to comply with nondiscrimination conditions as adoption placement agencies, even though doing so violated the sincerely held religious beliefs of the plaintiff Catholic charity in the lawsuit.[12] Plaintiffs sued both Michigan and the Department. As noted, the court entered a preliminary injunction against the Department, prohibiting it from taking any enforcement action against Michigan based on the faith-based organization's protected religious exercise or Michigan's obligations under the preliminary injunction to accommodate that religious exercise.

Against the backdrop of multiple requests for exceptions, communications and other complaints

[7] The request was subsequently narrowed to a request for an exception from the religious nondiscrimination provision in § 75.300(c).

[8] In reaching this conclusion, OCR found, among other things, that (1) the religious nondiscrimination provision in section 75.300(c) exceeds the scope of the nondiscrimination provisions found in the federal statutes applicable to the foster care program, and provides no exception for religious organizations (as found in other statutes prohibiting religious discrimination, (2) the OMB UAR does not include analogous provisions to section 75.300(c), and (3) HHS UAR permits the awarding agency to grant exceptions to applicable provisions on a case-by-case basis.

[9] South Carolina had provided information to the Department that it needs more child placing agencies, that faith-based organizations are essential to recruiting more families for child placement, and that it would have difficulty continuing to place all children in need of foster care without the participation of such faith-based organizations.

[10] Two lawsuits were filed against the Department, challenging the Department's decision to grant an exception to South Carolina. In *Maddonna* v. *Department of Health and Human Services,* 19–cv–448 (D.S.C. 2019), a Catholic plaintiff challenged the exception granted to South Carolina and its subrecipient bringing claims against the Department under the Administrative Procedure Act, and the First and Fifth Amendment; while the complaint was dismissed without prejudice because of lack of standing, the plaintiff has filed a further lawsuit. In *Rogers* v. *HHS,* 19–cv–01567–TMC (D.S.C. 2019), a Unitarian same-sex couple challenged the exception as a violation of the First and Fifth Amendments as well.

[11] On March 5, 2020, the Department's Office for Civil Rights (OCR) issued a letter to the Texas Attorney General indicating that OCR has concluded that RFRA prohibits the Department from applying (*i.e.,* enforcing) section 75.300(c) and (d) to Texas with respect to the Archdiocese or other similarly situated entities. In analyzing the issue, OCR noted.

- The Archdiocese's sincerely held religious beliefs with respect to marriage.
- Application of § 75.300(d) and certain provisions in § 75.300(c) to require Texas to exclude the Archdiocese (or similarly situated entities) from its foster care and adoption programs would constitute a substantial burden on the Archdiocese's religious exercise by compelling it to choose between religious exercise and participation in the program.
- Applying those provisions to Texas with respect to the Archdiocese is not the least restrictive means of advancing a compelling governmental interest because doing so would likely reduce the effectiveness of the Title IV–E program and the Department's compelling interest is in increasing the number of providers, including faith-based providers, who are willing to participate in the foster care program; the governmental interest in ensuring that potential foster care or adoptive parents with whom certain providers cannot partner still have opportunities to participate in the Title IV–E program can be accomplished through other means, such as promoting the availability of alternative providers; the OMB UAR does not contain provisions analogous to the provisions at issue; and part 75 provides a mechanism for granting exceptions from the requirements of that part.

[12] Michigan imposed this requirement independent of the requirements imposed by the Department in § 75.300(c) and (d).

concerning § 75.300(c) and (d), continued lawsuits, and a careful consideration of its authorities, the Department proposed amending these provisions in November of 2019. 84 FR 63831 (Nov. 19, 2019).

OMB's January 2020 Proposed Rule Updating the Uniform Guidance

Consistent with 2 CFR 200.109, which requires OMB to review the Uniform Guidance every five years, on January 22, 2020, OMB issued a proposed rule to update the Uniform Guidance. 85 FR 3766 (Jan. 27, 2020). With respect to OMB's Statutory and National Policy Requirements provision, OMB proposed to amend the first sentence of § 200.300(a) to include references to the U.S. Constitution and federal law and specific references to free speech and religious liberty, in addition to the specific references currently in § 200.300(a). Thus, under the proposed guidance, the Federal awarding agency would be required to manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented ''in full accordance with the U.S. Constitution, Federal Law, statutory, and public policy requirements,'' including ''those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.'' 85 FR at 3793. According to OMB, the purpose for the proposed revisions are ''to align with Executive Orders (E.O.) 13798 ''Promoting Free Speech and Religious Liberty'' and E.O. 13864 ''Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities.'' These Executive Orders advise agencies on the requirements of religious liberty laws, including those laws that apply to grants, and set forth a policy of free inquiry at institutions receiving Federal grants; the proposed revisions would ''underscore[ ] the importance of compliance with the First Amendment.'' 85 FR at 3768. The comment period closed on March 23, 2020. On August 13, 2020, OMB issue the final Guidance for Grants and Agreements, 85 FR 49506 (Aug. 13, 2020). As amended in the final rule, section 200.300(a) provides that the federal awarding agency would manage and administer federal awards so as to ensure that funding and associated programs are implemented and managed ''in full accordance with the U.S. Constitution, Federal Law, and public policy requirements,'' including ''those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.'' The Department anticipates that it will, as appropriate, amend its UAR to align with any changes adopted to the Uniform Guidance.[13]

III. Statutory Authority

As discussed above, in promulgating the UAR and Part 75, both OMB and the Department relied almost exclusively on the Housekeeping Statute, 5 U.S.C. 301, and the financial management statutes in 2 CFR 200.103 (and 45 CFR 75.103). These include the Chief Financial Officer's Act, 31 U.S.C. 503, the Budget and Accounting Act, 31 U.S.C. 1101–1125, the Single Audit Act, 31 U.S.C. 6101–6106, and several Executive Orders dictating internal government practice.

The Department also has statutory authority to issue regulations to enforce certain government-wide statutory civil rights nondiscrimination statutes, such as Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* (prohibiting discrimination on the basis of race, color, national origin by recipients of Federal financial assistance); Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 (prohibiting discrimination on the basis of sex in federally assisted education programs), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (prohibiting discrimination on the basis of disability in programs and activities conducted by, or receiving financial assistance from, federal agencies), and the Age Discrimination Act, 42 U.S.C. 6101 *et seq.* (prohibiting discrimination on the basis of age in programs and activities receiving financial assistance from federal agencies). There are also certain program specific nondiscrimination provisions where the Department has the authority to issue enforcement regulations. These include section 471(a)(18) of the Social Security Act (SSA), 42 U.S.C. 671(a)(18) (prohibiting discrimination on the basis of race, color, or national origin in Title IV–E adoption and foster care programs), and section 508 of the SSA, 42 U.S.C. 708 (prohibiting discrimination on the basis of age, race, color, national origin, disability, sex, or religion in Maternal and Child Health Services Block Grant programs).[14]

IV. Section-by-Section Description of the Final Rule and Response to Public Comments

The Department provided a 30-day comment period, which closed on December 19, 2019. The Department received well over 100,000 public comments. After considering the comments, the Department finalizes the proposed rule with the changes described in this section, in which the Department discusses the public comment, its responses, and the text of the final rules.

General Comments

Comment: Several comments stated 30 days was not sufficient time to comment on the proposed rule and asked the Department to extend the comment period.

Response: The Department appreciates the commenters' suggestions, but respectfully disagrees that the 30-day comment period was insufficient and declines to extend the comment period. The APA does not have a minimum time period for comments, and 30-day comment periods are often provided in rulemakings. The comment period closed 30 days after publication of the proposed rule in the **Federal Register** on November 19, 2019, but the proposed rule went on display at the Office of the Federal Register on November 18, 2019, and on the Department's website on November 1, 2019. *See https://www.hhs.gov/about/news/2019/11/01/hhs-issues-proposed-rule-to-align-grants-regulation.html.* This is consistent with the 2016 Rule, which was also the subject of a 30-day comment period. See Health and Human Services Grant Regulation, 81 FR 45270 (July 13, 2016) (establishing a comment period that closed on August 16, 2016).

The comment period provided ample time for the submission of more than 100,000 comments by a variety of interested parties, including extensive comments by a number of entities. Those comments offer a broad array of perspectives on the provisions that the Department proposed to modify in its repromulgation of the 2016 Rule. The number and comprehensiveness of the comments received disprove commenters' claim that the 30-day comment period was insufficient. Accordingly, after reviewing the public

[13] The changes to § 200.300(a) seem to address many of the issues that led the Department to propose the changes that it did to § 75.300(c) and (d). The Department finalizes the amendments to § 75.300(c) and (d) with no substantive changes from the proposed rule. However, as the Department gains experience in implementing the updated provisions, it will consider whether the changes made to section 200.300(a) obviate any need for the Department's § 75.300(c) and (d) and, thus, whether it should repeal such provisions.

[14] The Department is authorized to issue regulations for the efficient administration of its functions in the Social Security Act programs for which it is responsible. *See* SSA 1102(a), 42 U.S.C. 1302(a).

comments and the requests for additional time, the Department does not believe that extending the comment period is or was necessary for the public to receive sufficient notice of, and opportunity to comment on, the proposed rule. Consequently, the Department concludes that the comment period was legally sufficient and is not extending the comment period.

Section 75.300(c) and (d), Statutory and National Policy Requirements, and the Related Provision at 75.101(f)

As noted above, in proposing to repromulgate § 75.300(c) and (d) in modified form, the Department noted non-Federal entities have expressed concerns that requiring compliance with certain nonstatutory requirements of those paragraphs violates RFRA or the U.S. Constitution, exceeds the Department's statutory authority, or reduces the effectiveness of its programs. The Department further noted that the existence of complaints and legal actions indicates that § 75.300(c) and (d) imposed regulatory burden and created a lack of predictability and stability for the Department and stakeholders with respect to these provisions' viability and enforcement. The Department also noted that some Federal grantees had stated that they will require their subgrantees to comply with the nonstatutory requirements of § 75.300(c) and (d), even if it means some subgrantees with religious objections would leave the program(s) and cease providing services rather than comply. Because certain grantees and subgrantees that may cease providing services if forced to comply with § 75.300(c) and (d) provide a substantial percentage of services pursuant to some Department-funded programs and are effective partners of federal and state governments in providing such services, the Department indicated that it believes that such an outcome would likely reduce the effectiveness of Department-funded programs.

Accordingly, as an exercise of its discretion to establish requirements for its grant programs and to establish enforcement priorities for those programs, the Department proposed to amend § 75.300(c) and (d). It proposed to amend § 75.300(c) to require compliance with applicable statutory nondiscrimination requirements. It proposed to amend § 75.300(d) to provide that the Department would follow all applicable Supreme Court decisions in administering its award programs. The Department also proposed to remove § 75.101(f), which was added by the 2016 rule to clarify that the requirements of § 75.300(c) do not apply to the Temporary Assistance for Needy Families Program (title IV–A of the Social Security Act, 42 U.S.C. 601–619).

The Department reexamined the current § 75.300(c) and (d) and their authorities after also receiving complaints from recipients and States that these provisions exceeded the Department's authority under the laws cited in § 75.103 and the Housekeeping Statute, 5 U.S.C. 301. Several commenters pointed out, for example, that the Social Security Act prohibits discrimination on the basis of ''race, color or national origin'' in the foster care and adoption context, 42 U.S.C. 671(a)(18); *see* 42 U.S.C. 608(d) (incorporating statutory nondiscrimination provisions). And several other statutes, such as Title VI, 42 U.S.C. 2000d *et seq,* prohibit categories of discrimination by grantees on a government-wide basis. Upon closer scrutiny, the Department has determined it was not appropriate to stray beyond those statutory categories with the 2016 amendments to § 75.300.

The Department is finalizing § 75.300(c) as proposed, which states: ''It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services, to the extent doing so is prohibited by federal statute.'' [15] This change ensures that relevant changes in the law in these areas will be most appropriately monitored by the relevant program offices administering them. The Department also finalizes the removal of § 75.101(f).

As discussed, OMB issued proposed guidance amending § 75.300(a) in January. OMB's proposed revision, requiring funds to be expended in full accordance with the Constitution and federal laws, could be seen as mirroring the requirements of proposed § 75.300(d). However, the Department is adopting paragraph (d) as proposed.

Comments: Some commenters opposed the proposed provisions, contending that the Department had the authority to promulgate the current § 75.300(c) and (d) in the 2016 rulemaking. Some said concern about the Department's legal authority is inconsistent with the Department's previous legal position as embodied in the current rule.

Other commenters supported the proposed provisions, contending that the current rule exceeds the Department's authority. Some of these commenters focused on specific programs. For example, some commenters said that the current rule exceeds the Department's authority by expanding the nondiscrimination clause in Title IV–E (the federal foster care and adoption program) to include classifications not found in the statute. Another commenter said that the current rule exceeds the Department's authority and discretion by unilaterally expanding civil rights protections to persons not protected by existing law or Supreme Court decisions. Another commenter noted that the Department lacks statutory authority to vary the nondiscrimination requirements established by Congress for funded programs. Other commenters labeled the current rule executive overreach, contended that it grossly exceeded the authority of an Executive Branch agency to implement the relevant statutory scheme, or argued that federal discrimination standards should adhere to the Constitution, acts of Congress, and Supreme Court decisions.

Response: The Department, like all federal agencies, has authority to revisit regulations and question the wisdom of its policies on a continuing basis. *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 842–843 (1984). The Department has, in fact, written into its UAR regulations a periodic review mechanism. 45 CFR 75.109 (''HHS will review 45 part 75 at least every five years''). In reassessing these provisions, particularly in light of the receipt of letters and complaints,[16] ongoing lawsuits, and exception requests, regarding the lawful and appropriate scope of § 75.300(c) and (d), the Department is exercising that obligation.

With respect to § 75.300(c) in particular, the Department begins by noting that Congress has selectively imposed nondiscrimination requirements in certain statutes, and with respect to certain grant programs, and not imposed the same requirements in others. For example, Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color and national origin, but not religion or sex. Title IX of the Education

[15] The Department notes that ''federal statute'' encompasses binding case law authoritatively interpreting the statute, as well as any regulations duly promulgated pursuant to statutory rulemaking authority that address discrimination in particular programs. This clarification should remove possible confusion as to the scope of the provision while still ensuring the agency maintains the balance established by Congress in adopting statutory nondiscrimination provisions in part 75.

[16] While several commenters stressed that important reliance interests are at stake, the 2016 amendment had been in place less than three years when the Department issued the proposed rule.

Amendments of 1972 prohibits discrimination on the basis of sex, but not religion, and only in certain programs. While RFRA prohibits the federal government from substantially burdening a person's exercise of religion unless it demonstrates that the application of the burden is the least restrictive means of furthering a compelling governmental interest and discrimination by the federal government on the basis of religion often will violate RFRA, Congress does not specifically prohibit discrimination on the basis of religion (as such) in many of its statutes. In the statutes establishing certain programs and grants, Congress has specified the protected categories with respect to which discrimination is prohibited. Congress has not expressly included discrimination on the basis of sexual orientation, gender identity, or same-sex marriage status, in any statute applicable to departmental grants. In making these decisions, Congress balanced a number of competing considerations, including ensuring protections for beneficiaries and avoiding burdens that might discourage organizations from participating in Department-funded programs. And it balanced these considerations with respect to, and in the context of, specific grant programs.

Likewise, with respect to § 75.300(d), the Supreme Court's holdings in *United States* v. *Windsor,* 570 U.S. 744 (2013), and *Obergefell* v. *Hodges,* 576 U.S. 644 (2015), have limits. Generally, those cases require federal and state governments (as state actors) to treat same-sex and opposite-sex couples the same in licensing and recognizing marriage. Those cases do not require private individuals to abandon any views or beliefs that they have about same-sex marriage; nor could they, given that the Due Process Clause and Equal Protection doctrine do not regulate private conduct.

In promulgating the existing § 75.300(c) and (d), however, the Department went beyond the nondiscrimination requirements imposed by Congress and beyond the holdings of *Windsor* and *Obergefell.* It added additional prohibited bases of discrimination, thus disrupting the balance struck by Congress for nondiscrimination requirements in Department-funded grant programs. It also inserted a requirement that all grant recipients ''[i]n accordance with the Supreme Court decisions in *United States* v. *Windsor* and in *Obergefell* v. *Hodges,* . . . must treat as valid the marriages of same-sex couples,'' which thus extends the holdings in those cases to non-state action. Indeed, depending on how broadly that provision were interpreted, it could raise concerns under the unconstitutional conditions doctrine. *Cf. Agency for Int'l Dev't* v. *Alliance for Open Society Int'l, Inc.,* 570 U.S. 205, 214 (2013) (''[T]he Government may not deny a benefit to a person on a basis that infringes his constitutionally protected . . . freedom of speech even if he has no entitlement to that benefit.'' (internal quotation marks omitted).

The Department notes that the authority for imposing these requirements is not clear. In promulgating part 75, it relied on the Housekeeping Statute, 5 U.S.C. 301, which authorizes ''[t]he head of an Executive department . . . [to] prescribe[ ] regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, pages, and property.'' But the Department does not interpret that statute as authorizing substantive regulations imposing nondiscrimination requirements on the conduct of federal grant recipients, except as necessary or appropriate to implement an underlying substantive statutory requirement.[17] Similarly, the Department is not convinced that the authority conferred in the financial management statutes cited in 45 CFR 75.103 is appropriately exercised to impose nondiscrimination requirements of this sort. The Single Audit Act Amendments, for example, authorize the Department to promulgate rules to ''(1) monitor non-Federal entity use of Federal awards, and (2) assess the quality of audits conducted under this chapter,'' 31 U.S.C. 7504, 7505. That grant of authority does not appear to contemplate imposition of substantive nondiscrimination provisions onto all Departmental grant programs through regulation, especially where the substantive requirements were not embodied in statute(s) applying the requirement to all such grant programs.

Application of the requirements in § 75.300(c) and (d) is also contrary to RFRA in at least some circumstances. As explained at length later in this preamble, RFRA provides that the ''Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except'' where application of such substantial burden to a person ''(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.'' 42 U.S.C. 2000bb–1. The Department has already concluded that imposition of some of the nondiscrimination requirements in § 75.300(c) and (d) would violate the rights of certain religious organizations interested in providing foster-care services as part of Department-funded programs. There may be other circumstances where these requirements create similar problems under RFRA.

Even assuming that the Department had legal authority to impose the nondiscrimination requirements in circumstances that do not present a RFRA problem, however, the Department no longer believes it appropriate to do so. As explained throughout this preamble, those nondiscrimination requirements raised questions about whether the Department was exceeding its authority, disrupted the balance of nondiscrimination requirements adopted by Congress, and sowed uncertainty for grant applicants, recipients, and subrecipients that could deter participation in Department-funded programs and, over time, undermine the effectiveness of those programs. The Department is under no legal obligation to impose such requirements and has accordingly decided to remove them. In their place, the Department adopts a new § 75.300(c) to state clearly that all grant recipients and subrecipients must comply with the nondiscrimination requirements made applicable to them by Congress and a new § 75.300(d) to state that the Department will comply with all applicable Supreme Court precedents in its administration of grants. These provisions fall squarely within the Department's statutory authorities, respect the balance struck by Congress with respect to nondiscrimination requirements applicable to grant recipients, and will promote certainty for grant applicants and recipients by returning to the longstanding requirements with which they are familiar.

Comment: A number of commenters, both those that supported the proposed rule generally and those that opposed the proposed rule, suggested that proposed § 75.300(d) was unnecessary, as a truism or otherwise.

Response: The Department recognizes that proposed § 75.300(d) may seem a truism. But it states an important principle: The Department will follow all applicable Supreme Court decisions in administering its award programs. And it is not unknown for federal

[17] The Department recognizes that there are current legal challenges as to the use of the Housekeeping Statute to issue regulations to implement substantive statutory requirements.

regulations to enunciate such principles that may seem unnecessary to be set forth in regulatory text. The Department, accordingly, finalizes § 75.300(d) as proposed.

Comment: Several commenters opposed the proposed rule, arguing that proposed § 75.300(c) creates an inconsistency among the Department's regulations and policies prohibiting discrimination. Specifically, commenters referred to HHSAR 352.237–74, which includes a ''Non-Discrimination in Service Delivery'' clause that prohibits discrimination based on non-merit factors such as ''race, color, national origin, religion, sex, gender identity, sexual orientation, [and] disability (physical or mental).'' Commenters noted that the Department cited this provision in promulgating current § 75.300(c); one commenter noted that the alignment of grant programs with contractual requirements helped guarantee uniformity in service delivery and ensured that discrimination had no place in any Department-funded program. Another commenter said that this codification was, according to the Department, ''based on existing law or HHS policy.'' Commenters asserted that removing this consistency goes against the Department's assertion, in its proposed rulemaking, that the amendment will increase predictability and stability, and would subject grants and service contracts to different nondiscrimination requirements. Furthermore, commenters have said that the proposed rule amending § 75.300(c) would remove explicit protections from certain communities, leaving grantees with little clarity or guidance.

Response: The Department respectfully disagrees. This final rule amending § 75.300(c) expressly prohibits discrimination where prohibited by federal statute. While the Department's regulations and policies applicable to federal contracts can serve as persuasive authority for its regulations and policies applicable to grants and cooperative agreements, they do not bind the Department in adopting policies that govern its grant programs.

Furthermore, in basing its decision to adopt current § 75.300(c) on the fact that the HHSAR contains such a provision with respect to service contracts, the Department may have failed to give sufficient consideration to the difference between grants and procurement contracts (including service contracts) under federal law. Under the Federal Grant and Cooperative Agreement Act, a grant (or cooperative agreement) is an assistance arrangement, where the purpose is to encourage the recipient of funding to carry out activities in furtherance of a public goal: A grant agreement is used when the principal purpose of the relationship is to transfer something of value to the recipient ''to carry out a public purpose of support or stimulation authorized by a law of the United States'' and ''substantial involvement is not expected'' between the agency and the recipient when carrying out the contemplated activity. 31 U.S.C. 6304.[18] In contrast, the primary purpose of a procurement contract is to acquire goods or services for the direct benefit or use of the government: A procurement contract (including for service delivery) is used when ''the principal purpose of the instrument is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the United States government.'' 31 U.S.C. 6303.[19] Procurement contracts ''are subject to a variety of statutory and regulatory requirements that generally do not apply to assistance transactions.'' GAO–06–382SP, Appropriations Law (2006), Vol. II, 10–18. And, arguably, because the purpose is to acquire goods or services for the direct benefit or use of the government, the Department may have greater latitude to impose nondiscrimination and other requirements on a contractor than on a grantee, when the Department's purpose is to provide assistance through a grant.[20]

Comments: With respect to religious liberty issues and RFRA, some commenters opposed the proposed rule based on their view that religious freedom exemptions do not belong in healthcare where lives may be at stake, or in science and medical procedures. Another commenter contended that the proposed rule would allow religious groups to discriminate, to the detriment of children needing foster care services. Another disagreed that the 2016 Rule violated religious freedom or RFRA, or required remediation for that reason. Other commenters contended the proposed rule would permit religious discrimination, including against beneficiaries and participants in direct federally funded programs, or opposed the proposed rule because religious freedom should not be pursued with discriminatory regulations or policies. Another claimed that the proposed rule is based on a false premise that protecting minorities is inconsistent with RFRA. Some commenters opposed the proposed rule, asserting that it is unconstitutional and violates the Establishment Clause (or the separation of church and state); another commenter contended that it would also violate the Equal Protection and Due Process components of the Fifth Amendment.

Conversely, many commenters supported the proposed rule because it protects the religious freedom of faith-based organizations that provide services in federal programs. They stated that the proposed rule corrected the RFRA violations in the 2016 rule, alleviated discrimination against faith-based organizations, and would protect against religious discrimination. Another commenter supported the proposed rule because the current rule may violate the Free Speech and Free Exercise Clauses of the U.S. Constitution. Some commenters supported the proposed rule because it is a regulation that frees up long-standing faith-based organizations to help the public good. A number of commenters, specifically addressing foster care and adoption or other child welfare programs, supported the proposed rule to prevent government discrimination against religious

[18] A cooperative agreement is used when the principal purpose of the relationship is to transfer something of value to the recipient ''to carry out a public purpose of support or stimulation authorized by law of the United States'' and ''substantial involve is expected'' between the agency and the recipient when carrying out the contemplated activity. 31 U.S.C. 6305.

[19] The ''Non-Discrimination in Service Delivery'' clause is applied to ''solicitations, contracts, and orders to deliver services under HHS' programs directly to the public.'' See HHSAR 337.103(e). These service contracts are procurement contracts where the federal agency provides assistance to specified recipients by using an intermediary. They are procurement contracts: The agency is acquiring the services for the direct benefit or use of the United States government because it is buying the intermediary's services for its own purposes, to relieve the agency of the need to provide the advice or services with its own staff. See S. Rep. No. 97–180, 3 (1981) (''What is important is whether the federal government's principal purpose is to acquire the intermediary's services, which may happen to take the form of producing a product or carrying out a services that is then delivered to an assistance recipient, or if the government's principal purpose is to assist the intermediary to do the same thing. Where the recipient of the award is not receiving assistance from the federal agency but is merely used to provide a service to another entity which is eligible for assistance, the proper instrument is a procurement contract.'').

[20] In the proposed rule, the Department expressed concern that the existence of the referenced complaints and legal actions created a lack of predictability and stability for the Department and stakeholders with respect to the viability and enforcement of the current § 75.300(c) and (d). 84 FR at 638132. The Department recognizes that, because Congress has been selective in imposing specific nondiscrimination requirements with respect to certain grant programs, grantees may see even the application of statutory nondiscrimination requirements as unpredictable. However, under § 75.300(a), the Department's awarding agency is required to communicate to the non-Federal entity all relevant public policy nondiscrimination requirements and to incorporate them either directly or by reference in the terms and conditions of the Federal award.

adoption and foster care providers or faith-based agencies, which should not need to choose between helping children and their deeply held beliefs and should be free to serve children and families according to their beliefs. Several noted that prohibiting religious groups from providing critical services to underserved and at-risk children violates the principles of religious freedom; others noted that Christian-based foster agencies should not be discriminated against because of their religious beliefs regarding marriage. Some commenters also supported the proposed rule because they support the inclusion of faith-based organizations for consideration in the awarding of grants.

Response: RFRA provides broad protection for religious liberty against infringement by the federal government. *Burwell* v. *Hobby* Lobby, 573 U.S. 682 (2014). RFRA provides that the federal government ''shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability,'' unless ''it demonstrates that the application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.'' 42 U.S.C. 2000bb–1. RFRA's test is the ''most rigorous'' form of scrutiny identified by the Supreme Court. *Church of the Lukumi Babalu Aye* v. *City of Hialeah,* 508 U.S. 520, 546 (1993); see also *City of Boerne* v. *Flores,* 521 U.S. 507, 534 (1997) (''Requiring a State to demonstrate a compelling interest and show that it has adopted the least restrictive means of achieving that interest is the most demanding test known to constitutional law.''). It governs ''all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993'': It is applicable to federal statutory law adopted after such date ''unless such law explicitly excludes such application by reference to this chapter.'' [21]

For purposes of RFRA, ''exercise of religion'' includes ''any exercise of religion, whether or not compelled by, or central to, a system of religious belief.'' 42 U.S.C. 2000bb–2(2), 2000cc–5(7)(A). The term ''substantially burden'' means to ban an aspect of a person's religious observance or practice, compel an act inconsistent with that observance or practice, or substantially pressure the person to modify such observance or practice.'' Department of Justice, ''Federal Law Protections for Religious Liberty,'' 82 FR 49668, 49669–70 (Oct. 26, 2017). Whether the financial consequences are a fine or the withholding of a benefit, such as a grant or license, is irrelevant. *See Sherbert* v. *Verner,* 374 U.S. 398, 404 (1963) (''It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege.''); *see also Hobbie* v. *Unemployment Appeals Comm'n of Fla.,* 480 U.S. 136, 141 (1987); *Thomas* v. *Review Bd. of Ind.,* 450 U.S. 708, 717–18 (1981).[22] In 2017, the Supreme Court recognized that, under the First Amendment, religious institutions applying for government grants have ''a right to participate in a government benefit program without having to disavow [their] religious character.'' *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012, 2022 (2017). And RFRA likewise applies to government actions in administering grant programs. *See* 82 FR at 49669 (''RFRA applies to all actions by federal administrative agencies, including . . . grant or contract distribution and administration.''); *see also* OLC Opinion, ''Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act,'' 31 Op. O.L.C. 1, 62 (2007) (RFRA requires Office of Justice Programs to exempt a religious organization that is a grantee from a religious nondiscrimination requirement in the grant).

Government bears a heavy burden to justify a substantial burden on the exercise of religion. ''[O]nly those interests of the highest order . . . can overbalance legitimate claims to the free exercise of religion.'' *Thomas,* 450 U.S. at 718 (quoting *Wisconsin* v. *Yoder,* 406 U.S. 206, 215 (1972)). ''[B]roadly formulated interests justifying the general applicability of government mandates'' are insufficient. *Gonzales* v. *O Centro Espirita Beneficente Uniao do Vegetal,* 546 U.S. 418, 431 (2006). The government must establish a compelling interest to deny an accommodation to the particular claimant. *Id.* at 430, 435–38. An asserted compelling interest in denying an accommodation to a particular claimant is undermined by evidence that exemptions or accommodations have been granted for other interests, *id.* at 433, 436–37; *Hobby Lobby,* 134 S. Ct. at 2780, that the government has in place a system of individual exemptions from the requirement, *Employment Division, Department of Human Resources of Oregon* v. *Smith,* 494 U.S. 872, 884 (1994); *Fraternal Order of Police* v. *City of Newark,* 170 F.3d 359, 366 (3d Cir. 1999) (Alito, J.), or that similar agencies or programs do not impose the requirement, *Holt* v. *Hobbs,* 135 S. Ct. 853, 866 (2015). The compelling-interest requirement applies even where the accommodation sought is ''an exemption from a legal obligation requiring [the claimant] to confer benefits on third parties.'' *Hobby Lobby,* 134 S. Ct. at 2781 n.37. Although ''in applying RFRA 'courts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries,' '' the Supreme Court has explained that almost any governmental regulation could be reframed as a legal obligation requiring a claimant to confer benefits on third parties. *Id.* (quoting *Cutter* v. *Wilkinson,* 544 U.S. 709, 720 (2005)). As nothing in the text of RFRA admits of an exception for laws requiring a claimant to confer benefits on third parties, 42 U.S.C. 2000bb–1, and such an exception would have the potential to swallow the rule, the Supreme Court has rejected the proposition that RFRA accommodations are categorically unavailable for laws requiring claimants to confer benefits on third parties. *Hobby Lobby,* 134 S. Ct. at 2781 n.37.

Even if the government can identify a compelling interest, the government must also show that denial of an accommodation is the least restrictive means of serving that compelling governmental interest. This standard is ''exceptionally demanding.'' *Id.* at 2780. It requires the government to show that it cannot accommodate the religious adherent while achieving its interest through a viable alternative, which may include, in certain circumstances, expenditure of additional funds, modification of existing exemptions, or creation of a new program. *Id.* at 2781. Indeed, the existence of exemptions for other individuals or entities that could be expanded to accommodate the claimant, while still serving the government's stated interests, will generally defeat a RFRA defense, as the government bears the burden to establish that no accommodation is viable. *See id.* at 2781–82.

Applying these principles, as noted in the proposed rule, and above, the Department determined that RFRA's application to § 75.300(c) in the context of the South Carolina Title IV–E foster care program, and the participation of a faith-based provider whose religious

[21] 42 U.S.C. 2000bb–3.

[22] RFRA expressly incorporates the compelling interest tests of *Wisconsin* v. *Yoder,* 406 U.S. 205 (1972) and *Sherbert* v. *Verner,* 374 U.S. 398 (1963). *See* 42 U.S.C. 2000bb(b)(1).

beliefs precluded it from complying with the religious nondiscrimination provision, required the Department to issue an exception to South Carolina for that faith-based organization and other similarly situated faith-based participants in South Carolina's foster care program who were willing to refer would-be foster parents to other providers. A federal district court in Michigan likewise concluded that RFRA required an exception from § 75.300(c) for a Catholic organization that participated in Michigan's foster care and adoption program, but could not—consistent with its Catholic beliefs—review and recommend to the State same-sex or unmarried couples (although it referred such cases to other child placing agencies for review and recommendation). The court issued a preliminary injunction precluding the Secretary from taking ''any enforcement action against the State under 45 CFR 75.300(c) based upon [plaintiff's] protected religious exercise . . . or upon the State of Michigan's obligation under this preliminary injunction to accommodate such protected religious exercise.'' *Buck,* 429 F.Supp.3d at 461. Finally, as noted above, the Department's OCR notified the Texas Attorney General that it had concluded that application of § 75.300(d) and certain provisions in § 75.300(c) to require Texas to exclude the Archdiocese of Galveston (or similarly situated entities) from its foster care and adoption programs would violate RFRA.

The Department recognized that it had a number of options to address the burdens imposed on religious exercise by § 75.300(c) and (d). As noted above, the Department proposed to amend the provisions to mirror the balance struck by Congress with respect to nondiscrimination requirements and to reduce confusion for grant applicants and recipients. This exercise of the Department's discretion also alleviates the substantial burdens on religious exercise that the Department had identified and others of which it is not yet aware. Especially in the absence of any statutory requirement to impose § 75.300(c) and (d), the Department believes that the best way to avoid such burdens on religious exercise is, instead of requiring individual objectors to assert claims under RFRA or other applicable laws, to avoid such regulatory requirements.[23]

Comments: A number of commenters opposed the proposed revisions to § 75.300 because they asserted that the revisions would lead to spending of taxpayer dollars to support organizations that discriminate in violation of equal rights. Similarly, some commenters asserted that the proposed revisions to § 75.300 would violate the separation of church and state.

Response: The Department respectfully disagrees. Under the state action doctrine, the First, Fifth, and Fourteenth Amendment of the Constitution among others, apply only to state action, *i.e.,* the action of the federal government and, as applicable, the state governments. It does not apply to private conduct. *See United States* v. *Morrison,* 529 U.S. 598 (2000); *Civil Rights Cases,* 109 U.S. 3 (1883). Thus, only the action of the federal government (or state governments) could violate the Establishment Clause or the Due Process or Equal Protection Clauses. The private conduct of Federal recipients and subrecipients is not considered state action merely by receipt of partial funding from the government. *See Rendell-Baker* v. *Kohn,* 457 U.S. 830 (1982). And the Department's funding of faith-based and other organizations for a wide variety of purposes does not constitute sufficient involvement or entwinement with the government for private recipients to be considered state actors. *See Shelley* v. *Kraemer,* 334 U.S. 1 (1948).

The government does not violate the Establishment Clause where grants are awarded to a wide variety of entities, including faith-based organizations, and for a wide variety of purposes, none of which are the promotion of religion. Indeed, ''a significant factor in upholding governmental programs in the face of Establishment Clause attack is their neutrality towards religion.'' *Rosenberger* v. *Rector & Visitors of Univ. of Va.,* 515 U.S. 819, 839 (1995). That ''guarantee of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse.'' *Id.* Thus, religious adherents and organizations may, like nonreligious adherents and organizations, receive direct financial aid through a secular-aid program. Indeed, excluding religious adherents and organizations from secular-aid programs may violate the Free Exercise Clause. *See, e.g., Trinity Lutheran,* 137 S. Ct. 2012 (scrap tire program). And the Department is under an affirmative duty to allow faith-based organizations to participate equally in federal grant programs while maintaining their independence, including their expression of their religious beliefs. *See, e.g.,* 42 U.S.C. 290kk–1 (SAMHSA discretionary funds), 300x–65 (SAMHSA block grants), 604a (Temporary Assistance for Needy Families); *see also* 45 CFR 87.3.[24]

Comment: The Department received numerous comments on a variety of other laws as well. These included Title VII, the Affordable Care Act, the Family First Prevention Services Act, and state and local laws dealing with discrimination and child welfare. Some commenters believed these laws required keeping the current language of § 75.300(c) and (d), while other commenters believed these laws required the Department to repeal or amend paragraphs (c) and (d). Some also thought agency action to be premature given the pendency of several cases surrounding these laws at the Supreme Court.

Response: This rulemaking does not alter a grant applicant or recipient's obligations under the referenced laws or any regulations promulgated to implement such laws. Thus, grant applicants and recipients that are subject to nondiscrimination requirements in Title VII, the Affordable Care Act, and/or state or local laws dealing with discrimination, will remain subject to those laws to the same extent that they were before this rulemaking. Conversely, grant applicants and recipients who are not subject to those requirements will continue not to be subject to them. The Department will also continue to enforce any nondiscrimination provisions for which it has enforcement authority relating to grant applicants and recipients, and it will do so in accordance with the terms of the statutes. For example, the Department will continue to require State foster care plans under the Family First Prevention Services Act to include the prohibition on ''delay[ing] or deny[ing] the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or of the child,

[23] *See California* v. *Azar,* No. 19–15974, 2020 WL 878528, at *24 (9th Cir. Feb. 24, 2020) (en banc) (''HHS acted well within its authority in deciding how best to avoid conflict with the Federal conscience laws'').

[24] The Department is aware that a federal district court has recently declined to dismiss a challenge, brought by a same-sex couple against South Carolina and the Department, challenging the exception granted to the State of South Carolina with respect to the religious nondiscrimination provision in the current § 75.300(c) for Miracle Hill and similarly situated entities in South Carolina. The court dismissed the plaintiff's equal protection claim for religious discrimination and denied the motion to dismiss the plaintiff's claims for violation of the Establishment Clause and equal protection based on sexual orientation discrimination. Nothing in that decision would preclude the Department from finalizing this rule. *Rogers* v. *HHS,* 19–cv–01567–TMC (D.S.C. 2019).

involved,'' 42 U.S.C. 671(a)(18)(b), while also ensuring that federal payments for foster care are only expended for child placements made pursuant to the ''best interest of the child'' standard. 42 U.S.C. 672(e).

Commenters noted the pendency before the Supreme Court of several cases raising the question whether Title VII prohibits an employer from firing employees because of their sexual orientation or gender identity, contending that any action by the Department would be premature. As a general matter, although the Supreme Court's interpretation of the language of Title VII may inform the interpretation of similar language in other statutes and regulations, like Title IX, the statutes differ in certain respects. *See, e.g., Gebser* v. *Lago Vista Indep. Sch. Dist.,* 524 U.S. 274, 283–90 (1998) (comparing the text, context, and structure of Title VII and Title IX); *Jackson* v. *Birmingham Bd. of Educ.,* 544 U.S. 167, 175 (2005) (same).

The Supreme Court has now decided those Title VII cases and nothing in its decision in *Bostock* v. *Clayton County,* 590 U.S. ____, 140 S. Ct. 1731 (2020), on those consolidated cases precludes the Department from issuing this final rule. In *Bostock* v. *Clayton County,* the Supreme Court held that Title VII's prohibition of employment discrimination because of sex encompasses discrimination because of sexual orientation and gender identity. The provision at issue in *Bostock* stated that it is ''unlawful . . . for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual . . . because of such individual's . . . sex.'' 42 U.S.C. 2000e–2(a)(1). The Court stated that it ''proceed[ed] on the assumption that 'sex' signified what the employers suggest, referring only to biological distinctions between male and female'' when Title VII was enacted.in 1964 140 S. Ct. at 1739. The Court then discussed the statute's use of the words ''because of'' (''by reason of'' or ''on account of''), ''discriminate against'' (treating [an] individual worse than others who are similarly situated), and ''individual,'' before concluding that the statute covered the challenged conduct, *see* 140 S. Ct. at 1739–40, 1753. The Court reasoned, ''[f]or an employer to discriminate against employees for being homosexual or transgender, the employer must intentionally discriminate against individual men and women in part because of sex.'' 140 S. Ct. at 1743. The Court noted that ''[t]he only question before us is whether an employer who fires someone simply for being homosexual or transgender has discharged or otherwise discriminated against that individual 'because of such individual's sex.' '' 140 S. Ct. at 1753 (''Under Title VII . . . we do not purport to address bathrooms, locker rooms, or anything else of the kind.''). It noted that ''the employers worry that our decision will sweep beyond Title VII to other federal or state laws that prohibit sex discrimination,'' but stated that ''none of these other laws are before us; we have not had the benefit of adversarial testing about the meaning of their terms, and we do not prejudge any such question today.''). *Id.* Finally, the Court acknowledged the potential application of the ''express statutory exception for religious organizations''; of the First Amendment, which ''can bar the application of employment discrimination laws'' in certain cases; and of RFRA, ''a kind of super statute'' which ''might supersede Title VII's commands in appropriate cases.'' 140 S. Ct. at 1754 (noting that ''how these doctrines protecting religious liberty interact with Title VII are questions for future cases too'').

The final rule is consistent with *Bostock.* First, whether a grant recipient or applicant is subject to Title VII is determined by facts independent of its relationship to the Department. Receiving a grant from the Department does not change a grantee's obligations under that statute. Second, if the Court's reasoning in *Bostock* is extended to other statutory protections prohibiting discrimination on the basis of sex—statutory provisions that are applicable to grants, such as Title IX, section 1557 of the Affordable Care Act or other statutory provisions that incorporate Title IX's prohibition on discrimination on the basis of sex into Departmental grant programs, or other statutes that prohibit sex discrimination in Departmental grant programs—§ 75.300(c) and (d) would incorporate such protections. Third, because the final rule applies only applicable statutory nondiscrimination requirements to its grant programs, the Department necessarily acknowledges the potential exceptions to such requirements under the Constitution and federal statute, including in nondiscrimination statutes, RFRA, and the First Amendment. Accordingly, nothing about the *Bostock* decision undermines the Department's choice in this final rule to refer to statutory nondiscrimination requirements and state that the Department will follow applicable Supreme Court decisions in administering its award programs, rather than delineating the specific protected categories from discrimination in the rule or applying two specific Supreme Court decisions. If anything, *Bostock* shows the utility of the Department's approach in this final rule.

Comments: Some commenters opposed the proposed rule, contending that it is an arbitrary and capricious exercise of the Department's rulemaking authority and violates the APA; another added that it is an abuse of discretion and otherwise not in accordance with law. Several commenters asserted that the Department did not provide adequate evidence to support its assertions about complaints or the proposed revisions, or failed to provide a reasoned analysis for the proposed changes.

Response: The Department respectfully disagrees. Under the APA, agency action may be arbitrary and capricious if the agency (1) ''relied on factors which Congress has not intended it to consider''; (2) ''entirely failed to consider an important aspect of the problem''; (3) ''offered an explanation for its decision that runs counter to the evidence before the agency''; or (4) offered an explanation ''so implausible that it could not be ascribed to a difference in view or the product of agency expertise.'' *Motor Vehicle Mfrs. Ass'n of U.S., Inc.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43 (1983). Having identified legal, policy, and programmatic issues presented by current § 75.300(c) and (d), the Department proposed, and now finalizes, revisions to the provisions to address the issues. As finalized here, the amended § 75.300(c) and (d) better align with the governing statutes. It is never arbitrary and capricious for an agency to ''justify its policy choice by explaining why that policy 'is more consistent with statutory language,' '' so long as the agency ''analyze[s] or explain[s] why the statute should be interpreted'' as the agency proposes. *Encino Motorcars, LLC* v. *Navarro,* 136 S. Ct. 2117, 2127 (2016) (quoting *Long Island Care at Home, Ltd.* v. *Coke,* 551 U.S. 158, 175 (2007)).

The Department respectfully disagrees with commenters that contended that the Department has not met the threshold standard for revising its regulations. Agency action that ''changes prior policy'' is not subject to a heightened justification or standard of review: An Agency ''need not demonstrate to a court's satisfaction that the reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately

indicates. This means that the agency need not always provide a more detailed justification than what would suffice for a new policy created on a blank slate.'' *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009). Given the limited justification for the adoption of § 75.300(c) and (d), and the fact that the Department was not statutorily obligated to add those provisions in the first place, the explanations provided in the proposed rule—and in this final rule—meet the applicable standards.

Comments: Many commenters opposed the proposed rule, contending that it would permit organizations to discriminate against members of the LGBTQ community, women, and religious minorities. One commenter claimed that the proposed rule eliminates protections for traditionally marginalized populations, including LGBTQ people, and permits discrimination in the administration of HHS programs and services based on gender identity or sexual orientation. Many suggested that LGBTQ individuals and other marginalized communities could lose access to healthcare through discrimination under the proposed rule. One commenter claimed that the proposed rule lays the foundation for possible discrimination against certain groups of people; other commenters expressed concern that it will set a precedent for discrimination in other health and human services programs. One commenter suggested that the proposed changes would increase the burdens on the LGBTQ community, women, and people of minority faiths, violating their civil rights and imposing damage far greater than the monetary effects on the regulated community. A number of State Attorneys General opposed the proposed rule, contending that it would eliminate explicit protections for age, disability, sex, race, color, natural origin, religion, gender identity, or sexual orientation, and replace them with a generic prohibition of discrimination to the extent prohibited by federal statutes, making grantees free to discriminate if they so choose. One commenter stated that the proposed rule would allow HHS award recipients, whether religious or non-religious, to discriminate based on non-merit factors unless some other prohibition applies explicitly to the program or activity. A number of commenters argued that discrimination has no place in HHS programs and that HHS has no authority to hold money or discriminate against anyone with their tax dollars. Other commenters claimed that the proposed rule would permit taxpayer dollars to support organizations that may discriminate against, or violate the rights of, vulnerable people who need services, or in violation of equal rights. Some commenters argued that discrimination is against American beliefs and that law and government policy should not allow it. Another commenter noted that all of humankind is created in the image of God, and that no form of discrimination is defensible.

In addition to the potential impact on foster care and adoption (discussed below), commenters asserted that the proposed rule would have an adverse impact on children and adults served in multiple systems of care. Other commenters claimed a negative impact on various health and human services programs supported by HHS funding, including housing, homeless shelters, child care, education, food assistance, health care, cancer screenings, immunization programs, reproductive care, and STD/STI and HIV/AIDS programs, Head Start and other pre-kindergarten programs, domestic violence hotlines, substance abuse programs, resettlement efforts for refugees and asylees, and community support services for seniors and people with disabilities. Several commenters claimed that the proposed rule could restrict access to HIV prevention and treatment and would be a setback to the administration's Ending HIV as an epidemic initiative.

Response: The Department believes that all people should be treated with dignity and respect, especially in the Department's programs, and that they should be given every protection afforded by the Constitution and the laws passed by Congress. The Department does not condone the unjustified denial of needed medical care or social services to anyone. And it is committed to fully and vigorously enforcing all of the nondiscrimination statutes entrusted to it by Congress. In this final rule, the Department reemphasizes this commitment to apply and enforce those nondiscrimination laws.

The Department does not agree with commenters' assertion that, should the Department limit its nondiscrimination regulatory and enforcement activities to the nondiscrimination laws passed by Congress, grantees will discriminate against vulnerable populations or deny services to the intended beneficiaries of departmental programs, or that individuals who are otherwise eligible to receive services from programs funded by the Department will not receive them. Commenters offered little evidence that this was the case before the current § 75.300(c) and (d) became effective in January 2017, and there is no reason to believe that this will occur as a result of the fact that the regulation will only require compliance with statutory nondiscrimination requirements. This final rule merely removes the regulatory requirement to comply with nonstatutory nondiscrimination requirements; grant recipients are still required to comply with the statutory nondiscrimination requirements that are applicable to the programs for which they receive Department funding—and they remain free, consistent with their other legal and regulatory obligations, to observe nonstatutory nondiscrimination practices.[25] To the extent that commenters view statutory nondiscrimination provisions as insufficient, they can address that issue with Congress.

The Department is committed to improving the health and wellbeing of all Americans.[26] Consistent with its statutory authority, the Department seeks, wherever possible, to remove barriers to healthcare. As a matter of policy, the Department recognizes and works to address barriers to treatment caused by stigma about depression, anxiety, substance use disorder, and other comorbid mental and behavioral health conditions.[27] For example, this final rule does not alter or affect the longstanding Federal protections against discrimination for individuals with HIV: Section 504, and hence also this final rule, prohibits discrimination on the basis that an individual has HIV.[28] OCR continues to pursue major enforcement

[25] A few commenters complained about the proposed removal of the express enumeration of the required nondiscrimination in § 75.300(c). However, § 75.300(a) requires the Department's grantmaking agencies to communicate all of the relevant public policy requirements—which includes the applicable nondiscrimination requirements—to grantees and to incorporate them either directly or by reference in the terms and conditions of the Federal award.

[26] When there are a sufficient number of eligible organizations and the issue is which ones should be funded, an increase in the number of such organizations makes it more likely that the funding component (or recipient) would be able to select more effective or higher quality recipients/subrecipients.

[27] *See, e.g.,* Pain Management Task Force, ''Pain Management Best Practices, Fact Sheet on Stigma'' (Aug. 13, 2019), *https://www.hhs.gov/sites/default/files/pmtf-fact-sheet-stigma_508-2019-08-13.pdf* (''Compassionate, empathetic care centered on a patient-clinician relationship is necessary to counter the suffering of patients. . . . Patients with painful conditions and comorbidities, such as anxiety, depression or substance use disorder (SUD) face additional barriers to treatment because of stigma.'').

[28] *See* 29 U.S.C. 705(20) (incorporating ADA definition of disability into Section 504); 42 U.S.C. 12102(1)–(3); 28 CFR 35.108(d)(2)(iii)(J).

actions under its authorities [29] and to provide the public guidance [30] to protect the rights of persons with HIV or AIDS. HHS remains committed to ensuring that those living with HIV or AIDS receive full protection under the law, in accordance with full implementation of the President's National HIV/AIDS Strategy.[31]

Comments: Some commenters opposed the proposed rule, contending that it would license discrimination by allowing child welfare agencies to reject prospective foster and adoptive families on the basis of sexual orientation, gender identity or expression, religion, and other factors; several suggested that such interests would be prioritized above the best interests of the child. Others were concerned that it would permit discrimination against children in foster care who are LGBTQ and are entitled to loving support and the chance of a family. One state noted that its experience was that placement rates and time in care do not change significantly when discriminatory providers leave the field. A number of commenters thought that the proposed rule would have a negative impact on the availability of foster care/adoption placements; a few claimed that it would limit the number of loving parents that children can be placed with based on sexual preference, which does not serve anyone, with one commenter asserting that it will increase the number of children in foster care permanently. One commenter suggested that the substantive due process rights of children in state-regulated foster care will be impaired by the proposed rule and that placing the providers of foster care and adoption services in a position to serve their religious objectives over the best interest of the children in their care violates federal statute which gives the children and youth higher priority. Several commenters disagreed that the current rule reduces the effectiveness of HHS-funded programs, contending that there is no evidence validating the statement. One commenter faulted HHS for not providing empirical data to support the contention that the nondiscrimination rule is materially affecting efforts to find qualified providers; another complained that HHS did not present evidence that a significant number of grantees have been unduly burdened under the current rule.

On the other hand, some commenters believed that, with the proposed changes, more children in the foster care system will be able to receive help as there will be more organizations available to provide services. Other commenters supported the proposed rule, believing that it keeps faith-based adoption agencies viable. Several Senators who submitted comments argued that the proposed rule would encourage a wider array of foster service providers. Other commenters noted that faith-based organizations have a good track record of helping vulnerable children through foster care and adoption, and providing material support and services, and believe the proposed rule will have a positive impact on the availability of foster care and adoption services. Some noted that the proposed rule protects the beneficiaries of HHS programs by ensuring that faith-based organizations do not cease to provide services, including foster care; several commenters noted that the current rule jeopardized foster care for thousands of children nationwide.

Response: The Department and its Administration for Children and Families (ACF) supports the prompt placement of children in loving homes according to the best interest of the children involved. The Department recognizes that many states may need more foster and adoptive families and greater foster care capacity. The Department values the work of faith-based organizations in service to persons in need and in the protection of children. It believes that when both faith-based and secular entities participate in the foster care and adoption placement processes, children, families, and providers benefit from more, not fewer, placement options.[32]

All children and youth should be treated fairly and with compassion and respect for their human dignity. Those in foster care need the support of a loving family to help them negotiate adolescence and grow into healthy adults, including those that face special or unique challenges. Faith-based child placement agencies are critical providers and partners in caring for vulnerable children and youth. These agencies have a long and successful history of placing foster children with loving families, either in temporary foster care or in forever homes through adoption. Their participation in these programs does not prevent qualified individuals, with whom some faith-based agencies cannot work, from becoming foster or adoptive parents because there are other agencies that would welcome their participation.

Failure to address the objections to the nonstatutory nondiscrimination requirements could destabilize this diverse system of foster care providers. Some faith-based subrecipients, including some that provide critically important child welfare services to states and local jurisdictions across the child welfare continuum, may not be able to provide needed services—and indeed, might be compelled to withdraw from the provision of child welfare services—if they are forced to comply with the current nonstatutory nondiscrimination requirements. Foster care service providers in Michigan, South Carolina, and Texas have made such claims, supported by the state in the case of the providers in South Carolina and Texas. Such a result would likely reduce the effectiveness of the foster care/adoption programs because, in many states, it would decrease the number of entities available to provide foster care/adoption related services. The Department further notes that a number of states have laws requiring the placement of children, when possible, with families of the same faith tradition as the child, in order to promote and protect the child's free exercise rights. Eliminating the ability of faith-based providers to participate in Department-funded foster care and adoption programs—because of their sincerely held religious beliefs—could thus make it more difficult for children to receive services from child placement agencies that share their faith traditions and are more likely to place such children with foster or adoptive parents and families

[29] *See, e.g.,* ''HHS Office for Civil Rights Secures Corrective Action and Ensures Florida Orthopedic Practice Protects Patients with HIV from Discrimination'' (Oct. 30, 2019), *https://www.hhs.gov/about/news/2019/10/30/hhs-ocr-secures-corrective-action-and-ensures-fl-orthopedic-practice-protects-patients-with-hiv-from-discrimination.html;* ''HHS Office for Civil Rights Enters Into Agreement with Oklahoma Nursing Home to Protect Patients with HIV/AIDS from Discrimination'' (Sept. 8, 2017), *https://www.hhs.gov/about/news/2017/09/08/hhs-office-for-civil-rights-enters-into-agreement-with-oklahoma-nursing-home.html.*

[30] *See* OCR, ''Know the Rights That Protect Individuals with HIV and AIDS,'' *https://www.hhs.gov/sites/default/files/ocr/civilrights/resources/factsheets/hivaids.pdf;* OCR, ''Protecting the Civil Rights and Health Information Privacy Rights of People Living with HIV/AIDS,'' *https://www.hhs.gov/civil-rights/for-individuals/special-topics/hiv/index.html.*

[31] *See* ''Ending the HIV Epidemic: A Plan for America,'' *https://www.hiv.gov/Federal-response/ending-the-hiv-epidemic/overview.*

[32] While one state indicated that its placement rates and time in care did not change significantly when ''discriminatory'' providers leave the field, other states provided the Department with different perspectives on the issue, given the unique dynamics and experiences of their state foster care and adoption systems. As noted above, based on its experience, the Department believes that when faith-based organizations are permitted to participate consistent with their religious beliefs, there is greater availability of foster care and adoption services and placements.

who share their religious beliefs and values and faith traditions.

This final rule removes the federal regulatory barriers that would have precluded such faith-based organization from participating in the federally funded Title IV–E foster care and adoption programs.

Removing regulatory barriers to participation of faith-based child placement agencies thus serves the Department's goals of creating more options for children in need of loving homes. State child welfare agencies are best situated to determine how to serve the diversity of children and families within their states, but the changes in this final rule will ensure that they have the flexibility to work with all available providers. Such providers include not only those child placing agencies that operate within the context of their sincerely held religious beliefs, but also other providers that do not have such beliefs, including State agency placement services. The Department and ACF place the best interests of the child first, as participants in Department-funded Title IV–E programs must; ensuring qualified providers can participate allows ACF to continue to prioritize the child's best interest and to avoid any violation of RFRA.

Comments: Several commenters (including the Chairs of House Committees with jurisdiction) opposed the proposed rule, arguing that it would create a confusing, uneven patchwork of civil rights protections across HHS programs, and undermine a uniform nondiscrimination standard for HHS grant programs. Several commenters contended that the proposed rule would confuse beneficiaries and recipients of HHS services, and inevitably lead to extensive litigation; they also claimed that it would create conflicts between federal, state, and local law and with prior Executive Orders. Several commenters contended that the proposed rule creates greater ambiguity, compliance complexity and uncertainty for both providers and beneficiaries of HHS-funded programs.

Response: As noted above, Congress has been selective in imposing specific nondiscrimination criteria in certain statutes and programs, and not imposing the same criteria in other statutes and programs. The Department has elected to follow those selections, and leaves for Congress the determination whether to create a uniform nondiscrimination standard for all of the Department's grant programs.

The Department doubts that the lack of a uniform standard will cause confusion among grantees, beneficiaries, and recipients of Department-funded services. These organizations and individuals are likely familiar with the varying eligibility requirements imposed by Congress for various grant programs—that there may be varying nondiscrimination requirements among such programs is unlikely to come as a surprise. Moreover, the Department's agencies are required to inform recipients of the relevant public policy requirements—which includes the applicable nondiscrimination requirements—and to incorporate them either directly or by reference in the terms and conditions of the Federal award. *See* 45 CFR 75.300(a). This would minimize any potential for uncertainty or confusion as to what is required.

The Department respectfully disagrees that the proposed rule's provisions that are finalized here will create a conflict with state or local laws. A conflict arises when an entity cannot comply with two different laws. The Department's action here merely removes certain federal regulatory requirements. Regulated entities may follow such nondiscrimination principles (voluntarily or as a result of other law), consistent with their other legal obligations. And consistent with their constitutional and legal obligations, State and local governments remain free to adopt additional nondiscrimination requirements.

The Department also notes that commenters appear to have misunderstood its expressed concern in the proposed rule that the existence of the referenced complaints and legal actions created a lack of predictability and stability for the Department and stakeholders with respect to the viability and enforcement of the current § 75.300(c) and (d) in the proposed rule. 84 FR at 63832. In particular, the Department was focused on the situations that had been brought to its attention where under the current rule, nonstatutory requirements conflict with statutory requirements (*e.g.,* RFRA). It was in this context that the Department determined that the adoption of this regulatory approach would make compliance more predictable and simple for grant recipients, and, thus, control regulatory costs and relieve regulatory burden. The final rule is consistent with that comment.

Section 75.305, Payment

In the proposed rule, the Department proposed to repromulgate § 75.305 without change. As stated in the proposed rule, the 2016 Rule modified the language in § 75.305 to clarify the relation between it, the Treasury-State Cash Management Improvement Act, and other regulatory provisions. The Department is reaffirming this clarification so that all states are aware of the necessity, for example, to expend refunds and rebates prior to drawing down additional grant funds. The Department repromulgates this provision without change.

As with the 2016 rulemaking, the Department received no comments on this proposal.

Section 75.365, Restrictions on Public Access to Records

In the proposed rule, the Department proposed to repromulgate this section without change. Section 75.365 clarifies the limits on the restrictions that can be placed on non-federal entities that limit public access to records pertinent to certain federal awards. As stated in the proposed rule, it also implements Executive Order 13642 (May 9, 2013), and corresponding law. *See, e.g., https://www.federalregister.gov/documents/2013/05/14/2013-11533/making-open-and-machine-readable-the-new-default-for-government-information/,* and Departments of Labor, Health, and Human Services, and Education Appropriations Act of 2014, Public Law 113–76, Div. H, Sec. 527 (requiring ''each Federal agency, or in the case of an agency with multiple bureaus, each bureau (or operating division) funded under this Act that has research and development expenditures in excess of $100,000,000 per year [to] develop a Federal research public access policy''). The language in this final rule codifies permissive authority for the Department's awarding agencies to require public access to manuscripts, publications, and data produced under an award, consistent with applicable law. The Department repromulgates this provision without change.

As with the 2016 rulemaking, the Department received no comments on this proposal.

Section 75.414, Indirect (Facilities and Administration) Costs

This provision, as published in 2016, restricted indirect cost rates for certain grants. The Department is repromulgating this provision without change. As stated in the proposed rule, it is long-standing HHS policy to restrict training grants to a maximum eight percent indirect cost rate. In addition to implementing this limit for training grants, this section imposes the same limitation on foreign organizations and foreign public entities, which typically do not negotiate indirect cost rates, and includes clarifying language to § 75.414(f), which would permit an entity that had never received an

indirect cost rate to charge a de minimis rate of ten percent, in order to ensure that the two provisions do not conflict.[33] Additionally, the American University, Beirut, and the World Health Organization are exempted specifically from the indirect-cost-rate limitation because they are eligible for negotiated facilities and administration (F&A) cost reimbursement. This restriction on indirect costs, as indicated by 45 CFR 75.101, would flow down to subawards and subrecipients.

The Department received no comments on this provision.

In repromulgating the provision, the Department makes several minor technical corrections to the language, replacing ''training grants'' with ''Federal awards for training'' in paragraph (c)(1)(i); replacing ''grants awarded'' with ''Federal awards'' and deleting an ''and'' in subparagraph (c)(1)(ii); and adding ''in this section'' after ''paragraphs (c)(1)(i) and (ii)'' in paragraph (f).

Section 75.477, Allowability of Costs Pursuant to Affordable Care Act Provisions

The Department proposed to repromulgate only part of current § 75.477, providing for the exclusion, from allowable costs, of any payments imposed on employers for failure to offer employees and their dependents the opportunity to enroll in minimum essential coverage. It did not propose to repromulgate the exclusion, from allowable costs, of any penalties imposed on individuals for failure to maintain minimum essential coverage because Congress reduced to zero the penalties imposed on individuals as a result of their failure to maintain such coverage, effective after December 31, 2018. The Department has since learned that payments of the tax penalties assessed for failure to comply with the individual shared responsibility prior to 2019 may continue, whether as the result of later filing, IRS administrative or appeals processes, or litigation in the Tax Court, the Court of Federal Claims, or the District Courts. As a result, the Department repromulgates § 75.477, with changes. As proposed, the Department repromulgates, without change from the proposed rule, the provision addressing tax penalties for failure to comply with the employer shared responsibility provisions. That provision makes clear that employers may not claim as allowable costs any payments imposed under 26 U.S.C. 4980H for failure to offer employees (and their dependents) the opportunity to enroll in minimum essential coverage. However, because of the possibility that individuals may still be responsible for payments of the tax penalties assessed for failure to comply with the individual shared responsibility prior to 2019, the Department repromulgates the provision excluding such payments from allowable costs, but only with respect to payments incurred as a result of the failure to maintain minimum essential coverage prior to January 1, 2019, the date on which the individual tax penalty was reduced to zero.

As with the 2016 promulgation of this provision, the Department received no comments on this section.

V. Regulatory Impact Analysis

The Department has examined the impacts of this final rule as required by Executive Order 12866 on Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993); Executive Order 13563 on Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011); Executive Order 13771 on Reducing Regulation and Controlling Costs, 82 FR 9339 (Jan. 30, 2017); the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164 (Sept. 19, 1980) and Executive Order 13272 on Proper Consideration of Small Entities in Agency Rulemaking, 67 FR 53461 (Aug. 16, 2002); section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48 (Mar. 22, 1995); Executive Order 13132 on Federalism, 64 FR 43255 (Aug. 4, 1999); Executive Order 13175 on Tribal Consultation, 65 FR 67249 (Nov. 6, 2000); the Congressional Review Act (Pub. L. 104–121, sec. 251, 110 Stat. 847 (Mar. 29, 1996)); section 654 of the Treasury and General Government Appropriations Act of 1999; and the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

Executive Order 12866 and Related Executive Orders on Regulatory Review

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 is supplemental to Executive Order 12866 and reaffirms the principles, structures, and definitions governing regulatory review established there.

As explained in the proposed rule and in this final rule, the Office of Management and Budget (OMB) has determined this rule is not economically significant in that it will not have an annual effect on the economy of greater than $100 million dollars in one year. However, because the Department determined that this rule is a ''significant regulatory action'' under Executive Order 12866, § 3(f)(4), in as much as it raises novel legal or policy issues that arise out of legal mandates, the President's priorities, or the principles set forth in an Executive Order, the Office of Management and Budget has reviewed it. Under Executive Order 13563, this rule harmonizes and streamlines rules, and promotes flexibility by removing unnecessary burdens.

Summary of and Need for Final Rule

As the Department noted in the proposed rule, after promulgation of the 2016 Rule, non-Federal entities, including States and other grant recipients and subrecipients raised concerns about § 75.300(c) and (d), contending that the requiring compliance with certain of the nonstatutory requirements would violate RFRA or the U.S. Constitution, exceed the Department's statutory authority, or reduce the effectiveness of the Department's programs. As a result of the Department's consideration of these issues, it believes that this final rule is needed for a number of reasons, including:

- To restore the Congressionally established balance with respect to nondiscrimination requirements. Congress carefully balanced the rights, obligations, and goals involved in various Federal grant programs when it decided which nondiscrimination provisions to make applicable to such programs. The 2016 Rule made a number of nondiscrimination requirements, including certain nonstatutory nondiscrimination requirements, applicable to all grantees in all Departmental grant programs, regardless of whether Congress had made such requirements applicable to the grantees in particular Departmental programs. Because Congress carefully balanced competing interests, rights, and obligation, the Department believes that it is appropriate to impose only those nondiscrimination requirements required by the Constitution and the federal statutes that are applicable to the grantees.
- To avoid RFRA issues. The imposition of certain nonstatutory nondiscrimination requirements on certain faith-based organizations as recipients or subrecipients in the Department's programs would likely

[33] OMB has proposed to change this in its current rulemaking on 2 CFR part 200. Should OMB finalize the rule as proposed, the Department would implement as appropriate.

constitute a substantial burden on their exercise of religion that is not the least restrictive means of furthering a compelling government interest and, likely, constitute a violation of RFRA. With respect to the Title IV–E foster care and adoption program, the Department has determined in two contexts that this was the case, and a federal district court similarly issued a preliminary injunction against the Department's enforcement of such provisions in the case of a faith-based organization that participates in Michigan's foster care and adoption program. The Department believes that this final rule constitutes the best way to avoid such burdens on religious exercise.

• To appropriately focus on compliance with applicable Supreme Court decisions. The 2016 Rule made two specific Supreme Court decisions applicable to all recipients of the Department's grants, although those decisions only apply to state actors. The Department is committed to complying not just with those decisions, but all applicable Supreme Court decisions, which is what this final rule provides.

• To limit uncertainty that would decrease the effectiveness of the Department's programs. Section 75.300(c) and (d) have raised questions about whether the Department exceeded its authority, disrupted the balance of nondiscrimination requirements adopted by Congress, generated requests for deviations or exceptions and lawsuits challenging the provisions, and sowed uncertainty for grant applicants, recipients, and subrecipients that could deter participation in Department-funded programs and, over time, undermine the effectiveness of those programs. The Department is under no legal obligation to impose such requirements and, accordingly, believes that it is appropriate to remove them in order to avoid such impacts to the Department's programs.

• To remove an exclusion from allowable indirect costs to the extent that is no longer necessary. The 2016 Rule excludes from allowable indirect costs any tax penalty imposed on individuals for failure to maintain minimum essential coverage under the ACA. That tax penalty has since been reduced to zero, but individuals may still be paying such tax penalties. Accordingly, the final rule limits the exclusion to tax penalties assessed for failure to maintain such coverage prior to January 1, 2019, when the penalty was reduced to zero.

Thus, as discussed in more detail elsewhere in the preamble, this final rule would

• Require recipients to comply with applicable federal statutory nondiscrimination provisions.[34]

• Provide that HHS complies with applicable Supreme Court decisions in administering its award programs.

• Not repromulgate the exclusion from allowable costs of the tax penalty, now reduced to zero, imposed on individuals for failure to maintain minimum essential coverage, except for tax penalties associated with failure to maintain minimum essential coverage prior to January 1, 2019, when the tax penalty was reduced to zero.

• Repromulgate without change a provision which established that recipients could not include, in allowable costs under HHS grants, any tax penalty imposed on an employer for failure to comply with the employer mandate under the ACA.

• Repromulgate without change a provision which addressed the applicability of certain payment provisions to states.

• Repromulgate without change a provision which authorized the grant agency both to require recipients to permit public access to various materials produced under a grant and to place restrictions on recipients' ability to make public any personally identifiable information or other information that would be exempt from disclosure under FOIA.

• Repromulgate, with certain technical changes, a provision which established limits on the amount of indirect costs allowable under certain types of grants.

Alternatives Considered

The Department carefully considered several alternatives, but rejected the potential alternatives for a number of reasons:

• Alternative 1: Not make any changes to the previously issued regulatory provisions at issue. The Department concluded that this alternative would likely lead to additional legal challenges. Moreover, because of the RFRA issues presented by application of certain provisions in the section to certain faith-based organizations that participate in or seek to participate in Department-funded programs or activities, the Department would continue to be faced with either litigation over the Department's compliance with RFRA, or additional requests for exceptions or deviations from the provisions, both of which would require the expenditure of departmental resources to address, as well as the expenditure of resources by such faith-based organizations that participate in, or seek to participate in, Department-funded programs or activities consistent with their religious beliefs. Finally, the current requirements, if enforced, could have led to the exclusion of certain faith-based organizations from participating in the Department's programs as recipients or subrecipients and would likely have a negative impact on the effectiveness of such programs.

• Alternative 2: Not make any changes to the regulatory provisions at issue, but promulgate a regulatory exemption for faith-based organizations whose religious exercise would be substantially burdened by the application of § 75.300(c) and (d) in their current form. This would address the RFRA issues presented by application of certain provisions in the section to certain faith-based organizations that participate in or seek to participate in Department-funded programs or activities. However, this approach would not adhere to the balance struck by Congress on nondiscrimination provisions applicable to Department grant programs and, thus, would raise competing concerns that might require careful balancing.

• Alternative 3: Revise § 75.300(c) and (d) to enumerate all applicable nondiscrimination provisions and the programs and recipients/subrecipients to which the nondiscrimination provisions would apply. This alternative would require the Department to update the provision every time Congress created a new program for the Department to implement, adopted new nondiscrimination provisions, or revised existing nondiscrimination provisions. Moreover, since § 75.300(a) already requires the grantmaking agency to communicate to awardees all relevant public policy requirements, including specifically all nondiscrimination requirements (and incorporate them either directly or by reference in the terms and conditions of the Federal award), this alternative would provide no new benefits to the recipients of grants from the Department's grantmaking agencies.

Expected Benefits and Costs of the Final Rule

The Department expects several benefits from this final rule. The final rule will better align the regulation to the statutory requirements adopted by Congress. This provides covered entities

[34] The final rule would remove the provision which exempted the Temporary Assistance for Needy Families program from this provision because the changes to the provision render the exemption unnecessary.

more clarity and stability concerning the requirements applicable to them. The final rule better ensures compliance with RFRA, and allows the Department to avoid some situations where a substantial burden on religious exercise may be applied by requirements that flow from the Department but not from a statute. The final rule will reduce litigation and associated costs, both to the government and to covered entities, resulting from challenges to nonstatutory public policy requirements. The final rule relieves administrative burdens on covered entities by removing certain requirements that go beyond those mandated by statute. As a result, the final rule enables the participation of faith-based organizations that participate in or seek to participate in Department-funded programs or activities. In turn, the Department expects the final rule will avoid the negative impact that the current regulations, if fully implemented, may have on the effectiveness of the Department's programs. For example, the Department expects the final rule will avoid reducing participation rates in the Department's programs by entities that object to the current regulations. The Department believes some of those entities have been effective in providing a significant number and percentage of services in such programs, so the Department expects this rule will avoid a reduction in the effectiveness of the Department's programs and in the number of beneficiaries served overall.

As the Department noted in the regulatory impact analysis in the proposed rule and in this final rule, with respect to the Regulatory Flexibility Act (and as the Department reiterates below in response to comments), the Department does not believe that there will be any direct costs or economic impact associated with final rule, apart from potential administrative costs to grantees to become familiar with the requirements of the final rule.

The Department received comments on the Department's compliance with Executive Order 12866.

Comments: Several commenters contended that the Department had failed to conduct an adequate cost-benefit analysis for the proposed rule. Several commenters asserted that the Department had failed to consider the health and financial costs from the proposed rule; others alleged that the Department had failed to consider the impacts and harms that would flow from the proposed rule. One commenter alleged the proposed rule lacked a holistic analysis of risks and benefits of the proposed rule to small business or the foster care system. Another complained that the Department had not explained why the proposed rule was a significant regulatory action under Executive Order 12866, but not economically significant.

Response: The Department respectfully disagrees with commenters. First, the Department does not believe the final rule imposes the costs and harms that some commenters allege. While commenters opposing the revisions argued that the final rule would permit grantees and subrecipients to discriminate against LGBT individuals, women, and other vulnerable populations and negatively affect the health or well-being of such individuals who would be discouraged from seeking services from secular service providers, the Department does not believe that such discrimination is widespread in its programs (or would be widespread in its programs in the absence of the nonstatutory nondiscrimination requirements), nor that the final rule would lead to a reduction in services provided overall—or, as explained below, that this final rule would necessarily cause a change in the composition of participants in Department-funded programs. For example, as discussed above in cases concerning Title IV–E foster care and adoption programs, the Department is aware that various entities will provide services only to persons of their religion, or to persons having a certain marital status, but the Department is also aware that other entities in such programs have been available to provide services to parents with whom a specific provider will not work. On the other hand, the entities of which the Department is aware that will only work with limited categories of parents often place many children, and if they were forced to leave the program because of the current regulations, the overall number of children placed would likely drop.

With respect to the requirements imposed by current § 75.300(c) and (d) to comply with certain nonstatutory nondiscrimination requirements, the Department notes that these requirements of the 2016 rule became effective in January 2017, coinciding with the change in Administration. As a result of changes in compliance and enforcement priorities, the Department and its grantmaking agencies did not make, and have not made, any concerted effort to obtain recipient compliance with the nonstatutory nondiscrimination provisions since the 2016 rule became effective, and have not taken steps to enforce compliance with such requirements. In addition, in January 2019, the Department issued an exception to the State of South Carolina with respect to one of the nonstatutory nondiscrimination requirements, recognizing that requiring the State's compliance with respect to certain faith-based organizations would violate RFRA. In September 2019, a federal district court preliminarily enjoined the Department from enforcing § 75.300(c) with respect to the plaintiffs as a violation of RFRA. And on November 1, 2019, the Department announced that it would not be enforcing the provisions of the 2016 rule, including the nonstatutory nondiscrimination requirements, pending repromulgation of the provisions. In light of this sequence of events, the Department believes that its recipients fall into one of several categories:

- Recipients that adopted the nondiscrimination practices prior to the 2016 rule, voluntarily or as a result of state or local law. These recipients' observance of nonstatutory nondiscrimination requirements is, thus, not the result of the 2016 rule. Because this final rule merely removes the regulatory requirement to comply with the nonstatutory nondiscrimination provisions, recipients remain free to observe such nondiscrimination practices, consistent with their other legal and/or constitutional obligations. And the Department anticipates that recipients in this category are likely to continue to observe such practices.
- Recipients that had not adopted the nondiscrimination practices prior to the 2016 rule and still have not adopted such practices, despite the 2016 rule's nonstatutory nondiscrimination requirements, in some instances because of the concerns outlined in the proposed rule and this final rule with respect to such requirements. The Department knows that there are grantees that are in this category. Since this final rule removes the requirement to comply with such nonstatutory nondiscrimination provisions, the Department expects that these grantees will continue to do what they have been doing—and, thus, will not change any behavior as a result of the final rule.
- Recipients that had not adopted the nondiscrimination practices prior to the 2016 rule, but have complied with the nonstatutory nondiscrimination provisions since then. The Department acknowledges that there could be some grantees that are in this category, although it is not specifically aware of any. To the extent that any grantees fall into such category, it seems likely that many would continue to follow such

nondiscrimination practices, voluntarily or because of new or newly enforced state or local laws. The Department reaches that conclusion because, to the extent that grantees knew about the nonstatutory nondiscrimination requirements imposed by the 2016 rule at the time it was promulgated and had any concerns about them, such grantees or prospective grantees would most likely have taken a ''wait and see'' approach to the Department's interpretation and enforcement of such provisions. They would thus have fallen within the category described in the previous bullet. The same would likely be the case with respect to such grantees that learned of the 2016 rule only after the fact—for example, as a result of coverage of the State of South Carolina's February 2018 request for a deviation from certain requirements in § 75.300(c) and (d). Absent specific concerns about complying with those nonstatutory requirements, the Department sees little reason that grantees would change course yet again.

Thus, apart from the familiarization costs, the Department concludes that there will be no economic impact associated with § 75.300(c) and (d).

For significant regulatory actions, Executive Order 12866 requires ''an assessment, including the underlying analysis,'' of benefits and costs ''anticipated from the regulatory action.'' Executive Order 12866, §§ 6(a)(3)(C), 3(f)(1). The Department provides such an assessment here and provided one in the proposed rule. Furthermore, the APA requires agencies to base their decisions ''on consideration of the relevant factors,'' *State Farm,* 463 U.S. 29, 42 (1983), but it does not require them to ''conduct a formal cost-benefit analysis in which each advantage and disadvantage is assigned a monetary value,'' *Michigan* v. *EPA,* 135 S. Ct. 2699, 2711 (2015), or assess the relevant factors in quantitative terms, *Ranchers Cattlemen Action Legal Fund* v. *USDA,* 415 F.3d 1078, 1096–97 (9th Cir. 2005). The Department noted in the proposed rule that it would harmonize and streamline rules and promote flexibility by removing unnecessary burdens. It similarly noted that most of the provisions of the proposed rule have been operational since 2016, and that where the Department proposed to amend the 2016 provisions, grantees were already subject to the requirements that were proposed, so grantees would not need to make any changes to their current practice in response to the rulemaking. Although the Department received comments asserting that particular harms—for example, discrimination against particular groups of beneficiaries—would flow from the removal of the provisions, the Department did not identify such problems prompting its promulgation of § 75.300(c) and (d) in 2016, and the commenters did not provide evidence to suggest that such problems would occur after promulgation of this final rule.

Finally, the Department believes that this final rule will impose only de minimis costs, if any, on covered entities. This final rule relieves regulatory burdens by removing requirements on recipients and subrecipients in § 75.300(c) that are not imposed by statute, and eliminate the burden imposed on faith-based organizations that participate in the Department's programs to seek an exception from certain nonstatutory nondiscrimination imposed by the 2016 rule through litigation or the exception process in § 75.102(b), as well as the expenses that the Department would incur in addressing such litigation or exceptions requests. Therefore, as a qualitative matter, the final rule could be seen as relieving burdens and costs rather than imposing them. Because the final rule does not impose any new regulatory requirements, recipients and subrecipients should not incur any new or additional compliance costs. Nor does the Department believe covered entities would necessarily incur any more than de minimis costs to review this rule. Recipients are already required by § 75.300(a) and (b) and other regulatory provisions to comply with statutory nondiscrimination requirements and ensure their subrecipients and their programs are in compliance. Pursuant to § 75.300(a), the Department's grantmaking agencies are required to inform applicants for grants and recipients in notices of funding opportunities and award notices of applicable statutory and regulatory requirements, including, specifically, the nondiscrimination requirements applicable to the grant program. Therefore, as a practical matter, grantees and recipients may rely on these communications to inform them of the legal and regulatory requirements applicable to the programs in which they participate.

However, as a standard practice, the Department considers regulatory familiarization costs in its regulatory impact analyses. Although the Department issues many grants on an annual basis, many recipients receive multiple grants. Thus, based on information in the Department's Tracking Accountability in Government Grant Spending (TAGGS) system, the Department estimates that it has a total of 12,202 grantees.[35] Depending on the grantee, the task of familiarization could potentially fall to the equivalent of (1) a lawyer (hourly rate: Median $59.11, mean $69.86); (2) a general/operations manager (hourly rate: Median $48.45, mean $59.15); (3) a medical and health services manager (hourly rate: Median $48.55, mean $55.37); (4) a compliance officer (hourly rate: Median $33.02, mean $35.03); or (5) a social and community service manager (hourly rate: Median $32.28, mean $35.05).[36] Averaging these rates leads to a median hourly rate of $44.28 and mean hourly rate of $50.89. The Department assumes that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200% of the wage rate, or $88.56 (median) and $101.78 (mean). The changes made by the final rule are straight forward and easy to understand—and the Department anticipates that professional organizations, trade associations and other interested groups may prepare summaries of the rule. Accordingly, the Department estimates that it would take a grantee approximately an hour to become familiar with the final rule's requirements. The Department, thus, concludes that the cost for grantee familiarization with the final rule would total $1,080,609.12 (median) or $1,241,919.56 (mean).

The Department does not believe that covered entities will incur training costs under § 75.300(c) and (d) of this rule. Section 75.300(c) only applies requirements to the extent imposed by statute, and recipients and subrecipients are already required to comply with such statutory requirements under § 75.300(a) and (b) and other statutes and regulations. Section 75.300(d) does not impose requirements that recipients or subrecipients need to review, but makes a general statement about the Department's compliance with applicable Supreme Court cases in its award programs, without requiring familiarity with any particular case on the part of recipients or subrecipients. In both respects, § 75.300(c) and (d) of this final rule impose requirements that may be simpler and easier to understand than the current regulation.[37]

[35] Based on unique DUNS numbers, the Department had 11,749 recipients in 2017, 12,333 recipients in 2018, and 12,523 recipients in 2019, for an average of 12,202.

[36] U.S. Bureau of Labor Statistics, May 2019 National Occupational Employment and Wage Estimates United States, available at *https://www.bls.gov/oes/current/oes_nat.htm.*

[37] The Department notes that Executive Order 12866 ''is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or

Executive Order 13771

The White House issued Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs on January 30, 2017. Section 2(a) of Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation. In furtherance of this requirement, § 2(c) of Executive Order 13771 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. Guidance from OMB indicates this offset requirement applies to Executive Order 13771 regulatory actions. This rulemaking, while significant under Executive Order 12866, will impose at most de minimis costs and, therefore, is not either a regulatory action or deregulatory action under Executive Order 13771.

Regulatory Flexibility Act and Executive Order 13272

The Department has examined the economic implications of this final rule as required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The RFA requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The RFA generally requires that when an agency issues a proposed rule, or a final rule that the agency issues under 5 U.S.C. 553 after being required to publish a general notice of proposed rulemaking, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**—unless the agency expects that the rule will not have a significant impact on a substantial number of small entities, provides a factual basis for this determination, and certifies the statement. 5 U.S.C. 603, 604, 605(b). If an agency must provide a regulatory flexibility analysis, this analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. For purposes of the RFA, ''small entities'' include proprietary firms meeting the size standards of the Small Business Administration (SBA); [38] nonprofit organizations that are not dominant in their fields; and small governmental jurisdictions with populations of less than 50,000. 5 U.S.C. 601(3)–(6). States and individuals are not small entities. The Department considers a rule to have a significant impact on a substantial number of small entities if it has at least a three percent impact on revenue on at least five percent of small entities.

Executive Order 13272 on Proper Consideration of Small Entities in Agency Rulemaking reinforces the requirements of the RFA and requires the Department to notify the Chief Counsel for Advocacy of the Small Business Administration if the final rule may have a significant economic impact on a substantial number of small entities under the RFA. Executive Order 13272, 67 FR 53461 (Aug. 16, 2002).

As discussed, this final rule would

- Require recipients to comply with applicable federal statutory nondiscrimination provisions.
- Provide that HHS complies with applicable Supreme Court decisions in administering its award programs.
- Not repromulgate the exclusion from allowable costs of the tax penalty, now reduced to zero, imposed on individuals for failure to maintain minimum essential coverage, except for tax penalties associated with failure to maintain minimum essential coverage prior to January 1, 2019, when the tax penalty was reduced to zero.
- Otherwise re-promulgate the provisions of the 2016 rule.

The Department's grantees include state and local governments; state and local health and human services agencies; public and private colleges and universities; nonprofit organizations in the health and social services areas, including both secular and faith-based organizations; and certain health care providers. Because this final rule would apply to all grantees, affected small entities include all small entities that apply for the Department's grants; these small entities operate in a wide range of areas involved in the delivery of health and human services. It is important to note, however, that the RFA does not require that an entity assess the impact of a rule on all small entities that may be affected by the rule, but only those directly regulated by the rule. *See National Women, Infants, and Children Grocers Ass'n et al.* v. *Food and Nutrition Service,* 416 F. Supp. 2d 92, 108–110 (D.D.C. 2006).

With respect to the changes that the final rule makes to § 75.300(c) and (d): The adoption of amendments to § 75.300(c) and (d) do not impose any new regulatory requirements on recipients. Recipients are currently required to comply with applicable federal statutory nondiscrimination provisions by operation of such laws and pursuant to 45 CFR 75.300(a); the Department is currently required to comply with applicable Supreme Court decisions. As discussed above, apart from the potential familiarization costs, the Department does not believe that there will be any economic impact associated with these amendments.

With respect to the repeal of the allowable cost exclusion for the tax penalty for failure to comply with the individual shared responsibility provision: When the Department imposed this allowable cost exclusion, individuals were subject to a tax penalty or assessment for failure to maintain health insurance that constituted minimum essential coverage. Congress has since reduced to zero such tax penalties or assessments, effective after December 31, 2018. While the individual tax penalty for failure to comply with the individual shared responsibility provision has been reduced to zero, the Department has been informed that individuals may still be paying assessed tax penalties for failure to maintain minimum essential coverage prior to January 1, 2019. The Department had proposed to eliminate the provision because it seemed unnecessary to maintain a provision with respect payments of penalties that had been reduced to zero. Since some individuals may still be paying such assessments, the Department is repromulgating the provision, but limited to tax penalties for failure to maintain coverage prior to January 1, 2019, when the penalty was reduced to zero. Because this does not represent a change of the requirement imposed under the 2016 rule with respect to periods for which a non-zero tax penalty could be assessed, there should be no economic impact associated with re-imposing an allowable costs exclusion for such payments.

procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.'' Executive Order 12866, § 10, 58 FR 51735 (Oct. 4, 1993).

[38] In the health care and social assistance sector, from which the Department draws most of its grantees, SBA considers businesses to be small by virtue of having less than between $8.0 million and $41.5 million in average annual revenues, depending on the particular type of business. *See* U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, effective August 19, 2019 (sector 62), available at *https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf.* In as much as colleges, universities and professional schools (*e.g.,* medical schools) and other educational institutions may receive Department funding, the other sector from which the Department may draw grantees is the educational services sector, where the relevant small business sizes range from $12.0 million to $30.0 million in annual revenues. *Id.* (sector 61).

With respect to the provisions being repromulgated without change: These provisions of the final rule have been operational since the publication of the 2016 rule. As a result, as noted in the proposed rule, recipients, including small entities, will not need to make any changes to their current practice in response to this final rule. Accordingly, there should be no economic impact associated with the repromulgation of these provisions.

In light of the foregoing, the Department anticipates that this final rule will have no impact beyond providing information to the public. The Department anticipates that this information will allow affected entities to better deploy resources in line with established requirements for its recipients, while reducing administrative burdens related to litigation and waiver requests. Thus, grantees will be able to better prioritize resources towards providing services consistent with their mission and grant. As a result, the Department has determined, and the Secretary certifies, that this final rule will not have a significant impact on the operations of a substantial number of small entities.

The Department asked for comments on the impact of the proposed rule on small entities under the Regulatory Flexibility Act, as well as the comparative effects and impacts of the situation if the Department were to fully enforce the provisions of the 2016 rule as compared to the situation if the Department were to fully exercise its enforcement discretion with respect to the 2016 rule. The Department received a number of comments on the RFA analysis.[39]

Comments: Several commenters opposing the proposed rule contended that the Department had failed to conduct the required cost-benefit analysis necessary to sustain the proposed rule. Some commenters contended that the Department did not properly conduct a cost benefit and risk analysis of potential affected entities. Several commenters asserted that such a cost-benefit analysis would have to consider the health and financial costs from the proposed rule. One commenter alleged the proposed rule lacked a holistic analysis of risks and benefits of the proposed rule to small business or the foster care system.

Response: The Department respectfully disagrees with commenters. With respect to the RFA, the Department did fully consider whether the proposed rule's changes would have a significant impact on a substantial number of small entities. It reviewed the evidence and concluded that it would not—and provided a statement in the proposed rule with the factual bases for its conclusion. Very few commenters addressed the effect of the proposed rule on small entities, with most arguing that the Department should have considered the impact on individuals and entities other than the Department's recipients. However, the RFA requires the Department to consider the impact only on small entities directly regulated by the rule; it does not require consideration of the rule on all small entities potentially indirectly affected by it. *See National Women, Infants, and Children Grocers Ass'n,* 416 F. Supp. 2d at 108–110 (rule only applied to state agencies, not to small businesses, such as WIC-only vendors, so federal agency properly certified that rule would not have a significant impact on a substantial number of small entities). Nor does the RFA require consideration of the impact on individuals since individuals do not constitute small entities as such term is defined in the RFA.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), 2 U.S.C. 1532, requires that covered agencies prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. Currently, that threshold is approximately $154 million. If a budgetary impact statement is required, section 205 also requires covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The Department has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $154 million or more in any one year. Accordingly, the Department has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Executive Order 13132, Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Executive Order 13132, 64 FR 43255 (Aug. 4, 1999). The Department does not believe that this final rule would (1) impose substantial direct requirements costs on State or local governments; (2) preempt State law; or (3) otherwise have Federalism implications.

Executive Order 12866 directs that significant regulatory actions avoid undue interference with State, local, or tribal governments, in the exercise of their governmental functions. Executive Order 12866 at 6(a)(3)(B). Executive Order 13175 further directs that Agencies respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments. Executive Order 13175 at 2(a). The Department does not believe that the final rule would implicate the requirements of Executive Orders 12866 and 13175 with respect to tribal sovereignty.

The final rule maintains the full force of statutory civil rights laws protections against discrimination, but does not attempt to impose a ceiling on how those protections may be observed by States. Consistent with their other constitutional and legal obligations, State and local jurisdictions will continue to have the flexibility to impose additional civil rights protections. Therefore, the Department has determined that this final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement under Executive Order 13132, and that the rule would not implicate the requirements of Executive Orders 12866 and 13175 with respect to tribes.

The Department received several comments on its Executive Order 13132 analysis.

Comments: One commenter argued that the Department had not complied with Executive Order 13132. Other commenters claimed that the proposed rule creates conflicts between federal, state, and local law.

Response: The Department respectfully disagrees. The proposed rule, and this final rule, do not impose any substantial direct requirements on State and local governments that do not already exist, nor does it preempt or conflict with State or local laws. A conflict arises when an entity cannot comply with two different laws. The Department's action here merely removes certain regulatory requirements

[39] Many commenters disagreed with the Department's decision to exercise enforcement discretion with respect to the provisions of the 2016 rule, pending repromulgation, as a result of its concerns about the rule's compliance with the Regulatory Flexibility Act. As such comments are beyond the scope of the proposed rule, the Department does not respond to them.

for which it lacked legal authority. Consistent with their other constitutional and legal obligations, State and local jurisdictions will continue to have the flexibility to impose additional civil rights protections. And, consistent with their other legal obligations, regulated entities are free to comply with such additional civil rights protections.

Congressional Review Act

The Congressional Review Act (CRA) defines a ''major rule'' as ''any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.'' 5 U.S.C. 804(2). Based on the analysis of this final rule under Executive Order 12866, OMB has determined that this final rule is not likely to result in an annual effect of $100,000,000 or more, and is not otherwise a major rule for purposes of the Congressional Review Act.

Assessment of Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 [40] requires Federal departments and agencies to determine whether a proposed policy or regulation could affect family well-being.[41] If the determination is affirmative, then the Department or agency must prepare an impact assessment to address criteria specified in the law.[42] In the proposed rule, the Department determined that the proposed rule would not have an impact on family well-being, as defined in section 654.

The Department received many comments on its initial family well-being impact analysis, or on the likely impact of the proposed rule on the well-being of children in need of foster care or other services. After considering the comments, the Department concludes that the final rule will not have an impact on family well-being as defined in section 654.

Comment: Several commenters argued that, since the proposed rule rolls back nondiscrimination protections, it will have significant impacts on family well-being across a range of the Department's programs because it will affect access to programs for which they would otherwise be eligible. They suggested individual impact assessments were necessary for, among others, Head Start Programs, Refugee Resettlement, and caregiver support programs. Commenters also believed the family well-being analysis required an assessment of the impact for populations under the rule, including LGBT beneficiaries. At least some of the comments seem based on the premise that, under the proposed rule, religious or faith-based organizations would discriminate and, for example, reject prospective foster and adoptive families, to the detriment of children, including LGBTQ children, in need of foster or adoptive placements in loving families.

Other commenters supported the proposed rule, arguing that society needed as many agencies working on behalf of children as possible and that the proposed rule would prevent discrimination in the Department's programs by permitting religious and faith-based organizations to participate in Department-funded programs.

Response: The Department respectfully disagrees with commenters who argued that the proposed rule (and this final rule) would have a negative effect on family well-being, as defined in section 654. The Department rejects commenters' view that, under the rule, vulnerable families or populations will experience discrimination, or be denied services in Department-funded programs for which they are otherwise eligible. Commenters offered little evidence that this was the case before the current § 75.300(c) and (d) became effective, and the Department has no evidence supporting the belief that this will occur as a result of the final rule. Many commenters focused on child welfare programs and the foster care and adoption systems. Based on the information before the Department, as well as the Department's experience and expertise, the Department believes that the final rule will enable faith-based child placement agencies—which are critical providers and partners in caring for vulnerable children and have a long and successful history of placing children (including older children, children with health conditions and sibling groups, all of whom are more difficult to place) with loving families—to continue their service. Based on its experience and expertise, the Department believes that the result will be more, rather than fewer, child placement agencies and more, rather than fewer, options for children in need of loving homes. Furthermore, it is the Department's understanding that the participation of faith-based child placement organizations will not affect the availability of secular child placement organizations that are able to work with prospective foster and adoptive parents and families with whom some faith-based organizations cannot work. States work with both faith-based child placement organizations and secular child-placement organizations.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 appendix A.1), the Department has reviewed this final rule and has determined that there are no new collections of information contained therein.

List of Subjects in 45 CFR Part 75

Administrative Practice and Procedure, Federal aid programs, Grants Programs, Grants Administration, Cost Principles, state and local governments.

Dated: January 5, 2021.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

Therefore, under the authority of 5 U.S.C. 301 & 2 CFR part 200, and for the reasons stated in the preamble, the Department of Health and Human Services amends 45 CFR part 75 as follows:

[40] Public Law 105–277, Div. A, § 654, 112 Stat. 2681–480, 2681–528 (Oct. 21, 1998), codified at 5 U.S.C. 601 note.

[41] Before implementing regulations that may affect family well-being, an agency is required to assess the actions as to whether the action

(1) strengthens or erodes the stability or safety of the family and, particularly, the marital commitment;

(2) strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children;

(3) helps the family perform its functions, or substitutes governmental activity for the function;

(4) increases or decreases disposable income or poverty of families and children;

(5) action's proposed benefits justify the financial impact on the family;

(6) may be carried out by State or local government or by the family; and

(7) establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society.

5 U.S.C. 601 (note).

[42] If a regulation may affect family well-being, the head of the agency is required to submit a written certification to the director of OMB and to Congress that the regulation has been assessed and to provide an adequate rationale for implementation of a regulation that may negatively affect family well-being. *Id.*

PART 75—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR HHS AWARDS

■ 1. The authority citation for 45 CFR part 75 is revised to read as follows:

Authority: 5 U.S.C. 301; 2 CFR part 200.

§ 75.101 [Amended]

■ 2. Amend § 75.101 by removing paragraph (f).

■ 3. Amend § 75.300 by revising paragraphs (c) and (d) to read as follows:

§ 75.300 Statutory and national policy requirements.

* * * * *

(c) It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services, to the extent doing so is prohibited by federal statute.

(d) HHS will follow all applicable Supreme Court decisions in administering its award programs.

■ 5. Amend § 75.305 by revising paragraph (a) to read as follows:

§ 75.305 Payment.

(a)(1) For States, payments are governed by Treasury-State CMIA agreements and default procedures codified at 31 CFR part 205 and TFM 4A–2000 Overall Disbursing Rules for All Federal Agencies.

(2) To the extent that Treasury-State CMIA agreements and default procedures do not address expenditure of program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds, such funds must be expended before requesting additional cash payments.

* * * * *

■ 6. Revise § 75.365 to read as follows:

§ 75.365 Restrictions on public access to records.

Consistent with § 75.322, HHS awarding agencies may require recipients to permit public access to manuscripts, publications, and data produced under an award. However, no HHS awarding agency may place restrictions on the non-Federal entity that limits public access to the records of the non-Federal entity pertinent to a Federal award identified in §§ 75.361 through 75.364, except for protected personally identifiable information (PII) or when the HHS awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) (FOIA) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the HHS awarding agency. The FOIA does not apply to those records that remain under a non-Federal entity's control except as required under § 75.322. Unless required by Federal, State, local, or tribal statute, non-Federal entities are not required to permit public access to their records identified in §§ 75.361 through 75.364. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

■ 7. Amend § 75.414 by revising paragraphs (c)(1)(i) through (iii) and the first sentence of paragraph (f) to read as follows:

§ 75.414 Indirect (F&A) costs.

* * * * *

(c) * * *

(1) * * *

(i) Indirect costs on Federal awards for training are limited to a fixed rate of eight percent of MTDC exclusive of tuition and related fees, direct expenditures for equipment, and subawards in excess of $25,000;

(ii) Indirect costs on Federal awards to foreign organizations and foreign public entities performed fully outside of the territorial limits of the U.S. may be paid to support the costs of compliance with federal requirements at a fixed rate of eight percent of MTDC exclusive of tuition and related fees, direct expenditures for equipment, and subawards in excess of $25,000; and

(iii) Negotiated indirect costs may be paid to the American University, Beirut, and the World Health Organization.

* * * * *

(f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in paragraphs (c)(1)(i) and (ii) of this section and section (D)(1)(b) of appendix VII to this part, may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. * * *

* * * * *

■ 8. Revise § 75.477 to read as follows:

§ 75.477 Shared responsibility payments.

(a) Payments for failure to maintain minimum essential health coverage. Any payments or assessments imposed on an individual or individuals pursuant to 26 U.S.C. 5000A(b) as a result of any failure to maintain minimum essential coverage as required by 26 U.S.C. 5000A(a) with respect to any period prior to January 1, 2019, are not allowable expenses under Federal awards from an HHS awarding agency.

(b) Payments for failure to offer health coverage to employees. Any payments or assessments imposed on an employer pursuant to 26 U.S.C. 4980H as a result of the employer's failure to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan are not allowable expenses under Federal awards from an HHS awarding agency.

[FR Doc. 2021–00207 Filed 1–7–21; 4:15 pm]

BILLING CODE 4150–24–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 20–36; FCC 20–156; FRS 17258]

Unlicensed White Space Device Operations in the Television Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission revises its rules to expand the ability of unlicensed white space devices to deliver wireless broadband services in rural areas and areas where fewer broadcast television stations are on the air. The Commission also modifies its rules to facilitate the development of new and innovative narrowband Internet of Things (IoT) devices in TV white spaces. Unlicensed white space devices operate in the VHF and UHF broadcast TV bands, a spectral region that has excellent propagation characteristics that are particularly attractive for delivering wireless communications services over long distances, varying terrain, and into and within buildings. The Commission adopts a number of changes to the white space device rules to spur continued growth of the white space ecosystem, especially for providing affordable broadband service to rural and unserved communities that can help close the digital divide, while at the same time protecting broadcast television stations in the band from harmful interference.

DATES: Effective February 11, 2021, except for amendatory instruction 4.f. for § 15.709(g)(1)(ii), which is delayed. The Commission will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Office of Engineering and Technology, 202–418–7506, *Hugh.VanTuyl@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, *Report and Order,* FCC 20–156, ET Docket No. 20–36, adopted October 27, 2020 and released October 28, 2020. The full text of this document is available for public inspection and can be downloaded at: *https://www.fcc.gov/document/fcc-increases-unlicensed-wireless-operations-tv-white-spaces-0* or by using the search function for ET Docket No. 20–36 on the Commission's ECFS web page at *www.fcc.gov/ecfs.*

Synopsis

1. The Commission adopts targeted changes to the part 15 unlicensed device rules for white space devices in the TV bands to provide improved broadband coverage that will benefit American consumers in rural and underserved areas as well as to provide improved access to narrowband IoT applications that will benefit consumers and businesses while still protecting broadcast television stations from harmful interference. Specifically, the Commission permits higher EIRP (''equivalent isotropically radiated power'') and higher antenna HAAT (''height above average terrain'') for fixed white space devices in ''less congested'' geographic areas. In addition, the Commission permits higher power mobile operation within ''geo-fenced'' areas in ''less congested'' areas. The Commission also adopts rule changes designed to facilitate the development of new and innovative narrowband IoT services.

2. The Commission declines at this time to allow higher power operation by white space devices operating within the service contour of an adjacent channel TV station or to change the methodology it uses to protect authorized services within the TV bands. The changes the Commission adopts apply only to white space devices operating on TV channels 2–35. The Commission excludes channel 36 from these changes based on the need to protect Wireless Medical Telemetry Service and Radio Astronomy Service operations on channel 37 (608–614 MHz).

Fixed White Space Devices in Rural Areas in the TV Bands

3. The Commission adopts rule changes for fixed white space devices that operate in the TV bands to enable improved broadband service in rural areas and underserved areas. Specifically, in ''less congested'' areas the Commission increases the maximum permissible radiated power from 10 to 16 watts EIRP, and increases the maximum permissible antenna HAAT from 250 meters to 500 meters. Because the higher power and increased antenna limits will expand the maximum transmission range of white space devices, they will be able to provide broadband service over larger areas. Given these revisions, the Commission is commensurately increasing the minimum required separation distances between white space devices operating at higher power/HAAT and protected services in the TV bands.

Higher Power Limits

4. Current rules permit fixed white space devices to operate on channels 2–36 with a 4 watts EIRP maximum in any area, provided the device meets minimum separation distances from co-channel and adjacent channel users in the band. In addition, a fixed white space device may operate with up to 10 watts EIRP on channels 2–35 in ''less congested'' areas, defined as those areas where at least half the television channels in the band of operation are not in use, provided the fixed device complies with larger separation distances from other users in the band. Fixed white space devices are limited to one-watt maximum conducted transmitter power, requiring devices with radiated power levels above one-watt EIRP to use an antenna with directional gain, *e.g.,* 6 dBi to produce 4 watts EIRP, and 10 dBi to produce 10 watts EIRP.

5. In the notice of proposed rulemaking (85 FR 18901, April 3, 2020), the Commission proposed to permit fixed devices to operate in the TV bands, up to channel 35, with a maximum 16 watts EIRP (42 dBm) in ''less congested'' areas. The Commission proposed this change to permit fixed devices to reach users at greater distances in rural and other less congested areas, and thus enable improved broadband coverage at lower cost. The Commission proposed to maintain the one-watt transmitter conducted power limit for fixed devices and require instead that the higher power be achieved by using higher gain, more highly directional antennas to improve spectrum efficiency. The Commission proposed that in cases where an antenna with a gain higher than 12 dBi is used, the transmitter power must be reduced below one watt by the amount in dB that the antenna gain exceeds 12 dBi, in order to ensure that the EIRP from a fixed device does not exceed 16 watts EIRP.

6. The Commission adopts its proposal to permit fixed white space devices to operate in the TV bands on channels 2–35 with a maximum 16 watts EIRP (42 dBm) in ''less congested'' areas. The record generally supports this action, and as the Commission noted in the NPRM, this change will permit fixed devices used in ''less congested'' areas (including rural areas) to reach users at greater distances, thus enabling improved broadband coverage at less cost in these hard-to-reach areas. In addition, higher power will enable signals to better penetrate foliage, buildings, and other obstacles, thus providing improved coverage at locations where there is not a direct line-of-sight to the transmitter. The Commission also adopts its related proposals to maintain the transmitter conducted power limit of one watt, and to require that when an antenna with a directional gain of greater than 12 dB is used, the transmitter power must be reduced by the amount in dB that the antenna gain exceeds 12 dBi, thus ensuring that the maximum EIRP does not exceed 16 watts (42 dBm).

7. The Commission limits higher power operation to ''less congested'' areas as proposed in the NPRM. This is consistent with the Commission's actions in other white spaces proceedings in which it initially took a cautious approach when adopting white space rules. This limitation will also minimize the likelihood of any potential harmful interference to authorized services in the TV bands since there are fewer authorized services in ''less congested,'' typically rural, areas. The Commission therefore declines requests by Broadband Connects America Coalition and Public Interest Spectrum Coalition to allow higher power in all areas, not just ''less congested'' ones.

8. Restricting higher power operations only to ''less congested'' areas will also limit the potential impact on users of unlicensed wireless microphones (which share use of unused TV channels but are not entitled to any interference protection from unlicensed white space devices). Higher power operation will be permitted only at locations where multiple vacant channels are available for use by varying types of unlicensed users. The Commission's decision to limit the areas where higher power operations may occur should alleviate the concerns of wireless microphone operators about the potential impact that higher power white space devices would have on wireless microphone operations.

9. The Commission is not increasing the maximum permissible conducted transmitter power as requested by some parties. NAB opposes this request, arguing that greater conducted power levels will inevitably lead to inadvertent or intentional overpowered operation and increased potential for interference. The Commission finds that increasing conducted transmitter power limits could encourage the use of lower gain (*i.e.,* less directional) antennas, resulting in less efficient spectrum use and also increasing the potential for causing harmful interference to licensees and protected users. Requiring the use of more highly directional antennas will ensure that less white space device energy is directed outside the main antenna beam than would be the case if higher radiated power were achieved using lower gain, less directional antennas.

Higher Antenna Height Above Average Terrain Limits

10. *HAAT limit.* The rules currently permit fixed white space devices to operate with a maximum 250-meter antenna HAAT. A white space database will not provide a list of available channels to a fixed white space device with an antenna HAAT that exceeds 250 meters, and such devices are not permitted to operate. The Commission adopted this requirement to limit the distance over which the fixed white space devices would transmit and thus limit the distance at which harmful interference to other TV band users could occur. The antenna HAAT limit also precludes white space devices from operating at certain locations, *e.g.,* those where the ground HAAT exceeds 250 meters. In the *White Spaces Order on Reconsideration,* the Commission upheld its previous decision to maintain a 250-meter antenna HAAT limit but stated that it might consider increasing the limit in the future if there were a more complete record addressing whether higher HAAT could be permitted without causing harmful interference.

11. In the NPRM, the Commission proposed to increase the maximum permissible antenna HAAT for fixed white space devices operating on channels 2–35 from 250 meters to 500 meters and sought comment on appropriate procedures that may be necessary to ensure that broadcast operations and other entities in the TV bands are protected from harmful interference. The Commission noted that increasing permissible antenna HAAT would improve broadband coverage in rural areas by enabling signals to reach greater distances and enable fixed white space devices to operate at locations where they are not currently permitted due to the 250-meter HAAT limit, such as existing towers located at higher ground elevations. To protect Wireless Medical Telemetry Service and radio astronomy operations on channel 37, the Commission did not propose to permit operation with a higher HAAT in the adjacent channel 36.

12. Several commenters—including Adaptrum, Broadband Connects America Coalition, Consumer Technology Association, Dynamic Spectrum Alliance, Microsoft, Public Interest Spectrum Coalition, RADWIN, RED Technologies, RTO Wireless, and the Wireless internet Service Providers Association (WISPA)—support the proposal to increase the maximum HAAT for fixed devices to 500 meters as a way of promoting expanded coverage. Broadband Connects America Coalition, Microsoft, Public Interest Spectrum Coalition, and Dynamic Spectrum Alliance also recommend allowing higher HAAT in all areas, not just ''less congested'' ones.

13. As proposed, the Commission increases the HAAT limit for fixed white space devices that operate in the TV bands on channels 2–35 from 250 to 500 meters in ''less congested'' areas. As with the Commission decision to increase the maximum power allowed for fixed white space devices, this change will permit fixed devices used in ''less congested,'' including rural, areas to reach users at greater distances, thus enabling improved broadband coverage at less cost in these hard-to-reach areas. This change will also increase the number of locations where fixed white space devices can operate since it will permit white space device operators to use sites where the HAAT of the ground exceeds 250 meters, which would have been precluded under the current rules. Many parties support this change.

14. While the Commission recognizes that some parties request that it not limit this higher HAAT to ''less congested'' areas, the Commission believes that a more cautious approach is appropriate at this time due to the significant increase in HAAT it is allowing and the potential for harmful interference at greater distances, as noted by Smith and Fisher. Therefore, consistent with the Commission's actions increasing the maximum power limit for fixed white space devices, the Commission is restricting operation of white space devices with an HAAT of greater than 250 meters to ''less congested'' areas where fewer authorized services and protected entities are expected to be operating in the TV bands. Relatedly, because there are expected to be fewer authorized services and protected entities operating in ''less congested'' areas, the Commission expects that the separation distances between white space devices and authorized services and protected entities to generally be greater. This combination of fewer potential interactions between white space devices and authorized services and protected entities and greater distance separation minimizes the potential for harmful interference to such services. Moreover, these white space devices are still required to operate pursuant to the channel availability and power levels provided by a white space database which is designed to ensure that harmful interference does not occur. While wireless microphone interests express concerns about the impact of increased HAAT on unlicensed wireless microphone operations, restricting higher HAAT operations to ''less congested'' areas will serve to limit any impact on users of unlicensed wireless microphones since by definition these areas have multiple vacant TV channels (*i.e.,* at least half) available for use by other types of unlicensed operations. The Commission also notes that the rules do not provide harmful interference protection between unlicensed devices. However, because fixed white space device locations are registered in a database, unlicensed wireless microphone users have the ability to check the database and avoid using channels where a higher probability of harmful interference is predicted. In addition to limiting the use of high HAAT to ''less congested'' areas, as discussed in more detail below, the Commission is increasing the required separation distances between white space devices operating with higher HAAT and co-channel and adjacent channel TV contours to further minimize the likelihood of harmful interference.

15. *Coordination procedure with licensees.* The Commission sought comment on whether to require a coordination procedure between white space device operators and broadcast licensees when fixed white space devices operate with an HAAT exceeding 250 meters. In particular, the Commission requested comment on Microsoft's suggested coordination procedure comprised of several steps, including notifying a white space database administrator, notifying broadcast licensees, operating on a test basis on a 30-day trial authorization, as well as a process to submit claims of harmful interference, investigate such

claims, and upon satisfactorily addressing any such claims, permit authorization on a permanent basis. The Commission expressed concern about the complexity of Microsoft's suggested coordination procedure and whether such a procedure is even warranted given the existing obligations of unlicensed devices to protect authorized radio services and other protected users. The Commission also sought comment on a simpler alternative to this procedure. Specifically, the Commission sought comment on whether a party wishing to operate a fixed white space device at an HAAT greater than 250 meters should be required to notify potentially affected, protected entities of their intended operation at least 48 hours in advance. The notification would include the prospective white space device operator's contact information, geographic coordinates of the antenna, antenna height above ground and average terrain, EIRP and channel(s) of operation. For notification purposes, a potentially affected TV station would be defined consistent with Microsoft's proposal, *i.e.,* a station would receive notification if its broadcast contour was within the separation distance corresponding to an assumed HAAT 50 meters higher than the actual deployment.

16. Adaptrum, Microsoft, and WISPA support the more streamlined coordination procedure with broadcasters that the Commission proposed in the NPRM. RADWIN, RED Technologies, and Dynamic Spectrum Alliance assert that no coordination procedure is necessary since unlicensed device operators already have an obligation to not interfere with authorized services, although RED Technologies states that it supports the Commission's proposed coordination procedure if one is required.

17. The Commission adopts the simpler procedures proposed in the NPRM, except it will require that notifications be made four calendar days in advance of operating at an increased HAAT, in response to concerns raised by some parties that 48 hours is not sufficient notice. The Commission requires this coordination procedure because white space devices operating at high HAAT have the potential to interfere with TV reception at large distances. Several parties support this simpler procedure, which will ensure that TV broadcasters are aware of new white space device operations with high HAAT that have the potential to affect broadcast operations at greater distances. This procedure provides an opportunity for TV broadcasters to work with white space system operators to address any concerns regarding potential harmful interference situations.

18. Parties operating white space devices on an unlicensed basis have an ongoing obligation under the rules to cease operation if harmful interference occurs to any authorized service. The complex multi-step procedure, including a 30-day trial period, initially suggested by Microsoft and supported by NAB is therefore unnecessary. For example, requiring a 30-day trial period appears unnecessary since the unlicensed device operating parameters (location, channel, power, and antenna height) during a trial period would be no different than those planned for normal operation of the device. In addition, parties who believes that an unlicensed device is causing harmful interference may report this occurrence to the Commission and unlicensed device operator at any time, so there appears to be no need to require a specific time period for reporting and investigating interference complaints. An unlicensed device that causes harmful interference to an authorized service must cease operation regardless of whether the interference was found during the first 30 days of operation or sometime later.

19. As proposed in the NPRM, the Commission requires that when a party plans to operate a fixed white space device with an HAAT greater than 250 meters, it must contact a white space database and identify all TV broadcast station contours that would be potentially affected by operation at the planned HAAT and EIRP. The Commission will define a potentially affected TV station as one where the protected service contour would be within the applicable separation distance if the white space device were operating at an HAAT of 50 meters above the planned HAAT at the proposed power level. The Commission will also require that the installing party notify each of these broadcast licensees and provide the geographic coordinates of the white space device, relevant technical parameters of the proposed deployment, and contact information. The Commission will permit this process to be automated through the white space database, with notifications sent to a TV station licensee's address of record with the Commission. The white space device may commence operations no earlier than four days after the notification.

20. The Commission believes that increasing the notification period from two to four days balances broadcasters' concerns regarding having sufficient time to review proposed white space device operations when operating at high HAATs and the need for white space device operators to begin providing service. Because these white space devices are restricted to ''less congested'' areas, the Commission does not expect broadcasters to be overloaded with notification requests. Also, because device installation must generally be planned in advance, the four-day requirement should not unduly delay new broadband service to rural and underserved areas.

21. The Commission also adopts the other elements of the coordination procedure proposed in the NPRM. Specifically, the Commission will require that, upon request, the installing party must provide each potentially affected licensee with information on the time periods of operations. This will help licensees investigate alleged harmful interference from white space devices. The Commission will also require that if the installing party seeks to modify its fixed operations by (i) increasing its power level, (ii) moving more than 100 meters horizontally from its location, or (iii) making an increase in the HAAT or EIRP of the white space device that results in an increase in the minimum required separation distances from co-channel or adjacent channel TV station contours, then it must conduct a new coordination. This requirement will ensure that TV broadcast licensees have the most current information on white space device operations. The Commission selects 100 meters as the minimum change in location for which a new coordination is required since the tables of separation distances from TV station contours are rounded to the nearest 0.1 kilometer (100 meters). The Commission see no benefits in requiring a new coordination for changes less than 100 meters.

22. The Commission declines to require parties planning to operate white space devices with an HAAT above 250 meters to notify public safety or wireless microphone licensees prior to commencing operation, as requested by NPSTC, Sennheiser, and Shure. Their services are very different from broadcast TV. In the case of broadcast TV, white space devices must protect a consumer receive-only service with very weak signal levels at long distances from the transmitter. By contrast, public safety licensees operate two-way voice and data systems, generally operate with much higher signal levels than those a consumer receives at the edge of a TV contour and could increase power if necessary. Wireless microphones also operate at significantly higher signal levels than those at the edge of a TV contour. In addition, the required

separation distances from licensed wireless microphones are much shorter than those for broadcast TV and are in fact shorter than the distances over which HAAT is calculated (3 to 16 kilometers). Therefore, the Commission believes it is unnecessary to notify wireless microphone licensees of nearby white space devices operating at high HAAT since the HAAT is undefined at the wireless microphone's location.

23. *Antenna height above ground.* The Commission previously increased the maximum permissible antenna height above ground from 30 meters to 100 meters in ''less congested'' areas in the *White Spaces Order on Reconsideration* (84 FR 34792, July 19, 2019). It took this action to improve wireless broadband service to Americans in rural and other underserved areas, and stated that a 100-meter antenna height above ground limit will benefit wireless broadband providers and users by permitting antennas to be mounted on towers or other structures at heights sufficient to clear intervening obstacles such as trees and hills that would attenuate the transmitted signal, thereby increasing the range at which the signal can be received.

24. In the NPRM, the Commission sought comment on whether to increase the antenna height above ground limit in addition to the HAAT limit, noting that antenna heights above ground and average terrain are directly related, in that any change to a device's antenna height above ground changes its HAAT by the same amount. The Commission further noted that limiting the antenna height above ground may also limit the maximum achievable HAAT in areas where the terrain is flat since in those areas the HAAT will be approximately the same as, or not significantly higher than, the antenna height above ground. This means that the antenna height above ground limit (30 or 100 meters) may preclude white space device operators from taking advantage of a higher HAAT limit, or even the current 250-meter limit. The Commission sought comment on whether it should increase the antenna height above ground limit or remove it completely and rely only on HAAT since the separation distances from protected services are based on HAAT. The Commission also sought comment on whether modified rules should apply across the entire U.S. or only in certain areas, such as ''less congested'' areas.

25. The Commission eliminates the requirement that a fixed device's antenna height above ground may not exceed 30 meters generally or 100 meters in ''less congested'' areas. Several parties support eliminating this requirement opining that it is unnecessary. As the Commission noted in the NPRM, the separation distances from protected services are based on the antenna HAAT, and the HAAT already takes into account the antenna height above ground. Therefore, there does not appear to be a need for a separate antenna height above ground limit, and limiting the height above ground can unnecessarily limit the maximum achievable HAAT. CP Communications and Sennheiser assert that the Commission has previously concluded that there is no general need to mount an antenna higher than the current limit to avoid shadowing by trees or other obstructions and that the current limit should therefore not be changed. The Commission acknowledges that it did decide in the 2015 *White Spaces Order* (80 FR 73044, Nov. 23, 2015) that there was no need for a higher antenna height above ground limit. However, upon further consideration the Commission reversed its decision and decided that there was a need to increase this limit in ''less congested'' areas in the 2019 *White Spaces Order on Reconsideration.* In that proceeding, the Commission stated ''that real world experience has sufficiently demonstrated that increasing the allowable height above ground would be beneficial for operators in less congested areas'' and that such a change would not increase the potential to cause harmful interference to other users. In that same *White Spaces Order on Reconsideration,* the Commission noted Sennheiser's concern about potential interference to wireless microphones from a higher height limit, but concluded that limiting higher antenna height to less congested areas, where there are many vacant channels, ensures there will be sufficient spectrum resources in these areas for multiple spectrum users. Finally, the Commission notes that no party provided specific information or analysis in response to the NPRM showing that there is actually a need to retain an antenna height above ground limit.

26. However, the Commission is not removing the 10-meter height above ground limit that applies to fixed white space devices operating within the protected contours of adjacent channel TV stations since the NPRM did not seek comment on changing that limit and no party indicated a need to do so. That height limit could be addressed at a future date.

Separation Distances

27. The Commission increases the minimum required separation distances between white space devices operating at higher power and HAAT and the following services in the TV bands: (1) Broadcast television services, including low power; (2) receive sites of TV translators, low power TV stations, Class A TV stations, Multichannel Video Programming Distributors (MVPDs), and Broadcast Auxiliary Service (BAS) facilities; (3) private land mobile radio services and commercial mobile radio services (PLMRS/CMRS), and (4) licensed low power auxiliary service (LPAS) stations, including licensed wireless microphones. The increases the Commission adopts will protect these services from potentially receiving harmful interference as a result of expanded white space device operating parameters.

28. *Broadcast television services, including low power.* In the NPRM, the Commission proposed to expand the existing tables of minimum separation distances from broadcast television protected contours (both co-channel and adjacent channel) to include additional entries for fixed white space device operation at up to 500 meters HAAT and 42 dBm EIRP. No party argued that the proposed separation distances from co-channel and adjacent channel TV station protected contours are inadequate to prevent interference to TV reception. However, several parties request that the Commission significantly change the methodology used to protect services in the TV bands. Dynamic Spectrum Alliance, WISPA, and Public Interest Spectrum Coalition argue that the Commission should determine white space channel availability using a terrain-based model, such as the Longley-Rice Irregular Terrain Model, which they assert will determine channel availability more accurately than the overly conservative current contour-based model. NAB and Sennheiser, however, oppose using the Longley-Rice model due to concerns about its accuracy in protecting TV receivers and because it may slow operation of the white space database.

29. The Commission adopts the updated tables of separation distances from TV contours proposed in the NPRM. As noted, NAB supported these proposed separation distances in its comments to Microsoft's petition. In addition, the Commission adds a row at the end of each table (co-channel and adjacent channel) to include separation distances for white space devices with HAAT values over 500 meters and up to 550 meters, which will be used only for the purpose of determining which TV broadcast stations must be notified when a white space device operates with an HAAT of more than 450 meters and up to 500 meters.

Fixed white space devices								
Antenna height above average terrain of unlicensed devices (meters)	Required separation in kilometers from co-channel digital or analog TV (full service or low power) protected contour *							
	16 dBm (40 mW)	20 dBm (100 mW)	24 dBm (250 mW)	28 dBm (625 mW)	32 dBm (1,600 mW)	36 dBm (4 W)	40 dBm (10 W)	42 dBm (16 W)
Less than 3	1.3	1.7	2.1	2.7	3.3	4.0	4.5	5.0
3–10	2.4	3.1	3.8	4.8	6.1	7.3	8.5	9.4
10–30	4.2	5.1	6.0	7.1	8.9	11.1	13.9	15.3
30–50	5.4	6.5	7.7	9.2	11.5	14.3	19.1	20.9
50–75	6.6	7.9	9.4	11.1	13.9	18.0	23.8	26.2
75–100	7.7	9.2	10.9	12.8	17.2	21.1	27.2	30.1
100–150	9.4	11.1	13.2	16.5	21.4	25.3	32.3	35.5
150–200	10.9	12.7	15.8	19.5	24.7	28.5	36.4	39.5
200–250	12.1	14.3	18.2	22.0	27.3	31.2	39.5	42.5
250–300	13.9	16.4	20.0	23.9	29.4	35.4	42.1	45.9
300–350	15.3	17.9	21.7	25.7	31.4	37.6	44.5	48.4
350–400	16.6	19.3	23.2	27.3	33.3	39.7	46.9	51.0
400–450	17.6	20.4	24.4	28.7	35.1	41.9	49.4	53.8
450–500	18.3	21.4	25.5	30.1	36.7	43.7	51.4	55.9
500–550	18.9	21.8	26.3	31.0	37.9	45.3	53.3	57.5

Fixed White space devices							
Antenna height above average terrain of unlicensed devices (meters)	Required separation in kilometers from adjacent channel digital or analog TV (full service or low power) protected contour*						
	20 dBm (100 mW)	24 dBm (250 mW)	28 dBm (625 mW)	32 dBm (1,600 mW)	36 dBm (4 W)	40 dBm (10 W)	42 dBm (16 W)
Less than 3	0.1	0.1	0.1	0.1	0.2	0.2	0.3
3–10	0.1	0.2	0.2	0.2	0.3	0.4	0.5
10–30	0.2	0.3	0.3	0.4	0.5	0.6	0.7
30–50	0.3	0.3	0.4	0.5	0.7	0.8	1.0
50–75	0.3	0.4	0.5	0.7	0.8	0.9	1.0
75–100	0.4	0.5	0.6	0.8	1.0	1.1	1.3
100–150	0.5	0.6	0.8	0.9	1.2	1.3	1.5
150–200	0.5	0.7	0.9	1.1	1.4	1.5	1.7
200–250	0.6	0.8	1.0	1.2	1.5	1.7	1.9
250–300	0.7	0.8	1.0	1.3	1.6	2.1	2.3
300–350	0.7	0.9	1.1	1.4	1.8	2.2	2.4
350–400	0.8	1.0	1.2	1.5	1.9	2.4	2.7
400–450	0.8	1.0	1.3	1.6	2.1	2.6	2.9
450–500	0.8	1.1	1.4	1.7	2.1	2.7	2.9
500–550	0.9	1.2	1.5	1.8	2.2	2.8	3.0

30. The Commission declines at this time to alter the current method of protecting TV stations (*i.e.,* minimum separation distances outside of defined protected contours) by changing to a terrain-based model as requested by some parties. The Commission did not propose to make this change in the NPRM. However, it recognizes parties' arguments that more sophisticated propagation models could possibly identify unused TV spectrum more accurately than the current contour-based model while still protecting TV service from harmful interference.

31. *Receive sites of TV translators, low power TV stations, Class A TV stations, MVPDs, and BAS facilities.* In the NPRM, the Commission proposed to modify the keyhole-shaped exclusion zone around receive sites where white space devices may not operate. For fixed devices operating with an EIRP of greater than 10 watts, the Commission proposed to increase the minimum required separation distance from the receive site from 10.2 kilometers to 16.6 kilometers co-channel, and from 2.5 kilometers to 3.5 kilometers adjacent channel, over an arc of more than ±30 degrees outside the main lobe of the receive antenna. The Commission proposed no changes to the minimum required separation distances from a receive site (80 kilometers co-channel and 20 kilometers adjacent channel) within a ±30 degrees arc in the main lobe of the receive antenna. No party argued that the proposed changes are insufficient to protect these receive sites from higher power white space device operation. As such, the Commission adopts its proposal.

32. *Private land mobile radio services and commercial mobile radio services* (*PLMRS/CMRS*). The Commission proposed to increase the minimum required separation distances between fixed white space devices operating at greater than 10 watts EIRP and PLMRS/CMRS operations, which include public safety operations, on TV channels 14–20 (the T-Band) in 11 major markets and in some additional areas under rule waivers. In the 11 markets where PLMRS/CMRS stations are permitted to operate in the TV bands, the Commission proposed to increase the minimum required separation distance beyond the defined city center coordinates from 136 kilometers to 139.2 kilometers co-channel, and from 131.5 kilometers to 132.2 kilometers adjacent channel. The Commission also proposed to increase the minimum separation distance from PLMRS/CMRS base stations operating under a waiver outside the 11 markets from 56 kilometers to 59.2 kilometers co-channel and from 51.3 kilometers to 52.2 kilometers adjacent channel. NPSTC argues that these proposed separation

distances need to be increased to reflect both the higher power and the higher HAAT proposed and provided a table of recommended separation distances.

33. The Commission will increase the proposed separation distances between PLMRS/CMRS operations and fixed white space devices operating with an HAAT of greater than 250 meters to properly reflect the increase in HAAT of up to 500 meters the Commission is permitting in ''less congested'' areas. No party objected to NPSTC's suggested separation distances, and the Commission believes that they will adequately protect PLMRS/CMRS operations from white space device operations at the higher power and HAAT levels the Commission is permitting. However, the Commission also recognizes Microsoft's suggestion that if the separation distances to protect PLMRS/CMRS are increased, they should be provided on a stepped basis, rather than based on the assumption that all white space devices operate at a maximum HAAT of 500 meters, to avoid needlessly making areas off limits to white space devices. The Commission agrees that this approach will maximize the amount of spectrum available for white space devices while protecting the PLMRS/CMRS from white space devices operating at higher power and antenna heights. The Commission will therefore specify protection distances for the PLMRS/CMRS for three power level ranges (*i.e.,* up to 4 watts EIRP, greater than 4 and up to 10 watts EIRP, and greater than 10 watts and up to 16 watts EIRP), and for two ranges of HAAT (*i.e.,* up to 250 meters, and greater than 250 meters and up to 500 meters). The Commission adopts the proposed separation distances for the lower HAAT range, and NPSTC's suggested separation distances for the higher HAAT range.

34. In the *T-Band NPRM* (85 FR 46047, July 31, 2020), the Commission sought comment on reallocating T-Band spectrum, assigning new licenses by auction for that spectrum in each of the 11 markets areas where the PLMRS/CMRS currently operates, and relocating ''public safety eligibles'' from this band. The Commission proposed rules that would allow for flexible use in the auctioned T-Band, including wireless use, and also proposed to permit broadcast operations. If the Commission adopts rules to allow new types of licensed services in the T-Band, white space devices would operate on a non-interference basis to them as they do with the current PLMRS/CMRS services in the bands. To the extent that any future services in the T-Band have a different potential for receiving interference than the PLMRS/CMRS, the Commission may need to adjust the minimum separation distances that white space devices must meet.

35. The following two tables show the minimum required separation distances from the 11 metropolitan areas where the PLMRS/CMRS can operate in the TV bands, and from PLMRS/CMRS operations authorized under waivers of the rules.

White space device transmitter power	Required separation in kilometers from the areas specified in § 90.303(a) of this chapter			
	Co-channel operation		Adjacent channel operation	
	Up to 250 meters HAAT	Greater than 250 meters HAAT	Up to 250 meters HAAT	Greater than 250 meters HAAT
Up to 4 watts EIRP	134.0	158.0	131.0	155.4
Greater than 4 watts and up to 10 watts EIRP	136.0	169.8	131.5	166.0
Greater than 10 watts and up to 16 watts EIRP	139.2	171.1	132.2	166.2

White space device transmitter power	Required separation in kilometers from operations authorized by waiver outside of the areas specified in § 90.303(a) of this chapter			
	Co-channel operation		Adjacent channel operation	
	Up to 250 meters HAAT	Greater than 250 meters HAAT	Up to 250 meters HAAT	Greater than 250 meters HAAT
Up to 4 watts EIRP	54.0	78.0	51.0	75.4
Greater than 4 watts and up to 10 watts EIRP	56.0	89.8	51.5	86.0
Greater than 10 watts and up to 16 watts EIRP	59.2	91.1	52.2	86.2

36. *LPAS stations, including licensed wireless microphones.* The Commission proposed an increase from one kilometer to 1.3 kilometers in the minimum required separation distance between fixed white space devices operating with greater than 10 watts EIRP and registered licensed wireless microphones. Sennheiser and Shure argue that the proposed separation distances to protect licensed wireless microphones should be increased, and they provided a table of recommended distances. Microsoft, however, argues that there is no need to increase the separation distances in the manner Sennheiser and Shure proposes.

37. The Commission increases the minimum required separation distance between fixed white space devices operating with a power level greater than 10 watts EIRP and licensed wireless microphones as proposed in the NPRM. This will provide the same level of protection to wireless microphones as the current rules based on a conservative free space propagation model.

38. The Commission declines to require even greater separation distances from wireless microphones as suggested by Sennheiser and Shure. The Commission first notes that no party challenged its 2015 decision to increase the maximum power for fixed white space devices to 10 watts in ''less congested'' areas without also increasing the one-kilometer separation distance from wireless microphones. The Commission also notes that it did not propose to increase the existing one-kilometer separation distance in the NPRM, and it believes that it would be inappropriate in these circumstances to take such an action based on this record. As a separate and independent basis for its decision, the Commission does not believe that Sennheiser's suggested increased separation distances for higher HAAT operations are appropriate. HAAT is defined and calculated along radials at a distance of three to 16 kilometers from a transmitter

site, *i.e.,* HAAT is not defined for distances less than three kilometers. The majority of Sennheiser's suggested separation distances are at distances of less than three kilometers, which is shorter than the distance (3–16 kilometers) over which HAAT is defined. Moreover, because higher HAAT operations are expected to be coupled with higher power operations to reach greater distances, the rules require use of a directional antenna which will both direct energy towards the horizon (rather than downward) and minimize the energy outside the main beam. This, in effect, will minimize white space signal strength at nearby wireless microphones. Thus, the Commission does not believe there would be any benefit to wireless microphones by increasing the separation distance requirements. In fact, the directional antenna requirement may actually provide a better operating environment for wireless microphones in such situations.

Definition of ''Less Congested'' Area

39. In the NPRM, the Commission sought comment on whether any changes are necessary to the definition of ''less congested'' area given that many of the proposals were limited to those areas. ''Less congested'' locations are typically rural or semi-rural areas and are defined as those where at least half of the TV channels within a device's particular TV sub-band of operation (*i.e.,* the low VHF (channels 2–6), the high VHF (channels 7–13), or the UHF (channels 14–36) band) are unused for broadcast and other protected services and are available for white space device use. The Commission sought comment on whether the current definition is still appropriate, and if not, what the appropriate metric for defining ''less congested'' area would be. In addition, because the number of vacant channels at a location can vary based on the EIRP and HAAT of a white space device, the Commission sought comment on whether it should define vacant channels depending on particular antenna height and power level.

40. The Commission will continue to define ''less congested'' areas as those where at least half of the TV channels in the bands that will continue to be allocated and assigned only for broadcast service are unused for broadcast and other protected services and available for white space device use. Areas where the spectrum is less congested generally correspond to rural and unserved areas that will benefit from improved broadband coverage, and the current definition provides a simple way for the white space database to identify these areas where the Commission permits higher power and antenna heights to improve broadband coverage. In addition, in areas where the spectrum is less congested, there is less likelihood that white space devices operating at higher power and antenna heights will cause interference to protected services in the TV band. The Commission agrees with wireless microphone operators that the current definition should be retained because spectrum is a scarce resource and it is therefore appropriate to base the definition on how much spectrum is available at a given location rather than population density.

41. Shure states that to the extent there are concerns about accounting for the number of vacant channels with variations in white space device EIRP and HAAT, the Commission can address this by defining vacant channels at a particular antenna height and power level. While no party suggested a specific white space device EIRP and HAAT that should be used in determining TV channel availability, the Commission notes that it stated in the 2015 *White Spaces Order* that vacant channels would be defined as those available for fixed white space devices operating with an EIRP of 40 milliwatts and an HAAT of 3 meters, although it did not codify this decision. Since no party suggested specific criteria for determining channel availability in response to the NPRM, the Commission retains and codifies its 2015 decision by specifying the power and antenna heights used to determine TV channel availability in the definition of ''less congested'' area in § 15.703.

42. In addition, the Commission clarifies the definition of ''less congested'' area by codifying its decision in the 2015 *White Spaces Order* that ''less congested'' areas are calculated by the white space database in the three TV bands separately: The low VHF band (channels 2–6), the high VHF band (channels 7–13) and the UHF band (channels 14–36). The Commission declines to significantly modify the definition of ''less congested'' areas as suggested by some parties. For the reasons described above, the Commission finds that the current definition, with certain modifications, is the appropriate metric for determining which areas are ''less congested''. The Commission also declines Dynamic Spectrum Alliance's request to modify the definition of ''less congested'' area to consider all TV bands together (low VHF, high VHF and UHF) in determining vacant channel availability and whether an area qualifies as less congested. The higher frequency UHF TV band (470–608 MHz) is more heavily used by TV stations, white space devices, and wireless microphones than the lower frequency VHF TV bands (54–72 MHz, 76–88 MHz and 174–216 MHz) due to factors such as the shorter radio wavelengths and smaller required antennas. Moreover, because the TV bands are not contiguous, determining ''less congested'' areas based on considering all TV bands together may not produce a result that is representative of the actual spectrum congestion in the specific band where a white space device will operate. Thus, the Commission believes it is appropriate to continue determining ''less congested'' areas on a band-by-band approach, rather than by considering all TV bands together.

Higher Power Mobile Operation Within ''Geo-Fenced'' Areas

43. The white space rules permit two general classes of devices: Fixed and personal/portable, with personal/portable devices further subdivided into two types: Mode I and Mode II. Fixed and Mode II personal/portable devices must incorporate a geo-location capability to determine their coordinates and access a database to determine the available channels at those specific coordinates. The current rules permit fixed white space devices to operate with up to 4 watts EIRP generally, and up to 10 watts in ''less congested'' areas, which the Commission is increasing to 16 watts as discussed above. Personal/portable devices may operate with a maximum EIRP of 100 milliwatts. A Mode II personal/portable device must re-check its coordinates every 60 seconds and contact the database for an updated list of available channels if it changes location by more than 100 meters. Additionally, Mode II personal/portable devices may load channel availability information for multiple locations from the white space database and use that information to define a geographic area within which it can operate on a mobile basis (on the same available channels at all locations within that geographic area); the device must contact the database again, however, if it moves beyond the boundary of the area where the channel availability information is valid. No device manufacturers or database systems have yet implemented this provision.

44. In the NPRM, the Commission proposed to allow white space devices to operate on TV channels 2–35 on mobile platforms within geo-fenced areas at higher power levels than the rules currently permit for personal/

portable devices, and proposed to limit such operations to ''less congested'' areas to limit their potential for causing harmful interference. The Commission proposed to permit a higher power Mode II white space device installed on a movable platform to load channel availability information for multiple locations in the vicinity of its current location and to use that information to define a geo-fenced area within which it can operate on the same available channels at all locations. The Commission also proposed to require that the white space device's location be checked at least once every 60 seconds while in operation (unless in ''sleep'' mode). The Commission further proposed that a device may not use channel availability information for multiple locations if or when it moves closer than 1.6 kilometers to the boundary of the geo-fenced area in which the device operates, or at any point outside that boundary; this requirement would ensure that a device moving at 60 miles per hour (1.6 kilometers per minute) does not cross outside the boundary between device re-checks of its location. Additionally, the Commission proposed to prohibit operation on board aircraft or satellites to limit the range at which harmful interference could occur.

45. The Commission sought comment on a number of equipment issues for higher power geo-fenced mobile operations, including whether to permit fixed devices to operate on mobile platforms, the antenna and equipment authorization requirements that should apply, and whether the Commission should establish a new class of higher power mobile device to distinguish such devices from personal/portable white space devices. The Commission also sought comment on other requirements for higher power mobile white space devices, including whether to place limitations on the size of the area over which a geo-fenced mobile device could operate, the appropriate maximum power, whether there is a need to specify how information on an area will be provided to the white space database, and any other safeguards needed to ensure that higher power mobile devices do not cause harmful interference to protected operations. The Commission further sought comment on whether there is a need to prohibit operation on other mobile platforms such as trains and boats.

46. The Commission permits the operation of higher power mobile devices within defined geo-fenced areas in ''less congested'' areas, as proposed in the NPRM. A number of parties support this change, stating that it will benefit Americans in rural and underserved areas by permitting new agricultural applications and enabling broadband communications with moving vehicles such as school buses. The Commission implements this change by establishing a new class of higher power mobile white space device, rather than by modifying the Mode II personal/portable device rules as proposed in the NPRM and supported by Shure and Sennheiser, or by allowing fixed devices to operate on mobile platforms as suggested by Microsoft in its petition and supported by RED Technologies. The Commission agrees with commenters that establishing a new class of mobile white space device would be simpler than modifying the Mode II personal/portable device rules to permit higher power operation, and that this approach is more congruous than an approach providing for a fixed device on mobile platform as initially suggested by Microsoft. The Commission uses the term ''mobile device'' to refer to this class of white space devices to distinguish them from personal/portable white space devices. As suggested by Shure, the Commission is clearly indicating in the rules that mobile devices may operate only in ''less congested'' areas by adding this requirement to the definition of ''mobile white space device''.

47. The Commission permits mobile devices to operate at the same radiated power level permitted for fixed devices in ''less congested'' areas, *i.e.,* up to 16 watts EIRP. This power level will enable the provision of new types of mobile broadband services in rural and other unserved areas. Because the Commission is permitting power levels that are the same as fixed devices, it believes that many of the technical requirements that apply to fixed devices are also appropriate for the new class of mobile white space devices. Accordingly, the Commission requires mobile devices to comply with the same transmitter power limits as fixed devices, including maximum in-band power, adjacent channel emissions, power spectral density, and out-of-band emissions, as well as require them to meet the same antenna gain requirements as fixed devices. Under these requirements, a mobile device will be permitted to operate with a maximum transmitter power output of one watt, and can use an antenna with a gain of up to 12 dBi to achieve an EIRP of 16 watts. If the maximum gain of the antenna exceeds 12 dBi, then the transmitter power must be reduced by the same amount in dB that the antenna gain exceeds 12 dBi. Because mobile devices change direction as they travel, the Commission permits the use of electrically steerable directional antennas to help enable mobile devices to remain in contact with their associated base unit or another mobile device.

48. The white space database will determine channel availability over a defined geo-fenced area where a mobile device will operate. In order to provide flexibility for manufacturers and mobile device operators, the Commission does not specify how the boundaries of an area are entered into and stored within the white space database or a mobile device. The Commission does, however, require that both the white space database and mobile device contain the same boundary information. This requirement will ensure that mobile devices operate only where the database has determined available channels. Because mobile devices will operate at the same maximum power level as fixed devices, the Commission requires that the database use the same minimum required separation distances from protected services in the TV bands as fixed devices in determining available channels. This includes all protected services, including the PLMRS/CMRS, as noted by NPSTC. For simplicity of operation, the Commission requires that any channel identified by the database as available within the geo-fenced area must be available at the same power level over an entire geo-fenced area.

49. The Commission recognizes that there are some complexities in determining the available channels over a contiguous geo-fenced area. The current white space database system determines channel availability at discrete locations since it was designed to implement rules that require devices to determine their geographic coordinates at a single location and submit those coordinates to the database when requesting a list of available channels. The database system would have to use a modified methodology for determining available channels over a geo-fenced area. For example, it could divide the area into cells, *e.g.,* 100 by 100-meters, and determine channel availability within each cell. The Commission will not prescribe the exact method that database administrators must use to determine channel availability within geo-fenced areas, but mobile white space devices must comply with the minimum required separation distances from protected services at any point within a geo-fenced area. The white space database will have to consider a mobile device's HAAT in determining available channels and consider any variation in

HAAT over a geo-fenced area to determine whether a channel is available over the entire area. To simplify calculations, the Commission permits the database to use only the highest, *i.e.,* worst case, HAAT within a geo-fenced area in determining channel availability rather than having to calculate the HAAT at each location. The Commission sees no reason to limit the size of the geo-fenced area since mobile devices will only be permitted to operate in areas where the spectrum is ''less congested.'' The requirement that a channel must be available over an entire geo-fenced area will tend to preclude extremely large areas since there is less likelihood that the same TV channel will be vacant over a very large contiguous area.

50. Because a mobile device must be able to accurately determine its location, the Commission requires that a mobile device comply with similar geo-location requirements to fixed devices. Specifically, the Commission requires that a mobile device incorporate a geo-location capability that is capable of determining its location and geo-location uncertainty (expressed in meters), with a confidence level of 95%. To provide flexibility in the design of mobile devices, the Commission permits the use of a remote geo-location unit as the rules permit for fixed devices, provided the remote unit is located on the same moveable platform as the mobile device, *e.g.,* bus or tractor. To ensure that a mobile device is capable of determining whether it is within a geo-fenced area, the Commission requires that a mobile device have the ability to store information on the boundaries of a geo-fenced area in which it will operate.

51. While the Commission proposed in the NPRM to require a mobile white space device operating within a geo-fenced area to re-check its geographic coordinates at least once every 60 seconds and to cease operation if it travels closer than 1.6 kilometers to the edge of the geo-fenced area or is outside the boundary of the area, the Commission agrees with Shure that this proposed distance should be slightly increased to account for vehicles traveling at allowable highway speed limits. The proposed buffer requirement was intended to ensure that a mobile white space device traveling at 60 miles per hour (1.6 kilometers per minute) does not cross outside the geo-fenced area between location checks. However, the Commission recognizes Shure's argument that many vehicles travel faster than this speed. The Commission disagrees with Shure's contention that a 2.7-kilometer buffer is necessary because that corresponds to an atypical vehicle speed of more than 100 miles per hour, but note that Shure believes an increase in the buffer zone size to 1.9 kilometers (corresponding to a vehicle speed of just over 70 miles per hour) would be an improvement over the Commission's proposal of 1.6 kilometers. Accordingly, the Commission adopts the proposed location re-check interval of 60 seconds, but increases the size of the geo-fenced area buffer from the proposed 1.6 kilometers to 1.9 kilometers.

52. The Commission limits operation of mobile devices to ''less congested'' areas as proposed in the NPRM. The Commission believes that the primary applications for mobile devices will be in more rural areas, and limiting the new class of higher power mobile device to areas with more available spectrum will limit the likelihood of interference to authorized services in the TV bands as well as enable all unlicensed devices, including other white space devices and unlicensed wireless microphones, to have an opportunity to access spectrum in the TV bands. To limit the distance at which mobile devices could cause interference to authorized services, the Commission prohibits their operation on satellites and aircraft as proposed in the NPRM. This prohibition of operation on aircraft will include unmanned aerial vehicles (*e.g.,* drones).

53. The Commission sees no reason to specially limit the maximum height above ground level for mobile devices or to preclude operation on cranes or bucket trucks as suggested by NAB and others. The Commission requires a mobile device to report its height above ground to the white space database as is required for fixed devices, and the database will take the antenna height above ground into consideration when calculating a mobile device's HAAT and the available channels within a geo-fenced area. Thus, a higher antenna height above ground will not increase the likelihood of interference to authorized services as parties suggest. The Commissions also sees no reason to make any special requirements regarding the directivity of mobile device antennas, *i.e.,* larger buffer zones, as suggested by Shure. The required size of the buffer zone is a function of a mobile device's speed and re-check interval and is independent of the power level used.

Narrowband IoT Operations

54. Under current rules, fixed white space devices operating with 4 watts or greater EIRP must comply with a power spectral density (PSD) limit of 12.6 dBm per 100 kilohertz, which limits total conducted power within any 6-megahertz television channel to 30 dBm. The PSD limit is proportionally lower for devices operating at lower EIRP levels. The Commission established PSD limits to prevent multiple white space devices from simultaneously operating at the maximum allowable power with transmit bandwidths of less than six megahertz within a single television channel, which would result in a total transmitted power within that channel significantly greater than the limit. The PSD limits were calculated based upon a single white space device spreading its energy uniformly across a 6-megahertz television channel bandwidth, excluding 250 kilohertz near each channel edge for roll-off, and serve to limit the maximum power of white space devices with bandwidths of less than 6-megahertz.

55. In the NPRM, the Commission proposed changes to the white space rules to facilitate narrowband (*e.g.,* 100 kilohertz) IoT device deployment on TV channels 2–35. The proposed rules would permit white space devices to operate with narrowband carriers rather than having to spread all of their energy across a six megahertz channel, and are designed to ensure that narrowband white space devices have no greater interference potential than wider bandwidth devices operating under the current rules. Specifically, the Commission proposed to define a ''narrowband white space device'' as a type of fixed or personal/portable white space device operating in a bandwidth of no greater than 100 kilohertz. The Commission also proposed that narrowband white space devices be client devices that communicate with a fixed or Mode II master device that contacts the white space database to obtain a list of available channels and operating powers at its location. In this connection, the Commission also sought comment on whether the proposed definition for narrowband white space device is appropriate for the intended IoT applications.

56. The Commission proposed to permit narrowband white space devices to operate with the same conducted PSD limit, adjacent channel emission limits, and antenna gain requirements as 4-watt fixed devices. To ensure that the total energy in a single TV channel does not cause harmful interference, the Commission proposed to limit each transmitter to transmissions totaling no more than 10 seconds per hour. The Commission further proposed to require narrowband devices to use a channel plan that limits total transmitted power

in a six-megahertz channel to no higher than the existing limits for a four-watt EIRP broadband white space device. Although the Commission declined to propose requiring narrowband devices to use a listen-before-talk mechanism, it nonetheless sought comment on whether one would be necessary to prevent harmful interference to protected services in the TV bands. The Commission also sought comment on whether there is a need to increase the minimum separation distances from co-channel and adjacent channel TV station contours as the rules require for personal/portable devices operating as clients.

57. The Commission modifies the rules to facilitate the development of new and innovative narrowband IoT devices in the TV bands. Specifically, the Commission establishes a new class of ''narrowband white space device,'' which it defines as a type of fixed or personal/portable white space device operating in a bandwidth of no greater than 100 kilohertz. A number of parties support the proposals to modify the white space rules to permit narrowband IoT operations. In response to specific comment sought on the definition of a narrowband white space device, the Commission expands that definition to include master devices as well as clients. This change is suggested by Dynamic Spectrum Alliance and Microsoft to enable greater flexibility in the design of IoT networks. No party opposed this change. A narrowband device that operates as a client must communicate with a master device that contacts the white space database to obtain a list of available channels and operating powers at its location, while a narrowband device that acts as a master must incorporate a geo-location mechanism and be capable of obtaining lists of available channels and operating powers from the white space database. The Commission permits all types of white space devices that incorporate geo-location and have database access (fixed, Mode II, mobile, and narrowband) to act as a master device to a narrowband client device. TV band frequencies are better able to penetrate foliage and other obstacles than higher frequencies, so this action will permit the development of IoT devices with improved transmission range.

58. As proposed in the NPRM, the Commission permits narrowband white space devices to operate with a conducted PSD of up to 12.6 dBm/100 kilohertz, which is the same maximum level permitted for fixed devices, and require narrowband devices to comply with the same maximum antenna gain requirements as fixed devices, *i.e.,* a maximum antenna gain of 6 dBi with no reduction in transmitter conducted power, or higher antenna gain if the conducted power is proportionally reduced. The Commission also requires narrowband white space devices to comply with an emission limit of −42.8 dBm into adjacent channels, *i.e.,* outside of the 6-megahertz channel in which they operate. These requirements will permit a white space device to operate with a single or several narrowband carriers rather than having to spread all of its energy across a six megahertz channel while ensuring that narrowband white space devices have no greater interference potential than wider bandwidth devices operating under the current rules. To prevent narrowband devices from being used for data intensive applications and to limit the potential for these devices to cause harmful interference, the Commission limits transmissions on each narrowband channel to a total of 36 seconds per hour, as suggested by Dynamic Spectrum Alliance and Microsoft, *i.e.,* a 1% duty cycle.

59. The Commission will not, however, increase this transmission time limit for narrowband devices to allow for signaling overhead as suggested by Microsoft. Microsoft has not indicated how much additional transmission time would be necessary for this overhead. Further, to the extent that a narrowband device needs additional transmission time for functions such as contacting a white space database to obtain a list of available channels, there appear to be ways to perform these functions while still complying with the 36 second per hour per narrowband channel limit. For example, under the rules the Commission is adopting there will be up to 55 narrowband channels within one six-megahertz TV channel, and a device could use one or more of these narrowband channels for signaling purposes. In addition, any overhead associated with contacting the database could be accomplished by other means, such as a non-narrowband white space channel, Wi-Fi, a fixed link, or a fiber connection.

60. The Commission also requires narrowband devices to use the proposed channel plan that limits total transmitted power in a six-megahertz channel to no higher than the existing limits for a four-watt EIRP broadband white space device. This channel plan requires narrowband white space devices to operate at least 250 kilohertz from the edge of a six-megahertz TV channel, unless the adjacent channel is also vacant, and requires narrowband white space devices to operate only on channels centered at integral multiples of 100 kilohertz between the 250 kilohertz guard bands. The net effect of these requirements is that narrowband devices will be permitted to operate within 55 possible 100-kilohertz channels in the center 5.5 megahertz of each six-megahertz channel. Even in the event that all 55 narrowband channels within a six-megahertz channel were occupied simultaneously by devices transmitting at maximum power, the total conducted and radiated power within that six-megahertz channel would be no greater than for a fixed device operating with one-watt conducted power and 4 watts EIRP. Because of the transmission time limit of thirty-six seconds per hour (a one-percent duty cycle), the interference potential of these narrowband white space devices will actually be significantly less than four-watt EIRP fixed devices in most cases since it is extremely unlikely that devices would transmit at maximum power on all 55 narrowband channels simultaneously, and even if they did, that would occur for no more than 36 seconds per hour.

61. The Commission is not limiting operation of narrowband devices to ''less congested'' areas as suggested by wireless microphone interests. Since narrowband devices will operate under control of a master device that accesses a white space database to determine available channels at its location, narrowband devices will not be permitted to operate on the channels at locations where registered licensed wireless microphones operate. Additionally, unlicensed wireless microphones and white space devices must already share spectrum with fixed white space devices operating at up to 4 watts EIRP in areas that do not meet the definition of ''less congested.'' Even under worst-case conditions, narrowband devices will have no greater interference potential than four-watt fixed devices and will have a significantly lower interference potential in the vast majority of cases. For these reasons, the Commission does not agree with RADWIN that a proliferation of narrowband devices will prevent spectrum use for internet access.

62. The Commission declines to allow a greater transmission duty cycle for narrowband devices used only by public safety entities as requested by NPSTC. While NPSTC does not indicate how much it wants the limit increased, the higher transmit duty cycle the Commission is permitting will benefit all narrowband device applications, including those used by public safety entities. Allowing different technical

requirements for public safety entities would complicate equipment certification and would be difficult to enforce since there could be multiple versions of the same device, some of which could be legally used only by specific types of entities. It is not clear how the Commission could ensure that devices approved for use only by public safety entities would be marketed to, and operated by, only those entities.

Higher Power on Adjacent Channels

63. White space devices must generally operate outside the protected contours of adjacent channel TV stations because a strong signal on an adjacent channel can cause interference to the reception of a channel being viewed. The general requirement that white space devices avoid operation within the protected contours of a station operating on an adjacent channel means that, as a practical matter, a white space device may operate only at locations where there are three contiguous vacant channels, *i.e.,* the channel used by the white space device plus both adjacent channels. The Commission's rules do, however, provide two exceptions that permit white space device operations at lower power levels when adjacent channels are occupied, based upon the shorter distances at which interference to adjacent channel TV stations could occur. First, both fixed and personal/portable white space devices may operate at up to 40 milliwatts EIRP at locations where both adjacent channels are occupied. Second, fixed white space devices may operate within the protected contour of adjacent channel TV stations with a power level of 100 milliwatts EIRP when the white space device operates in a six-megahertz band centered on the boundary of two contiguous vacant channels, *i.e.,* 50 milliwatts EIRP within a three-megahertz band in each channel.

64. In the NPRM, the Commission sought comment on whether it could permit white space devices to operate at higher power levels than the rules currently permit when adjacent TV channels are occupied. In particular, the Commission sought comment on methods that could be used to determine the locations where it could permit higher power unlicensed operations on adjacent channels, and if so, what specific technical parameters would need to be considered or specified in such calculations. The Commission also sought comment on whether there is any information available on adjacent channel selectivity and interference rejection capabilities of next-generation TV receivers, such as manufacturers' specifications or actual measurement results, and whether there is any indication that next-generation TV receivers will have better adjacent channel interference rejection than current receivers.

65. The Commission does not increase the maximum permissible power for white space devices operating inside the protected contour of adjacent channel TV stations at this time. As an initial matter, the Commission does not at this time have sufficient evidence in the record on which to change the manner of protecting broadcast services to a terrain-based model, as Microsoft and others suggest. Microsoft argues that the Commission should permit white space device operation within the protected contour of adjacent channel TV stations at higher power levels than the rules currently permit. In so doing, Microsoft supplied a test report on the results of laboratory measurements of current model ATSC 1.0 TV receivers and next generation ATSC 3.0 TV receivers that it claims shows higher power adjacent channel operation is possible because these TV receivers have better selectivity than the Commission assumed in developing the current power limits and because the use of terrain-based propagation models (*e.g.,* Longley-Rice) can provide a more accurate determination of where higher power adjacent channel white space device operation can be permitted without causing harmful interference. Microsoft also supplied a test report on field measurements conducted with Ark Multicasting, a lower power TV network operator, that it claims validates its laboratory measurements and demonstrates that for the given parameters (*e.g.,* fixed white space device EIRP and antenna pattern, DTV transmitter characteristics, adjacent channel selectivity of the newer model TV receivers with integral display tested, and distance between the DTV transmitter and the TV receiver) a white space device can operate within the protected contour on a first adjacent channel at higher powers than currently allowed.

66. But while data supplied by Microsoft shows that some newer model TV receivers have better adjacent channel selectivity than the −33 dB D/U ratio the Commission assumed when it adopted the power limits for white space devices operating inside the protected contour of adjacent channel TV stations, NAB disputes Microsoft's analysis, arguing that the TV receivers it used are not representative of the currently installed consumer base. Microsoft's report shows that the average adjacent channel selectivity of tested ATSC 1.0 receivers is better than the value the Commission assumed, and that ATSC 3.0 receivers have a selectivity 10 dB better than that of ATSC 1.0 receivers at lower order modulations and similar to ATSC 1.0 receivers at higher order modulations. In addition, the report shows that receiver adjacent channel selectivity improves by 5.7 dB on average when a white space device operates at a 3 megahertz offset from a TV channel edge.

67. The improved receiver selectivity shown in Microsoft's testing could allow white space devices to operate within adjacent channel protected contours at higher power levels than the rules currently permit without increasing the potential for interference to TV reception. The Commission recognizes, however, NAB's concern that Microsoft's testing was performed with a limited number of TV receivers which may not be representative of the currently installed base. The Commission encourages Microsoft and other parties to continue studies and white space device and TV receiver testing to determine whether or how the Commission can permit higher power for white space devices without causing harmful interference to TV reception. The Commission welcomes interested parties to file a petition in the future when this work has been done.

Other Matters

68. *Directional antennas.* Broadband Connects America Coalition, Public Interest Spectrum Coalition, and WISPA request that the white space database be allowed to consider the directivity of white space device transmit antennas in determining channel availability for white space devices. NAB opposes this request, arguing that there is no way of determining whether a directional antenna has been installed properly without hiring a licensed land-surveyor, which it believes is unlikely to occur. The Commission previously considered and rejected requests to consider white space device transmit antenna directivity in the *White Spaces Order on Reconsideration* and did not make any proposals on this issue in the NPRM. The Commission declines to take any action on these requests.

69. *Wireless microphone issues.* Wireless microphone interests request that the Commission not take action to change the rules for white space devices until it acts on the outstanding proceeding (GN Docket No. 14–166) that proposed to expand the eligibility for obtaining a part 74 license for wireless microphones and until the Commission addresses difficulties with the white

space database in registering licensed wireless microphones.

70. The Commission declines to defer action in this proceeding pending a decision in GN Docket No. 14–166 on expanding part 74 licensing eligibility. The Commission actions in this proceeding will benefit Americans in rural and underserved areas by enabling improved broadband access. The Commission does not wish to delay these public benefits until some unspecified point in the future. Further, the Commission decision here will not adversely impact either licensed or unlicensed wireless microphone operations. For example, the Commission is limiting higher power and antenna height operations, as well as higher power geo-fenced operations, to areas where the spectrum is less congested, which will limit the impact on wireless microphones that operate in the TV bands. Moreover, because white space devices operate on an unlicensed basis, they are obligated by the rules to protect licensed wireless microphone operations; unlicensed wireless microphones operate on a co-equal basis with white space devices. However, if the Commission decides to expand wireless microphone licensing eligibility in GN Docket No. 14–166, any newly licensed wireless microphone operation would receive the same protection from harmful interference, even if white space device operators need to adjust their systems. Thus, the actions the Commission takes in this *Report and Order* do not alter the relationship between wireless microphones and white space devices, including the obligation for unlicensed devices to protect licensed wireless microphones.

71. The Commission appreciates parties bringing concerns about the white space database to its attention, and is working with the database administrators to address them. The Commission notes that a new administrator, RED Technologies, has taken over operation of the Nominet white space database. However, the Commission believes that the concerns parties raised, *e.g.,* improvements to the licensed wireless microphone registration procedure, can be addressed without a need to delay action in this proceeding.

Procedural Matters

72. *Paperwork Reduction Act Analysis.* This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

73. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) regarding the possible significant economic impact on small entities of the policies and rules adopted in this *Report and Order,* which the full FRFA is found in Appendix C at *https://www.fcc.gov/document/fcc-increases-unlicensed-wireless-operations-tv-white-spaces-0.* The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the *Report and Order,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

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

Ordering Clauses

75. *It is ordered,* pursuant to sections 4(i), 201, 302, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 201, 302a, 303, that this *Report and Order* is hereby *adopted.*

76. *It is further ordered* that the amendments of the Commission's rules as set forth below *are adopted*, effective thirty days from the date of publication in the **Federal Register**, except for the amendment to § 15.709(g)(1)(ii), which contains new or modified information collection requirements that require approval by the OMB under the PRA and *will become effective* after the Commission publishes a document in the **Federal Register** announcing such approval and the relevant effective date.

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

78. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order,* including the Final Regulatory Flexibility Analyses, to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 15

Communications equipment, Radio, Reporting and recordkeeping requirement.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 15 as follows:

PART 15—RADIO FREQUENCY DEVICES

■ 1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 2. Amend § 15.703 by:

■ a. Removing the paragraph designations;

■ b. Adding a definition for ''Geo-fenced area'' in alphabetical order;

■ c. Revising the definition of ''Less congested area'';

■ d. Adding definitions for ''Mobile white space device'' and ''Narrowband white space device in alphabetical order.

The additions and revision read as follows:

§ 15.703 Definitions.

* * * * *

Geo-fenced area. A defined geographic area over which the white space database has determined the set of available channels.

* * * * *

Less congested area. Geographic areas where at least half of the TV channels within a specific TV band are unused for broadcast and other protected services and available for white space device use. Less congested areas are determined separately for each TV

band—the low VHF band (channels 2–6), the high VHF band (channels 7–13) and the UHF band (channels 14–36); *i.e.,* one, two or all three bands or any combination could qualify as less congested. White space devices may only operate at the levels permitted for less congested areas within the area and the specific TV band(s) that qualify as a less congested area. For the purpose of this definition, a channel is considered available for white space device use if it is available for fixed devices operating with 40 milliwatts EIRP at 3 meters HAAT. Less congested areas in the UHF TV band are also considered to be less congested areas in the 600 MHz service band.

Mobile white space device. A white space device that transmits and/or receives radiocommunication signals on available channels within a defined geo-fenced area. A mobile white space device uses an incorporated geo-location capability to determine its location with respect to the boundaries of the defined area. A mobile white space device may operate only in less congested areas.

* * * * *

Narrowband white space device. A fixed or personal/portable white space device operating in a bandwidth of no greater than 100 kilohertz.

* * * * *

■ 3. Revise § 15.707 to read as follows:

§ 15.707 Permissible channels of operation.

(a)(1) *470–614 MHz band.* Fixed and personal/portable white space devices are permitted to operate on available channels in the frequency bands 470–614 MHz (TV channels 14–37), subject to the interference protection requirements in §§ 15.711 and 15.712.

(2) *600 MHz duplex gap.* Fixed and personal/portable white space devices may operate in the 657–663 MHz segment of the 600 MHz duplex gap.

(3) *600 MHz service band.* Fixed and personal/portable white space devices may operate on frequencies in the bands 617–652 MHz and 663–698 MHz in areas where 600 MHz band licensees have not commenced operations, as defined in § 27.4 of this chapter.

(4) *Channel 37 guard band.* White space devices are not permitted to operate in the band 614–617 MHz.

(b) Only mobile white space devices and fixed white space devices that communicate only with other fixed or mobile white space devices may operate on available channels in the bands 54–72 MHz (TV channels 2–4), 76–88 MHz (TV channels 5 and 6), and 174–216 MHz (TV channels 7–13), subject to the interference protection requirements in §§ 15.711 and 15.712.

(c) Narrowband and mobile white space devices may only operate on frequencies below 602 MHz.

■ 4. Amend § 15.709 by:
■ a. Revising paragraphs (a)(2)(i);
■ b. Adding paragraph (a)(5);
■ c. Revising paragraph (b)(1);
■ d. Adding paragraph (b)(4);
■ e. Revising paragraphs (c)(2) and (g)(1)(i); and
■ f. Delayed indefinitely, revising paragraph (g)(1)(ii).

The additions and revisions read as follows:

§ 15.709 General technical requirements.

(a) * * *

(2) * * *

(i)(A) Fixed devices in the TV bands below 602 MHz: Up to 4 W (36 dBm) EIRP, and up to 16 W (42 dBm) EIRP in less congested areas. Fixed devices in the 602–608 MHz band may operate with up to 4 W (36 dBm) EIRP.

(B) Fixed devices in the 600 MHz service bands above 620 MHz: Up to 4 W (36 dBm) EIRP, and up to 10 W (40 dBm) EIRP in less congested areas. Fixed devices that operate in any portion of the 614–620 MHz band may operate with up to 4 W (36 dBm) EIRP.

* * * * *

(5) *Mobile devices in the TV bands below 602 MHz.* Up to 16 W (42 dBm) EIRP in less congested areas. Mobile device operation is not permitted above 602 MHz. Mobile devices may operate only in less congested areas.

(b) * * *

(1) *Fixed and mobile white space devices.* (i) Technical limits for fixed and mobile white space devices are shown in the table in paragraph (b)(1)(iii) of this section and subject to the requirements of this section.

(ii) For operation at EIRP levels of 36 dBm (4,000 mW) or less, fixed and mobile white space devices may operate at EIRP levels between the values shown in the table in paragraph (b)(1)(iii) of this section provided that the conducted power and the conducted power spectral density (PSD) limits are linearly interpolated between the values shown and the adjacent channel emission limit of the higher value shown in the table is met. Operation at EIRP levels above 36 dBm (4,000 mW) but not greater than 40 dBm (10,000 mW) shall follow the requirements for 40 dBm (10,000 mW). Operation at EIRP levels above 40 dBm (10,000 mW) shall follow the requirements for 42 dBm (16,000 mW).

(iii) The conducted power spectral density from a fixed or mobile white space device shall not be greater than the values shown in the table in this paragraph (b)(1)(iii) when measured in any 100 kilohertz band during any time interval of continuous transmission.

TABLE 1 TO PARAGRAPH (b)(1)(iii)

EIRP (6 MHz)	Conducted power limit (6 MHz)	Conducted PSD limit [1] (100 kHz) (dBm)	Conducted adjacent channel emission limit (100 kHz) (dBm)
16 dBm (40 mW)	10 dBm (10 mW)	−7.4	−62.8
20 dBm (100 mW)	14 dBm (25 mW)	−3.4	−58.8
24 dBm (250 mW)	18 dBm (63 mW)	0.6	−54.8
28 dBm (625 mW)	22 dBm (158 mW)	4.6	−50.8
32 dBm (1,600 mW)	26 dBm (400 mW)	8.6	−46.8
36 dBm (4,000 mW)	30 dBm (1,000 mW)	12.6	−42.8
40 dBm (1,0000 mW)	30 dBm (1,000 mW)	12.6	−42.8
42 dBm (16,000 mW)	30 dBm (1,000 mW)	12.6	−42.8

* * * * *

(4) *Narrowband white space devices.* (i) A narrowband white space device that operates as a client must communicate with a master device (fixed, Mode II, mobile or narrowband) that contacts the white space database to obtain a list of available channels and operating powers at its location. A narrowband white space device that acts as a master must incorporate a geo-location mechanism and be capable of obtaining lists of available channels and

operating powers from the white space database.

(ii) Narrowband white space devices shall operate on channel sizes that are no more than 100 kilohertz. The edge of a narrowband channel shall be offset from the upper and lower edge of the 6 megahertz channel in which it operates by at least 250 kilohertz, except in the case where bonded 6 megahertz channels share a common band edge. Narrowband operating channels shall be at integral multiples of 100 kilohertz beginning at a 250 kilohertz offset from a 6 megahertz channel's edge, or with no offset at the common band edge of two bonded 6 megahertz channels.

(iii) The conducted power limit is 12.6 dBm in a 100 kilohertz segment. The EIRP limit is 18.6 dBm in a 100 kilohertz segment. The conducted power spectral density limit is 12.6 dBm in any 100 kilohertz band during any time interval of continuous transmission.

(iv) Conducted adjacent channel emissions shall be limited to −42.8 dBm in 100 kilohertz in a first adjacent 6 megahertz channel, starting at the edge of the 6 megahertz channel within which the narrowband device is operating. This limit shall not apply between the edge of the narrowband channel and the edge of the 6 megahertz channel that contains it.

(v) If transmitting antennas of directional gain greater than 6 dBi are used, the maximum conducted power output shall be reduced by the amount in dB that the directional gain of the antenna exceeds 6 dBi.

(vi) Total occupancy for each narrowband channel shall be limited to 36 seconds per hour.

(c) * * *

(2) The conducted power, PSD, and adjacent channel limits for fixed and mobile white space devices operating at greater than 36 dBm (4,000 milliwatts) EIRP shown in the table in paragraph (b)(1)(iii) of this section are based on a maximum transmitting antenna gain of 12 dBi. If transmitting antennas of directional gain greater than 12 dBi are used, the maximum conducted output power shall be reduced by the amount in dB that the directional gain of the antenna exceeds 12 dBi.

* * * * *

(g) * * *

(1) * * *

(i) *Above ground level.* The transmit antenna height shall not exceed 10 meters above ground level in any area for fixed white space devices operating in the TV bands at 40 mW EIRP or less or operating across multiple contiguous TV channels at 100 mW EIRP or less.

(ii) *Height above average terrain (HAAT).* For devices operating in the TV bands below 602 MHz, the transmit antenna shall not be located where its height above average terrain exceeds 250 meters generally, or 500 meters in less congested areas. For devices operating in all other bands the transmit antenna shall not be located where its height above average terrain exceeds 250 meters. The HAAT is to be calculated by the white space database using the methodology in § 73.684(d) of this chapter. For HAAT greater than 250 meters the following procedures are required:

(A) The installing party must contact a white space database and identify all TV broadcast station contours that would be potentially affected by operation at the planned HAAT and EIRP. A potentially affected TV station is one where the protected service contour is within the applicable separation distance for the white space device operating at an assumed HAAT of 50 meters above the planned height at the proposed power level.

(B) The installing party must notify each of these licensees and provide the geographic coordinates of the white space device, relevant technical parameters of the proposed deployment, and contact information.

(C) No earlier than four calendar days after the notification in paragraph (g)(1)(ii)(B) of this section, the installing party may commence operations.

(D) Upon request, the installing party must provide each potentially affected licensee with information on the time periods of operations.

(E) If the installing party seeks to modify its operations by increasing its power level, by moving more than 100 meters horizontally from its location, or by making an increase in the HAAT or EIRP of the white space device that results in an increase in the minimum required separation distances from co-channel or adjacent channel TV station contours, it must conduct a new notification.

(F) All notifications required by this section must be in written form (including email). In all cases, the names of persons contacted, and dates of contact should be kept by the white space device operator for its records and supplied to the Commission upon request.

* * * * *

■ 5. Amend § 15.711 by revising paragraphs (j)(3) and (4) and adding paragraph (k) to read as follows:

§ 15.711 Interference avoidance methods.

* * * * *

(j) * * *

(3) A white space database shall be protected from unauthorized data input or alteration of stored data. To provide this protection, the white space database administrator shall establish communications authentication procedures that allow fixed, mobile, and Mode II white space devices to be assured that the data they receive is from an authorized source.

(4) Applications for certification of white space devices shall include a high level operational description of the technologies and measures that are incorporated in the device to comply with the security requirements of this section. In addition, applications for certification of fixed, mobile, and Mode II white space devices shall identify at least one of the white space databases operated by a designated white space database administrator that the device will access for channel availability and affirm that the device will conform to the communications security methods used by that database.

(k) *Requirements for mobile white space devices.* (1) Mobile white space devices shall operate within geo-fenced areas over which the white space database has determined channel availability. A mobile white space device shall have the capability to internally store the boundaries of a geo-fenced area and determine its location with respect to those boundaries. The area boundaries stored within a mobile white space device must be the same as those used by the white space database to determine channel availability.

(2) A mobile white space device shall incorporate a geo-location capability to determine its geographic coordinates. A mobile white space device may obtain its geographic coordinates through an external geo-location source, provided that source is on the same vehicle or other mobile platform as the mobile device. An external geo-location source may be connected to a mobile device through either a wired or a wireless connection, and a single geo-location source may provide location information to multiple mobile devices on the same mobile platform. An external geo-location source must be connected to a mobile device using a secure connection that ensures that only an external geo-location source that has been approved with a particular mobile device can provide geographic coordinates to that device. The geographic coordinates must be provided automatically by the external geo-location source to the mobile device; users may not manually enter them. Alternatively, an extender cable may be used to connect a remote receive

antenna to a geo-location receiver within a mobile device.

(3) The applicant for certification of a mobile device must demonstrate the accuracy of the geo-location method used and the location uncertainty as defined in paragraph (b) of this section. For mobile devices that are not using an internal geo-location capability, this uncertainty must account for the accuracy of the geo-location source and the separation distance between such source and the white space device.

(4) The antenna height above ground shall be determined by the operator of the device, or by an automatic means. The mobile device shall provide this information to the white space database when it requests a list of available channels for the geo-fenced area in which it will operate.

(5) Each mobile device must access a white space database over the internet to determine the available channels and the maximum permitted power for each available channel within the geo-fenced area in which it will operate. The white space database must take into consideration the mobile device's antenna height above ground level and geo-location uncertainty in determining the list of available channels. It must also take into consideration any variation in mobile device HAAT throughout the geo-fenced area and must use the highest HAAT within the geo-fenced area in determining channel availability. Operation is permitted only on channels that are indicated by the database as being available at the same power level throughout the entire geo-fenced area in which the mobile device will operate.

(6) Mobile devices must comply with the same separation distances from protected services in § 15.712 as fixed devices.

(7) Mobile devices may use electrically steerable directional antennas, but a device's maximum EIRP in any direction must be used by the white space database in determining channel availability.

(8) A mobile device must re-check its coordinates at least once every 60 seconds while in operation except while in sleep mode, *i.e.,* in a mode in which the device is inactive but is not powered down. It must cease operation if its location is within 1.9 kilometers of the boundary, or outside the boundary, of the geo-fenced area over which the white space database has determined the available channels.

(9) Each mobile white space device shall access the white space database at least once a day to verify that the operating channels within the geo-fenced area continue to remain available. Each mobile white space device must adjust its use of channels in accordance with channel availability schedule information provided by its database for the 48-hour period beginning at the time the device last accessed the database for a list of available channels.

(10) Operation of mobile white space devices on satellites and aircraft, including unmanned aerial vehicles, is prohibited.

■ 6. Amend § 15.712 by:

■ a. Revising the introductory text and paragraphs (a)(2) and (3) and (b)(3)(ii) and (iii);

■ b. Adding paragraph (b)(3)(iv);

■ c. Revising paragraph (c)(2)(ii);

■ d. Adding paragraph (c)(2)(iii); and

■ e. Revising paragraphs (d), (f), (g), (h)(1), and (i)(1).

The revisions and additions read as follows:

§ 15.712 Interference protection requirements.

The separation distances in this section apply to fixed, mobile, and personal/portable white space devices with a location accuracy of ±50 meters. These distances must be increased by the amount that the location uncertainty of a white space device exceeds ±50 meters. Narrowband white space devices shall comply with the separation distances applicable to a fixed white space device operating with 30 dBm conducted power and 36 dBm EIRP across a 6 megahertz channel.

(a) * * *

(2) *Required separation distance.* White space devices must be located outside the contours indicated in paragraph (a)(1) of this section of co-channel and adjacent channel stations by at least the minimum distances specified in the tables in paragraph (a)(2)(v) of this section.

(i) If a device operates between two defined power levels, it must comply with the separation distances for the higher power level.

(ii) White space devices operating at 40 mW EIRP or less are not required to meet the adjacent channel separation distances.

(iii) Fixed white space devices operating at 100 mW EIRP or less per 6 megahertz across multiple contiguous TV channels with at least 3-megahertz separation between the frequency band occupied by the white space device and adjacent TV channels are not required to meet the adjacent channel separation distances.

(iv) Fixed white space devices may only operate above 4 W EIRP in less congested areas as defined in § 15.703.

(v) The following are the tables of minimum required separation distances outside the contours of co-channel and adjacent channel stations that white space devices must meet.

TABLE 2 TO PARAGRAPH (a)(2)(v)

Mode II personal/portable white space devices		
	Required separation in kilometers from co-channel digital or analog TV (full service or low power) protected contour	
	16 dBm (40 mW)	20 dBm (100 mW)
Communicating with Mode II or Fixed device ...	1.3	1.7
Communicating with Mode I device	2.6	3.4

TABLE 3 TO PARAGRAPH (a)(2)(v)

Fixed white space devices								
Antenna height above average terrain of unlicensed devices (meters)	Required separation in kilometers from co-channel digital or analog TV (full service or low power) protected contour [1]							
	16 dBm (40 mW)	20 dBm (100 mW)	24 dBm (250 mW)	28 dBm (625 mW)	32 dBm (1,600 mW)	36 dBm (4 W)	40 dBm (10 W)	42 dBm (16 W)
Less than 3	1.3	1.7	2.1	2.7	3.3	4.0	4.5	5.0
3–10	2.4	3.1	3.8	4.8	6.1	7.3	8.5	9.4
10–30	4.2	5.1	6.0	7.1	8.9	11.1	13.9	15.3
30–50	5.4	6.5	7.7	9.2	11.5	14.3	19.1	20.9
50–75	6.6	7.9	9.4	11.1	13.9	18.0	23.8	26.2
75–100	7.7	9.2	10.9	12.8	17.2	21.1	27.2	30.1
100–150	9.4	11.1	13.2	16.5	21.4	25.3	32.3	35.5
150–200	10.9	12.7	15.8	19.5	24.7	28.5	36.4	39.5
200–250	12.1	14.3	18.2	22.0	27.3	31.2	39.5	42.5
250–300	13.9	16.4	20.0	23.9	29.4	35.4	42.1	45.9
300–350	15.3	17.9	21.7	25.7	31.4	37.6	44.5	48.4
350–400	16.6	19.3	23.2	27.3	33.3	39.7	46.9	51.0
400–450	17.6	20.4	24.4	28.7	35.1	41.9	49.4	53.8
450–500	18.3	21.4	25.5	30.1	36.7	43.7	51.4	55.9
500–550	18.9	21.8	26.3	31.0	37.9	45.3	53.3	57.5

[1] When communicating with Mode I personal/portable white space devices, the required separation distances must be increased beyond the specified distances by 1.3 kilometers if the Mode I device operates at power levels no more than 40 mW EIRP or 1.7 kilometers if the Mode I device operates at power levels above 40 mW EIRP.

TABLE 4 TO PARAGRAPH (a)(2)(v)

Personal/portable white space devices	
	Required separation in kilometers from adjacent channel digital or analog TV (full service or low power) protected contour
	20 dBm (100 mW)
Communicating with Mode II or Fixed device	0.1
Communicating with Mode I device	0.2

TABLE 5 TO PARAGRAPH (a)(2)(v)

Fixed white space devices							
Antenna height above average terrain of unlicensed devices (meters)	Required separation in kilometers from adjacent channel digital or analog TV (full service or low power) protected contour [1]						
	20 dBm (100 mW)	24 dBm (250 mW)	28 dBm (625 mW)	32 dBm (1,600 mW)	36 dBm (4 W)	40 dBm (10 W)	42 dBm (16 W)
Less than 3	0.1	0.1	0.1	0.1	0.2	0.2	0.3
3–10	0.1	0.2	0.2	0.2	0.3	0.4	0.5
10–30	0.2	0.3	0.3	0.4	0.5	0.6	0.7
30–50	0.3	0.3	0.4	0.5	0.7	0.8	1.0
50–75	0.3	0.4	0.5	0.7	0.8	0.9	1.0
75–100	0.4	0.5	0.6	0.8	1.0	1.1	1.3
100–150	0.5	0.6	0.8	0.9	1.2	1.3	1.5
150–200	0.5	0.7	0.9	1.1	1.4	1.5	1.7
200–250	0.6	0.8	1.0	1.2	1.5	1.7	1.9
250–300	0.7	0.8	1.0	1.3	1.6	2.1	2.3
300–350	0.7	0.9	1.1	1.4	1.8	2.2	2.4
350–400	0.8	1.0	1.2	1.5	1.9	2.4	2.7
400–450	0.8	1.0	1.3	1.6	2.1	2.6	2.9
450–500	0.8	1.1	1.4	1.7	2.1	2.7	2.9
500–550	0.9	1.2	1.5	1.8	2.2	2.8	3.0

[1] When communicating with a Mode I personal/portable white space device that operates at power levels above 40 mW EIRP, the required separation distances must be increased beyond the specified distances by 0.1 kilometers.

(3) *Fixed white space device antenna height.* Fixed white space devices must comply with the requirements of § 15.709(g).

(b) * * *

(3) * * *

(ii) White space devices operating with more than 4 watts EIRP and up to 10 watts EIRP may not operate within 10.2 kilometers from the receive site for co-channel operation and 2.5 kilometers

from the receive site for adjacent channel operation.

(iii) White space devices operating with more than 10 watts EIRP may not operate within 16.6 kilometers from the receive site for co-channel operation and 3.5 kilometers from the receive site for adjacent channel operation.

(iv) For purposes of this section, a TV station being received may include a full power TV station, TV translator station or low power TV/Class A TV station.

(c) * * *

(2) * * *

(ii) White space devices operating with more than 4 watts EIRP and up to 10 watts EIRP may not operate within 10.2 km from the receive site for co-channel operation and 2.5 km from the receive site for adjacent channel operation.

(iii) White space devices operating with more than 10 watts EIRP may not operate within 16.6 kilometers from the receive site for co-channel operation and 3.5 kilometers from the receive site for adjacent channel operation.

(d) *PLMRS/CMRS operations.* (1) White space devices may not operate at distances less than those specified in the table in this paragraph (d)(1) from the coordinates of the metropolitan areas and on the channels listed in § 90.303(a) of this chapter.

TABLE 6 TO PARAGRAPH (d)(1)

White space device transmitter power	Required separation in kilometers from the areas specified in § 90.303(a) of this chapter			
	Co-channel operation		Adjacent channel operation	
	Up to 250 meters HAAT	Greater than 250 meters HAAT	Up to 250 meters HAAT	Greater than 250 meters HAAT
Up to 4 watts EIRP	134.0	158.0	131.0	155.4
Greater than 4 watts and up to 10 watts EIRP	136.0	169.8	131.5	166.0
Greater than 10 watts and up to 16 watts EIRP	139.2	171.1	132.2	166.2

(2) White space devices may not operate at distances less than those specified in the table in this paragraph (d)(2) from PLMRS/CMRS operations authorized by waiver outside of the metropolitan areas listed in § 90.303(a) of this chapter.

TABLE 7 TO PARAGRAPH (d)(2)

White space device transmitter power	Required separation in kilometers from operations authorized by waiver outside of the areas specified in § 90.303(a) of this chapter			
	Co-channel operation		Adjacent channel operation	
	Up to 250 meters HAAT	Greater than 250 meters HAAT	Up to 250 meters HAAT	Greater than 250 meters HAAT
Up to 4 watts EIRP	54.0	78.0	51.0	75.4
Greater than 4 watts and up to 10 watts EIRP	56.0	89.8	51.5	86.0
Greater than 10 watts and up to 16 watts EIRP	59.2	91.1	52.2	86.2

* * * * *

(f) *Low power auxiliary services, including wireless microphones.* White space devices are not permitted to operate within the following distances of the coordinates of registered low power auxiliary station sites on the registered channels during the designated times they are used by low power auxiliary stations.

(1) Fixed white space devices with 10 watts EIRP or less: 1 kilometer.

(2) Fixed white space devices with greater than 10 watts EIRP: 1.3 kilometers.

(3) Personal/portable white space devices: 400 meters.

(g) *Border areas near Canada and Mexico.* Fixed, mobile, and personal/portable white space devices shall comply with the required separation distances in paragraph (a)(2) of this section from the protected contours of TV stations in Canada and Mexico. White space devices are not required to comply with the separation distances in paragraph (a)(2) from portions of the protected contours of Canadian or Mexican TV stations that fall within the United States.

(h) * * *

(1) Operation of fixed, mobile, and personal/portable white space devices is prohibited on all channels within 2.4 kilometers at the following locations.

* * * * *

(i) * * *

(1) Fixed white space devices may only operate above 4 W EIRP in less congested areas as defined in § 15.703.

* * * * *

■ 7. Amend § 15.713 by revising paragraphs (a)(1), (e)(1), (2), (3), and (6), (h), and (l)(2) to read as follows:

§ 15.713 White space database.

(a) * * *

(1) To determine and provide to a white space device, upon request, the available channels at the white space device's location in the TV bands, the 600 MHz duplex gap, the 600 MHz service band, and 608–614 MHz (channel 37). Available channels are determined based on the interference protection requirements in § 15.712. A database must provide fixed, mobile, and Mode II personal portable white space devices with channel availability information that includes scheduled changes in channel availability over the course of the 48-hour period beginning at the time the white space devices make a recheck contact. In making lists of available channels available to a white space device, the white space database shall ensure that all communications and interactions between the white space database and the white space device include adequate security measures such that

unauthorized parties cannot access or alter the white space database or the list of available channels sent to white space devices or otherwise affect the database system or white space devices in performing their intended functions or in providing adequate interference protections to authorized services operating in the TV bands, the 600 MHz duplex gap, the 600 MHz service band, and 608–614 MHz (channel 37). In addition, a white space database must also verify that the FCC identifier (FCC ID) of a device seeking access to its services is valid; under the requirement in this paragraph (a)(1) the white space database must also verify that the FCC ID of a Mode I device provided by a fixed or Mode II device is valid. A list of devices with valid FCC IDs and the FCC IDs of those devices is to be obtained from the Commission's Equipment Authorization System.

* * * * *

(e) * * *

(1) Fixed, mobile, and Mode II white space devices must provide their location and required identifying information to the white space database in accordance with the provisions of this subpart.

(2) Fixed, mobile, and Mode II white space devices shall not transmit unless they receive, from the white space database, a list of available channels and may only transmit on the available channels on the list provided by the database.

(3) Fixed and mobile white space devices register and receive a list of available channels from the database by connecting to the internet, either directly or through another fixed white space device that has a direct connection to the internet. Fixed devices must also register with the database in accordance with paragraph (g) of this section.

* * * * *

(6) A fixed device with an antenna height above ground that exceeds 30 meters or an antenna height above average terrain (HAAT) that exceeds 250 meters generally, or 500 meters in less congested areas shall not be provided a list of available channels. The HAAT is to be calculated using computational software employing the methodology in § 73.684(d) of this chapter.

* * * * *

(h) *Mode II personal/portable and mobile device information to database.* (1) A mobile device and a personal/portable device operating in Mode II shall provide the database its FCC Identifier (as required by § 2.926 of this chapter) and serial number as assigned by the manufacturer.

(2) A personal/portable device operating in Mode II shall provide the database the device's geographic coordinates (latitude and longitude (NAD 83)).

(3) A mobile device shall provide the database with the boundaries of the geo-fenced area in which it will operate. Alternatively, the boundaries of the geo-fenced area may be loaded from the database into the mobile device.

* * * * *

(l) * * *

(2) A white space database shall verify that the FCC identification number supplied by a fixed, mobile, or personal/portable white space device is for a certified device and may not provide service to an uncertified device.

* * * * *

■ 8. Amend § 15.714 by revising paragraph (a) to read as follows:

§ 15.714 White space database administration fees.

(a) A white space database administrator may charge a fee for provision of lists of available channels to fixed, mobile, and personal/portable devices and for registering fixed devices. This paragraph (a) applies to devices that operate in the TV bands, the 600 MHz service band, the 600 MHz duplex gap, and 608–614 MHz (channel 37).

* * * * *

■ 9. Amend § 15.715 by revising paragraph (e) to read as follows:

§ 15.715 White space database administrator.

* * * * *

(e) Provide accurate lists of available channels and the corresponding maximum permitted power for each available channel to fixed, mobile, and personal/portable white space devices that submit to it the information required under § 15.713(e), (g), and (h) based on their geographic location and provide accurate lists of available channels and the corresponding maximum permitted power for each available channel to fixed, mobile, and Mode II devices requesting lists of available channels for Mode I devices. Database administrators may allow prospective operators of white space devices to query the database and determine whether there are vacant channels at a particular location.

* * * * *

[FR Doc. 2020–26706 Filed 1–11–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 20–331; RM–11863; DA 20–1436; FRS 17286]

Television Broadcasting Services; Mesa, Arizona

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Media Bureau, Video Division (Bureau) has before it a notice of proposed rulemaking issued in response to a petition for rulemaking filed by Multimedia Holdings Corporation (Multimedia), licensee of KPNX, channel 12 (NBC), Mesa, Arizona, requesting the substitution of channel 18 for channel 12 at Mesa in the DTV Table of Allotments. The Bureau had instituted a freeze on the acceptance of rulemaking petitions by full power television stations requesting channel substitutions in May 2011 and waived the freeze to consider Multimedia's proposal to substitute channel 18 at Mesa. TEGNA, Inc., filed comments in support of the petition reaffirming its commitment to applying for channel 18. The Bureau believes the public interest would be served by the substitution and will permit the station to better serve its viewers, who have experienced reception problems with VHF channel 12.

DATES: Effective January 12, 2021.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at *Joyce.Bernstein@fcc.gov,* or (202) 418–1647.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 20–331; RM–11863; DA 20–1436, adopted December 2, 2020, and released December 2, 2020. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of

2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

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

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622 [Amended]

■ 2. Amend § 73.622(i), the Post-Transition Table of DTV Allotments under Arizona, by removing channel 12 and adding channel 18 at Mesa.

[FR Doc. 2020–27981 Filed 1–11–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 210106–0003]

RTID 0648–XP014

Pacific Island Pelagic Fisheries; 2021 U.S. Territorial Longline Bigeye Tuna Catch Limits

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

ACTION: Final specifications.

SUMMARY: NMFS specifies a 2021 limit of 2,000 metric tons (t) of longline-caught bigeye tuna for each U.S. Pacific territory (American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI), the territories). NMFS will allow each territory to allocate up to 1,500 t in 2021 to U.S. longline fishing vessels through specified fishing agreements that meet established criteria. The overall allocation limit among all territories, however, may not exceed 3,000 t. As an accountability measure, NMFS will monitor, attribute, and restrict (if necessary) catches of longline-caught bigeye tuna, including catches made under a specified fishing agreement. These catch limits and accountability measures support the long-term sustainability of fishery resources of the U.S. Pacific Islands.

DATES: The final specifications are effective January 12, 2021, through December 31, 2021. The deadline to submit a specified fishing agreement pursuant to 50 CFR 665.819(b)(3) for review is July 12, 2021.

ADDRESSES: Copies of the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP) are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, or *www.wpcouncil.org.*

Pursuant to the National Environmental Policy Act, the Council and NMFS prepared environmental analyses that support this action, available from *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0010.*

FOR FURTHER INFORMATION CONTACT: Lynn Rassel, NMFS PIRO Sustainable Fisheries, 808–725–5184.

SUPPLEMENTARY INFORMATION: NMFS is specifying a 2021 catch limit of 2,000 t of longline-caught bigeye tuna for each U.S. Pacific territory. NMFS is also authorizing each U.S. Pacific territory to allocate up to 1,500 t of its 2,000 t bigeye tuna limit, not to exceed a 3,000 t total annual allocation limit among all the territories, to U.S. longline fishing vessels permitted to fish under the FEP. A specified fishing agreement with the applicable territory must identify those vessels.

NMFS will monitor catches of longline-caught bigeye tuna by the longline fisheries of each U.S Pacific territory, including catches made by U.S. longline vessels operating under specified fishing agreements. The criteria that a specified fishing agreement must meet, and the process for attributing longline-caught bigeye tuna, will follow the procedures in 50 CFR 665.819. When NMFS projects that the fishery will reach a territorial catch or allocation limit, NMFS will, as an accountability measure, prohibit the catch and retention of longline-caught bigeye tuna by vessels in the applicable territory (if the territorial catch limit is projected to be reached), and/or vessels in a specified fishing agreement (if the allocation limit is projected to be reached).

You may find additional background information on this action in the preamble to the proposed specifications published on November 9, 2020 (85 FR 71300). Regardless of the final specifications, all other existing management measures will continue to apply in the longline fishery.

Comments and Responses

On November 9, 2020, NMFS published the proposed specifications and request for public comments (85 FR 71300); the comment period closed on November 24, 2020. NMFS received comments on the proposed specifications from one person. NMFS considered these comments in making its decision on this action, and responds below. We made no changes to the final specifications.

NMFS specifically invited public comments on the effect of the proposed action on cultural fishing in American Samoa; we received no relevant comments on this issue.

Comment 1: Catch limits should be reduced because the styrofoam and plastic, with chemicals in them, used in longline fishing gear pose controversial implications for ecosystems, fish, and the food chain. Mitigation efforts should be made to protect consumers from harmful chemicals.

Response: NMFS has no information that longline fishing, including the gear used, results in significant adverse impacts to the marine habitat or food chain. Federal laws and regulations strictly regulate the disposal of waste in ocean waters. NMFS also notes that fisheries observers collect information on the frequency, location and composition of marine debris. During 2008–2016, NMFS observers on Hawaii vessels reported 1,326 marine debris items intercepted by longlines. While derelict fishing gear made up most of the debris, most (52 percent) was netting, and ropes and other types of lines (27 percent). Floats and monofilament fishing line used in longline fishing made up less than 9 percent of the debris. When longline fishermen snag marine debris in their gear, they typically bring it on board and disposed of in port. This prevents future entanglement with sea life and entry into the food chain.

Comment 2: Longline gear poses a threat to seabirds, most notably endangered albatross, that dive for baited lines and are hooked or entangled and drowned.

Responses: The short-tailed albatross (*Phoebastria albatrus*) is the only endangered albatross in the fishing area. None has ever been observed or reported interacting with Hawaii longline fisheries. The current biological opinion prepared under Section 7 of the Endangered Species Act concluded that Hawaii longline fisheries are not likely to jeopardize the continued existence of short-tailed albatross.

NMFS acknowledges that seabirds are sometimes hooked and entangled in longline gear, and we have implemented measures that significantly reduce seabird bycatch. Current mitigation methods include, but are not limited to, bird-scaring curtains, weights to quickly sink hooks below birds' reach, dying bait blue so it is less visible to birds, safe seabird handling techniques, and strategically discharging spent bait and fish offal to distract birds from lines and hooks. These mitigation methods are 70–90 percent effective at reducing seabird bycatch. Nonetheless, NMFS has noticed an increasing trend in seabird interaction rates and is currently developing and testing new mitigation methods, including the potential use of tori lines, to further protect seabirds.

Comment 3: While NMFS considered economic impacts on smaller fisheries, the effects of catch limits on ''small entities'' such as minority, ethnic, and/or native populations and the biodiversity of affected fishing territories were not explicitly considered.

Responses: Although these populations were not specifically addressed in the Regulatory Flexibility Act analysis of the effect of this rule on small entities, they were considered in the environmental assessment (EA) and supplemental environmental assessment (SEA) under Executive Order 12898 (E.O. 12898), ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.'' As described in the EA and SEA, NMFS does not expect the proposed action to have large effects to the environment that would result in a disproportionately large and adverse effect on minority or low-income populations including with respect to the availability of fish, other environmental effects, or health effects.

Comment 4: Longline bigeye tuna catch limits should be increased from previous years to address observed impacts of overfishing such as fewer fish and smaller fish, shorter fishing seasons, bizarre developments in their seasonal appearance and dispersal, and fewer overall species seen.

Response: In August 2020, the Western and Central Pacific Fisheries Commission (WCPFC) completed the most recent assessment of the western and central Pacific Ocean (WCPO) bigeye tuna stock. The assessment showed that the stock remains healthy, is not subject to overfishing and is not overfished. NMFS is satisfied that the catch limits are consistent with the conservation and management needs of bigeye tuna in the WCPO, and that this action would not result in a change in stock status.

Comment 5: Mitigation efforts should be made to ensure the sustainability of fishing practices and to protect marine species.

Response: See responses to comments 1, 2, and 4 regarding efforts to reduce marine debris, protect seabirds, and the scientific information NMFS considers when establishing catch limits. In accordance with the Endangered Species Act and Marine Mammal Protection Act, fisheries are managed under a suite of requirements designed to reduce the likelihood and severity of effects of unintentional and incidental interactions with protected species, and that allow monitoring of interactions. NMFS continually evaluates monitoring and scientific information to determine whether they change our understanding of the potential effects of our management decisions and prepares supplemental environmental analyses, as appropriate.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator (AA) has determined that this final rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws.

The AA has also determined that because this rule relieves a restriction, it is exempt from the otherwise-applicable requirement of a 30-day delayed effectiveness provision, pursuant to 5 U.S.C. 553(d)(1). This rule allows U.S. vessels identified in a valid specified fishing agreement to continue fishing in the WCPO even if NMFS closes the longline fishery for bigeye tuna. Consistent with Conservation and Management Measure 2018–01 adopted by the WCPFC at its December 2018 meeting, the bigeye tuna catch limit for U.S. longline fisheries in the western and central Pacific in 2021 is 3,554 t. When NMFS projects the limit will be reached, NMFS must close the fishery for bigeye tuna in the WCPO. Regulations at 50 CFR 665.819 require NMFS to begin attributing longline caught bigeye tuna to the U.S. territory to which a fishing agreement applies seven days before the date NMFS projects the fishery will reach the WCPO limit, or upon the effective date of the agreement, whichever is later.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. NMFS published the factual basis for the certification in the proposed rule, and we do not repeat it here. NMFS received no comments relevant to this certification; as a result, a final regulatory flexibility analysis is not required, and none has been prepared.

This action is exempt from review under Executive Order 12866.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

Dated: January 6, 2021.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2021–00391 Filed 1–11–21; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 7
Tuesday, January 12, 2021

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 THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 53

[Docket ID OCC–2020–0038]

RIN 1557–AF02

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Docket No. R–1736]

RIN 7100–AG06

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 304

RIN 3064–AF59

Computer-Security Incident Notification Requirements for Banking Organizations and Their Bank Service Providers

AGENCY: The Office of the Comptroller of the Currency (OCC), Treasury; the Board of Governors of the Federal Reserve System (Board); and the Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC, Board, and FDIC (together, the agencies) invite comment on a notice of proposed rulemaking (proposed rule or proposal) that would require a banking organization to provide its primary federal regulator with prompt notification of any ''computer-security incident'' that rises to the level of a ''notification incident.'' The proposed rule would require such notification upon the occurrence of a notification incident as soon as possible and no later than 36 hours after the banking organization believes in good faith that the incident occurred. This notification requirement is intended to serve as an early alert to a banking organization's primary federal regulator and is not intended to provide an assessment of the incident. Moreover, a bank service provider would be required to notify at least two individuals at affected banking organization customers immediately after the bank service provider experiences a computer-security incident that it believes in good faith could disrupt, degrade, or impair services provided for four or more hours.

DATES: Comments must be received by April 12, 2021.

ADDRESSES: You may submit comments, identified by RIN (1557–AF02 (OCC), 7100–AF (Board), 3064–AF59 (FDIC)), by any of the following methods:

OCC:

Commenters are encouraged to submit comments through the Federal eRulemaking Portal, if possible. Please use the title ''Computer-Security Incident Notification Requirements for Banking Organizations and Their Bank Service Providers'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—Regulations.gov Classic or Regulations.gov Beta:*
  - *Regulations.gov Classic:* Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2020–0038'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. For help with submitting effective comments please click on ''View Commenter's Checklist.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov,* including instructions for submitting public comments.
  - *Regulations.gov Beta:* Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov Site*'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2020–0038'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2020–0038'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

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

- *Viewing Comments Electronically—Regulations.gov Classic or Regulations.gov Beta:*
  - *Regulations.gov Classic:* Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2020–0038'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov.* The docket may be viewed after the close of the comment period in the same manner as during the comment period.
  - *Regulations.gov Beta:* Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov Site*'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2020–0038'' in the Search Box and click ''Search.'' Click on the ''Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. Supporting materials can

be viewed by clicking on the ''Documents'' tab and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen.'' For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com.* The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Board:

When submitting comments, please consider submitting your comments by email or fax because paper mail in the Washington, DC area and at the Board may be subject to delay. You may submit comments, identified by Docket No. R–1736 RIN 7100–AG06, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/RevisedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at: *http://www.federalreserve.gov/generalinfo/foia/RevisedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments also may be viewed electronically or in paper in 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC:

- *Agency Website: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the Agency website.
- *Email: Comments@fdic.gov.* Include RIN 3064–AF59 in the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW, building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/*—including any personal information provided—for public inspection. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 or by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT:

OCC: Patrick Kelly, Director, Critical Infrastructure Policy, (202) 649–5519, Jennifer Slagle Peck, Counsel, (202) 649–5490, or Priscilla Benner, Senior Attorney, Chief Counsel's Office, (202) 649–5490, or persons who are hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Nida Davis, Associate Director, (202) 872–4981, Julia Philipp, Lead Financial Institution Cybersecurity Policy Analyst, (202) 452–3940, Don Peterson, Supervisory Cybersecurity Analyst, (202) 973–5059, Systems and Operational Resiliency Policy, of the Supervision and Regulation Division; Jay Schwarz, Special Counsel, (202) 452–2970, Claudia Von Pervieux, Senior Counsel (202) 452–2552, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

FDIC: Robert C. Drozdowski, Special Assistant to the Deputy Director (202) 898–3971, *RDrozdowski@FDIC.gov,* and Martin D. Henning, Deputy Director (202) 898–3699, *mhenning@fdic.gov,* Division of Risk Management Supervision; Graham N. Rehrig, Senior Attorney (703) 314–3401, *grehrig@fdic.gov,* and John Dorsey, Acting Supervisory Counsel (202) 898–3807, *jdorsey@fdic.gov,* Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Introduction

Cyberattacks reported to federal law enforcement have increased in frequency and severity in recent years.[1] These types of attacks may use destructive malware or other malicious software to target weaknesses in the computers or networks of banking organizations supervised by the agencies.[2] Some cyberattacks have the potential to alter, delete, or otherwise render a banking organization's data and systems unusable. Depending on the scope of an incident, a banking organization's data and system backups may also be affected, which can severely affect the ability of the banking organization to recover operations. The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are issuing a notice of proposed rulemaking (the proposal or proposed rule) that would require a banking organization to notify its primary federal regulator when the banking organization believes in good faith that a significant ''computer-security incident'' has occurred.[3] This notification requirement is intended to serve as an early alert to a banking organization's primary federal regulator and is not intended to include an assessment of the incident.

The agencies also recognize that a computer-security incident may be the result of non-malicious failure of hardware, software errors, actions of staff managing these computer resources, or potentially criminal in nature. Banking organizations that experience a computer-security incident that may be criminal in nature are expected to contact relevant law enforcement or security agencies, as appropriate, after the incident occurs.[4]

Moreover, banking organizations have become increasingly reliant on bank

[1] *See* Federal Bureau of Investigation, internet Crime Complaint Center, *2019 internet Crime Report* at 5 (last accessed Sept. 4, 2020), *available at https://pdf.ic3.gov/2019_IC3Report.pdf.*

[2] *See Cybercriminals and Fraudsters: How Bad Actors Are Exploiting the Financial System During the COVID–19 Pandemic: Virtual Hearing Before the Subcommittee on National Security, International Development and Monetary Policy of the U.S. House Committee on Financial Services 116th Congress* (2020) (written statement of Tom Kellerman, Head of Cybersecurity Strategy, VMware, Inc.), *available at https://financialservices.house.gov/uploadedfiles/hhrg-116-ba10-wstate-kellermannt-20200616.pdf.*

[3] As defined by the proposed rule, a *computer-security incident* is an occurrence that results in actual or potential harm to the confidentiality, integrity, or availability of an information system or the information that the system processes, stores, or transmits; or constitutes a violation or imminent threat of violation of security policies, security procedures, or acceptable use policies. To promote uniformity of terms, the agencies have sought to align this term to the fullest extent possible with an existing definition from the National Institute of Standards and Technology (NIST). *See* NIST, Computer Security Resource Center, *Glossary* (last accessed Sept. 20, 2020), *available at https://csrc.nist.gov/glossary/term/Dictionary.*

[4] For example, a local FBI field office. *See* FBI, Contact Us, Field Offices, *https://www.fbi.gov/contact-us/field-offices* (last accessed Dec. 9, 2020).

service providers to provide essential technology-related products and services. Service providers that provide services described in the Bank Service Company Act (BSCA) [5] to banking organizations (bank service providers) [6] also are vulnerable to cyber threats, which have the potential to disrupt, degrade, or impair the provision of banking services to their banking organization customers. Therefore, the proposed rule would require a bank service provider to notify affected banking organization customers immediately after the bank service provider experiences a computer-security incident that it believes in good faith could disrupt, degrade, or impair the provision of services subject to the BSCA. Given the rule's purposes of ensuring that banking organizations provide timely notice of significant computer-security incident disruptions to the agencies, the agencies believe that bank service providers should contact at least two individuals at affected banking organizations to help ensure that notice has been received.

The agencies believe that it is important that the primary federal regulator of a banking organization be notified as soon as possible of a significant computer-security incident that could jeopardize the viability of the operations of an individual banking organization, result in customers being unable to access their deposit and other accounts, or impact the stability of the financial sector.[7] The proposed rule refers to these significant computer-security incidents as ''notification incidents.'' Knowing about and responding to notification incidents affecting banking organizations is important to the agencies' missions for a variety of reasons, including the following:

- The receipt of notification-incident information may give the agencies earlier awareness of emerging threats to individual banking organizations and, potentially, to the broader financial system;
- An incident may so severely impact a banking organization that it can no longer support its customers, and the incident could impact the safety and soundness of the banking organization, leading to its failure. In these cases, the sooner the agencies know of the event, the better they can assess the extent of the threat and take appropriate action;
- Based on the agencies' broad supervisory experiences, they may be able to provide information to a banking organization that may not have previously faced a particular type of notification incident;
- The agencies would be better able to conduct analyses across supervised banking organizations to improve guidance, adjust supervisory programs, and provide information to the industry to help banking organizations protect themselves; and
- Receiving notice would enable the primary federal regulator to facilitate and approve requests from banking organizations for assistance through the U.S. Treasury Office of Cybersecurity and Critical Infrastructure Protection (OCCIP).[8]

As discussed below, current reporting requirements related to cyber incidents are neither designed nor intended to provide timely information to regulators regarding such incidents.

II. Review of Existing Regulations and Guidance

The agencies considered whether the information that would be provided under the proposed rule could be obtained through existing reporting standards. Currently, banking organizations may be required to report certain instances of disruptive cyber-events and cyber-crimes through the filing of Suspicious Activity Reports (SARs), and they are generally expected to notify their primary federal regulator ''as soon as possible'' when they become ''aware of an incident involving unauthorized access to or use of sensitive customer information.'' [9] These reporting standards provide the agencies with valuable insight regarding cyber-related events and information-security compromises; however, these existing requirements do not provide the agencies with sufficiently timely information about every notification incident that would be captured by the proposed rule.

Under the reporting requirements of the Bank Secrecy Act (BSA) and its implementing regulations, certain banking organizations are required to file SARs when they detect a known or suspected criminal violation of federal law or a suspicious transaction related to a money-laundering activity.[10] While the agencies monitor SARs regularly, SARs serve a different purpose from this proposed incident notification requirement and do not require reporting of every incident captured by the proposed definition of a notification incident. Moreover, the 30-calendar-day reporting requirement under the BSA framework (with an additional 30 calendar days provided in certain circumstances) does not provide the agencies with sufficiently timely notice of reported incidents.

Additionally, the Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice, which interprets section 501(b) of the Gramm-Leach-Bliley Act (GLBA) and the Interagency Guidelines Establishing Information Security Standards, generally sets forth the supervisory expectation that a banking organization notify its primary federal regulator ''as soon as possible'' if the organization becomes aware of an incident involving unauthorized access to, or use of, sensitive customer information.[11] While this may provide the agencies with notice of certain computer-security incidents, this standard is too narrow in scope to address all relevant computer-security incidents that would be covered by the proposed rule. In particular, the GLBA notification standard focuses on incidents that result in the compromise of sensitive customer information and, therefore, does not include the reporting of incidents that disrupt operations but do not compromise sensitive customer information.

Finally, the BSCA requires a banking organization to notify the appropriate Federal banking agency of the existence of service relationships within 30 days after the making of such service contracts or the performance of the

[5] 12 U.S.C. 1861–67.

[6] Bank service providers would include both bank service companies and third-party providers under the BSCA.

[7] These computer-security incidents may include major computer-system failures, cyber-related interruptions, such as coordinated denial of service and ransomware attacks, or other types of significant operational interruptions.

[8] OCCIP coordinates with U.S. Government agencies to provide agreed-upon assistance to banking and other financial services sector organizations on computer-incident response and recovery efforts. These activities may include providing remote or in-person technical support to an organization experiencing a significant cyber event to protect assets, mitigate vulnerabilities, recover and restore services, identify other entities at risk, and assess potential risk to the broader community. The Federal Financial Institutions Examination Council's *Cybersecurity Resource Guide for Financial Institutions* (Oct. 2018) identifies additional information available to banking organizations. *Available at https://www.ffiec.gov/press/pdf/FFIEC%20Cybersecurity%20Resource%20Guide%20for%20Financial%20Institutions.pdf* (last accessed Nov. 29, 2020).

[9] *See* 12 CFR part 30, appendix B, supp. A (OCC); 12 CFR part 208, appendix D–2, supp. A, 12 CFR 211.5(l), 12 CFR part 225, appendix F, supp. A (Board); 12 CFR part 364, appendix B, supp. A (FDIC) (italics omitted).

[10] *See, e.g.,* 31 U.S.C. 5311 *et seq.;* 31 CFR subtitle B, chapter X.

[11] *See* 15 U.S.C. 6801; 12 CFR part 30, appendix B, supp. A (OCC); 12 CFR part 208, appendix D–2, supp. A, 12 CFR 211.5(l), 12 CFR part 225, appendix F, supp. A (Board); 12 CFR part 364, appendix B, supp. A (FDIC).

service, whichever occurs first.[12] However, the BSCA has no notification requirements if the service is disrupted.

III. The Proposal

The proposed rule would establish two primary requirements, which would promote the safety and soundness of banking organizations and be consistent with the agencies' authorities to supervise these entities.[13] First, the proposed rule would require a banking organization to notify the agencies of a notification incident. In particular, a banking organization would be required to notify its primary federal regulator of any computer-security incident that rises to the level of a notification incident as soon as possible and no later than 36 hours after the banking organization believes in good faith that a notification incident has occurred. The agencies do not expect that a banking organization would typically be able to determine that a notification incident has occurred immediately upon becoming aware of a computer-security incident. Rather, the agencies anticipate that a banking organization would take a reasonable amount of time to determine that it has experienced a notification incident. In this context, the agencies recognize banking organizations may not come to a good faith belief that a notification incident has occurred outside of normal business hours. Only once the banking organization has made such a determination would the requirement to report within 36 hours begin.

The proposed rule would define a *computer-security incident* as an occurrence that (i) results in actual or potential harm to the confidentiality, integrity, or availability of an information system or the information the system processes, stores, or transmits; or (ii) constitutes a violation or imminent threat of violation of security policies, security procedures, or acceptable use policies. The proposed rule would define a *notification incident* as a computer-security incident that a banking organization believes in good faith could materially disrupt, degrade, or impair—

the ability of the banking organization to carry out banking operations, activities, or processes, or deliver banking products and services to a material portion of its customer base, in the ordinary course of business;

any business line of a banking organization, including associated operations, services, functions and support, and would result in a material loss of revenue, profit, or franchise value; or

those operations of a banking organization, including associated services, functions and support, as applicable, the failure or discontinuance of which would pose a threat to the financial stability of the United States.

Second, the proposed rule would require a bank service provider of a service described under the BSCA to notify at least two individuals at affected banking organization customers immediately after experiencing a computer-security incident that it believes in good faith could disrupt, degrade, or impair services provided subject to the BSCA for four or more hours. As technological developments have increased in pace, banks have become increasingly reliant on bank service providers to provide essential technology-related products and services. The impact of computer-security incidents at bank service providers can flow through to their banking organization customers. Therefore, in order for a banking organization to be able to provide relevant notifications to its primary federal regulator in a timely manner, it needs to receive prompt notification of computer-security incidents from its service providers.

Bank services that are subject to the BSCA include ''check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a depository institution,'' as well as components that underlie these activities.[14] Other services that are subject to the BSCA include data processing, back office services, and activities related to credit extensions, as well as components that underlie these activities.[15]

The proposed rule would apply to the following banking organizations:

For the OCC, ''banking organizations'' would include national banks, federal savings associations, and federal branches and agencies.

For the Board, ''banking organizations'' would include all U.S. bank holding companies and savings and loan holding companies; state member banks; the U.S. operations of foreign banking organizations; Edge and agreement corporations.

For the FDIC, ''banking organizations'' would include all insured state nonmember banks, insured state-licensed branches of foreign banks, and state savings associations.

To clarify, not all ''computer-security incidents'' require a banking organization to notify its primary federal regulator; only those that rise to the level of ''notification incidents'' require notification. Other computer-security incidents, such as a limited distributed denial of service attack that is promptly and successfully managed by a banking organization, would not require notice to the appropriate agency.

The following is a non-exhaustive list of events that would be considered ''notification incidents'' under the proposed rule:

1. Large-scale distributed denial of service attacks that disrupt customer account access for an extended period of time (*e.g.,* more than 4 hours);
2. A bank service provider that is used by a banking organization for its core banking platform to operate business applications is experiencing widespread system outages and recovery time is undeterminable;
3. A failed system upgrade or change that results in widespread user outages for customers and bank employees;
4. An unrecoverable system failure that results in activation of a banking organization's business continuity or disaster recovery plan;
5. A computer hacking incident that disables banking operations for an extended period of time;
6. Malware propagating on a banking organization's network that requires the banking organization to disengage all internet-based network connections; and
7. A ransom malware attack that encrypts a core banking system or backup data.

The agencies expect that banking organizations would consider whether other significant computer-security incidents they experience, beyond those listed above, constitute notification incidents for purposes of notifying the appropriate agency.

The definition of ''notification incident'' includes language that is consistent with the ''core business line''

[12] 12 U.S.C. 1867(c)(2).

[13] *See* 12 U.S.C. 1, 93a, 161, 481, 1463, 1464, 1861–1867, and 3102 (OCC); 12 U.S.C. 321–338a, 1467a(g), 1818(b), 1844(b), 1861–1867, 3101 *et seq.,* and 5365 (Board); 12 U.S.C. 1463, 1811, 1813, 1817, 1819, and 1861–1867 (FDIC).

[14] *See* 12 U.S.C. 1863–64.

[15] *See* 12 U.S.C. 1864(f). Under the BSCA, such services must be permissible for bank holding companies under section 4(c)(8) of the Bank Holding Company Act of 1956, as amended, and § 225.28 of the Board's Regulation Y. 12 U.S.C. 1841 *et seq.;* 12 CFR 225.28. Activities permissible under § 225.28 are: (1) Extending credit and servicing loans; (2) activities related to extending credit; (3) leasing personal or real property; (4) operating nonbank depository institutions; (5) trust company functions; (6) financial and investment advisory activities; (7) agency transactional services for customer investments; (8) investment transactions as principal; (9) management consulting and counseling activities; (10) support services; (11) insurance agency and underwriting; (12) community development activities; (13) money orders, savings bonds, and traveler's checks; and (14) data processing. 12 CFR 225.28.

and ''critical operation'' definitions included in the resolution-planning rule issued by the Board and FDIC under section 165(d) of the Dodd-Frank Act.[16] In particular, the second prong of the notification incident definition identifies incidents that would impact core business lines, and the third prong identifies incidents that would impact critical operations. Banking organizations subject to the Resolution Planning Rule can use the core business lines and critical operations identified in their resolution plans [17] to identify incidents that should be reported under the second and third prongs of the proposed rule.

The agencies do not expect banking organizations that are not subject to the Resolution Planning Rule to identify ''core business lines'' or ''critical operations,'' or to develop procedures to determine whether they engage in any operations, the failure or discontinuance of which would pose a threat to the financial stability of the United States. However, the agencies do expect all banking organizations to have a sufficient understanding of their lines of business to be able to notify the appropriate agency of notification incidents that could result in a material loss of revenue, profit, or franchise value to the banking organization.

If a banking organization is a subsidiary of another banking organization that is also subject to the notification requirements of this proposed rule, the agencies expect the subsidiary banking organization to alert its parent banking organization as soon as possible of the notification incident, in addition to notifying its primary federal regulator. The parent banking organization would need to make a separate assessment of whether it, too, has suffered a notification incident about which it must notify its primary federal regulator. An entity that is not itself a banking organization, but that is a subsidiary of a banking organization, would not have its own separate notification requirement under this proposed rule. Instead, if a computer-security incident were to occur at a non-bank subsidiary of a banking organization, the parent banking organization would be expected to assess whether the incident was a notification incident, and if so, it would be required to notify its primary federal regulator.

The proposed notification requirement is intended to serve as an early alert to a banking organization's primary federal regulator about a notification incident and is not intended to include an assessment of the incident. As such, no specific information is required for the notice, and the proposed rule does not include any prescribed reporting forms or templates to minimize reporting burden. The agencies believe that in most cases banking organizations would eventually notify their primary regulator when an event occurs that meets the high threshold of a notification incident and that this proposed rule is formalizing a process that the agencies' experience suggest already exists. The agencies recognize that a banking organization may be working expeditiously to resolve the notification incident—either directly or through a bank service provider—at the time it would be expected to notify its primary federal regulator. The agencies believe, however, that 36 hours is a reasonable amount of time after a banking organization believes in good faith that a notification incident has occurred to notify its primary federal regulator, particularly because the notice would not need to include an assessment of the incident. The agencies expect only that banking organizations share general information about what is known at the time. Moreover, the notice could be provided through any form of written or oral communication, including through any technological means (*e.g.,* email or telephone), to a designated point of contact identified by the banking organization's primary federal regulator (*e.g.,* an examiner-in-charge, local supervisory office, or a cyber-incident operations center). The notification, and any information provided by a banking organization related to the incident, would be subject to the agencies' confidentiality rules.

Under the proposed rule, a bank service provider would be required to notify at least two individuals at affected banking organization customers immediately after it experiences a computer-security incident that it believes in good faith could disrupt, degrade, or impair services provided subject to the BSCA for four or more hours. A bank service provider would not be expected to assess whether the incident rises to the level of a notification incident for a banking organization customer. The banking organization would be responsible for making that determination because a bank service provider may not know if the services provided are critical to the banking organization's operations. If, after receiving such notice from a bank service provider, the banking organization determines that a notification incident has occurred, the banking organization would be required to notify its primary federal regulator in accordance with this proposed rule. Typically, existing bank service provider agreements that support operations that are critical to a banking organization customer require notification to the customer as soon as possible in the event of a material incident during the normal course of business, and the agencies believe that the procedures in place to do so will generally include some redundancy to ensure that notification occurs.

Under the proposal, the agencies would expect bank service providers to continue to provide a banking organization customer with prompt notification of these material incidents. The agencies believe that it is practical for a bank service provider to immediately notify at least two individuals at their affected banking organization customers after experiencing a computer-security incident of the severity described in the proposed rule because the notice would not need to include an assessment of the incident, and the agencies observe that there are effective automated systems for doing so currently. The agencies expect only that bank service providers would make a best effort to share general information about what is known at the time. Regulators would enforce the bank service provider notification requirement directly against bank service providers and would not cite a banking organization because a service provider fails to comply with the service provider notification requirement.

This proposal is not expected to add significant burden on banking organizations. Banking organizations should already have internal policies for responding to computer-security incidents, which the agencies believe generally already include processes for notifying their primary federal regulator and other stakeholders of incidents

[16] Section 165(d) of the Dodd-Frank Act and the resolution-plan rule, 12 CFR parts 363 and 381 (the Resolution Planning Rule), require certain financial companies to report periodically to the FDIC and the Board their plans for rapid and orderly resolution in the event of material financial distress or failure. On November 1, 2019, the FDIC and the Board published in the **Federal Register** amendments to the Resolution Planning Rule. *See* 84 FR 59194.

[17] Elements of both the ''core business lines'' and ''critical operations'' definitions from the Resolution Planning Rule are incorporated in the proposed ''notification incident'' definition. Under the Resolution Planning Rule, ''core business lines'' means those business lines of the covered company, including associated operations, services, functions and support, that, in the view of the covered company, upon failure would result in a material loss of revenue, profit, or franchise value, and ''critical operations'' means those operations of the covered company, including associated services, functions, and support, the failure or discontinuance of which would pose a threat to the financial stability of the United States. *See* 12 CFR 363.2, 381.2.

within the scope of the proposal. However, these processes are not uniform or consistent between institutions and have not always resulted in timely notification being provided to the applicable regulator, which is why the agencies are issuing this proposal. This proposal also is not expected to add significant burden on bank service providers. The agencies' experiences with conducting bank service provider contract reviews during examinations indicates that most of these contracts include incident-reporting provisions. As a result, this proposal is not expected to add significant burden on a material number of bank service providers.

Each agency may provide additional clarification and guidance to its supervised banking organizations on how best to communicate with the agencies to implement the notification requirements of the rule.

IV. Impact Analysis

Covered banking organizations under the proposed rule would include all depository institutions, holding companies, and certain other financial entities that are supervised by one of the agencies. According to recent Call Report and other data, the agencies supervise approximately 5,000 depository institutions along with a number of holding companies and other financial services entities that would be covered under the proposed rule.[18]

In addition, the proposed rule would require bank service providers as described in the BSCA to notify at least two individuals at affected banking organization customers immediately after the bank service providers experience a computer-security incident that they believe in good faith could disrupt, degrade, or impair services they provide subject to the BSCA for four or more hours. This requirement would enable a banking organization to promptly respond to an incident, determine whether it must notify its primary federal regulator that a notification incident has occurred, and take other appropriate measures related to the incident. The agencies do not have data on the number of bank service providers that would be affected by this requirement. However, several known bank service providers have self-selected the North American Industry Classification System (NAICS) industry ''Computer System Design and Related Services'' (NAICS industry code 5415) as their primary business activity. As a conservative estimate of the population of covered bank service providers for this analysis, the agencies assume that all firms in this industry are bank service providers.[19] According to Census counts, there were 120,220 firms in the United States under NAICS code 5415 in 2017, the most recent year for which such data is available.[20]

Benefits

The agencies believe that prompt notification of these incidents would provide the following benefits to banking organizations and the financial industry as a whole.

Notification may assist the relevant agencies in determining whether the incident is isolated or is one of many simultaneous identical or similar incidents at multiple banking organizations. If the notification incident is isolated to a single banking organization, the primary federal regulator may be able to facilitate requests for assistance to the affected organization, arranged by the U.S. Treasury OCCIP, to minimize the impact of the incident. This benefit may be greatest for small banking organizations with more limited computer security resources. If the notification incident is one of many simultaneous identical or similar incidents at multiple banking organizations, the agencies may also alert other banking organizations of the threat, as appropriate, while protecting confidential supervisory information, recommend preventative measures in order to better manage or prevent reoccurrence of similar incidents, or otherwise help coordinate the response and mitigation efforts. Receiving notification incident information from multiple banking organizations would also allow regulators to conduct analyses across entities to improve guidance, to adjust supervisory programs to limit the reoccurrence of such incidents in the future, and to provide information to the industry to help banking organizations protect themselves against future computer-security incidents.

The proposal may help reduce losses in the event a notification incident is so significant that it jeopardizes a banking organization's viability, as the proposal will provide additional time for the agencies to prepare to handle a potential failure as cost-effectively and non-disruptively as possible.

The agencies do not have the information to quantify the potential benefits of the proposed rule because the benefits depend on the breadth and severity of future notification incidents, the specifics of those incidents, and the value of the assistance approved by the agencies, among other things. In addition, the agencies believe that the proposed rule would formalize a process that already exists, based on the agencies' experiences. Nevertheless, as previously discussed, banking organizations face a heightened risk of disruptive and destructive attacks that have increased in frequency and severity in recent years; therefore, the agencies believe that the benefits of the proposed rule would exceed the costs—detailed below.

Costs

The proposed rule would require banking organizations to notify their primary federal regulator as soon as possible and no later than 36 hours after a banking organization has determined that a notification incident has occurred. The agencies reviewed available supervisory data and SARs involving cyber events against banking organizations to develop an estimate of the number of notification incidents expected to be reported annually. This review focused on descriptive criteria (*e.g.,* ransomware, trojan, zero day, etc.) that may be indicative of the type of material computer-security incident that would meet the notification incident reporting criteria. Based on this review, the agencies estimate that approximately 150 notification incidents may occur on an annual basis.[21] The agencies specifically invite comment on the estimated number of incidents.

The agencies estimate that, upon occurrence of a notification incident, the affected banking organization may incur up to three hours of staff time to coordinate internal communications, consult with its bank service provider, if appropriate, and notify the banking organization's primary federal regulator. This may include discussion of the incident among staff of the banking organization, such as the Chief Information Officer, Chief Information Security Officer, a senior legal or compliance officer, and staff of a bank service provider, as appropriate, and liaison with senior management of the

[18] September 30, 2020 Call Report Data.

[19] NAICS code 5415 most likely contains many firms that are not bank service providers, so the agencies believe using the population of firms in this industry is an overestimate. However, there may be some bank service providers that do not self-identify under NAICS code 5415.

[20] *See* U.S. Census Bureau, 2017 SUSB Annual Data Tables by Establishment Industry (Mar. 2020), *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html.*

[21] The agencies used conservative judgment when assessing whether a cyber-event might have risen to the level of a notification incident, so the approach may overestimate the number. However, the approach may also underestimate the number of notification incidents since supervisory and SAR data may not capture all such incidents.

banking organization. The agencies believe that the regulatory burden associated with the notice requirement would be *de minimis,* because the communications that led to the determination of the notification incident would occur regardless of the proposed rule.[22]

The proposed rule also requires a bank service provider, as defined herein and in accordance with the BSCA, to notify at least two individuals at affected banking organization customers immediately after it experiences a computer-security incident that it believes in good faith could disrupt, degrade, or impair services provided subject to the BSCA for four or more hours. The agencies do not have data on the frequency of incidents that would require bank service providers to notify their customers who are banking organizations. For purposes of this proposed rule, the agencies assume that 2,404 bank service providers, or approximately 2 percent [23] of the 120,220 firms under NAICS code 5415, could experience a computer-security incident each year that would require notification to affected banking organization customers. The agencies specifically invite comment on the estimated number of incidents.

The agencies believe that bank service providers would have automated systems allowing them to identify banking organization customers when a computer-security incident that meets the criteria for notification has occurred and for contacting at least two individuals at affected banking organization customers. Furthermore, the agencies anticipate that such firms would need approximately one hour to determine that a computer-security incident meets the notification criteria and two hours to identify the customers affected by the service disruption and provide notification that an incident has occurred. These activities would total 7,212 hours per year for the population of bank service providers described above.[24] The agencies believe that the additional compliance costs would be *de minimis* for each affected bank service provider.[25] Post-notification activities such as providing technical support to affected bank organization customers that would be provided during the normal course of business when managing and resolving a computer security incident are beyond the scope of the notification requirement.

The agencies invite comments on these expected benefits and costs.

V. Alternatives Considered

The agencies considered several alternatives to the proposal. The agencies considered leaving the current regulations unchanged. The agencies rejected this alternative because of the significant risks that notification incidents pose to banking organizations and to the financial sector.

The agencies considered limiting the definition of notification incidents to those covered by the SAR-filing requirements. In this alternative, submission of a SAR would have served as notification of such an incident. This approach would have eliminated the additional compliance burden but would have delayed the notification and decreased the benefits provided by the proposed rule. In the proposal, however, the agencies determined that, to minimize regulatory burden, the notice requirement would not include the level of detail required of a SAR (which could otherwise have created a significant burden to complete as a banking organization manages a notification incident).

The agencies considered expanding the definition of notification incident to include any incident that might disrupt a banking organization's systems or any unauthorized access to the banking organization's sensitive customer data. However, the agencies ultimately sought to strike a balance that would minimize compliance burden by focusing only on events that are likely to cause significant harm to banking organizations.

VI. Request for Comments

The agencies seek comment on all aspects of their proposal and more specifically on the following:

1. How should the definition of ''computer-security incident'' be modified, if at all? For example, should it include only occurrences that result in *actual* harm to the confidentiality, integrity, or availability of an information system or the information the system processes, stores, or transmits? Should it include only occurrences that constitute an *actual* violation of security policies, security procedures, or acceptable use policies?

2. How should the definition of ''notification incident'' be modified, if at all? For example, instead of ''computer-security incident,'' should the definition of ''notification incident'' refer to other NIST terms and definitions, or another recognized source of terms and definitions? Should the standard for materially disrupt, degrade, or impair be altered to reduce potential redundancy between the terms or to consider different types of impact on the banking organization? Should the definition not include language that is consistent with the ''core business line'' and ''critical operation'' definitions included in the resolution-planning rule? Should those elements of the definition only apply to banking organizations that have resolution planning requirements?

3. How should the 36 hour timeframe for notification be modified, if at all, and why? Should it be made shorter or longer? Should it start at a different time? Should the timeframe be modified for certain types of notification incidents or banking organizations (for example, should banks with total assets of less than $10 billion have a different timeframe)?

4. Is the proposed requirement that banking organizations and bank service providers notify the appropriate party when they ''believe in good faith'' that they are experiencing or have experienced a notification incident or computer-security incident, as applicable, sufficiently clear such that banking organizations and bank service providers understand when they should provide notice? How should the ''believes in good faith'' standard be modified, if at all? For example, should the standard be ''reasonably believes'' for either banking organizations or bank service providers?

5. How should notification by banking organizations under the proposed rule be provided to the agencies? Should the agencies adopt a process for joint notification to the agencies in cases where multiple affiliates of a banking organization have notification requirements to different agencies? If so, how should joint notification be done and why? Should the agencies adopt centralized points of contact to receive notifications or should notifications be provided to regional offices (such as Federal Reserve Banks) or banking organization-specific supervisory teams?

6. The proposed rule's definition of ''banking organizations'' and ''bank service providers'' would include the financial market utilities (FMUs) that are chartered as a State member bank or Edge corporation, or perform services subject to regulation and examination under the BSCA. Are there unique factors that the agencies should consider in determining how notification requirements should apply to these

[22] Even at an elevated labor compensation rate of $200 per hour, the proposed rule would only impose additional compliance costs of $600 per notification.

[23] This is informed by the estimate of the percentage of banking organizations that have notification incidents.

[24] 7,212 hours = 2,404 per year frequency of incidents * 3 hours per incident.

[25] Even at an elevated labor compensation rate of $200 per hour, the proposed rule would only impose additional compliance costs of $600 per notification.

FMUs? For designated FMUs for which the Board is the Supervisory Agency under Title VIII of the Dodd-Frank Act, would notification requirements best be conveyed through this proposed rule or through amendments to the Board's Regulation HH?

7. What other types of entities regulated by the agencies should be added to the rule as ''banking organizations'' that would be subject to the rule? Why?

8. Which entities proposed in the rule as ''banking organizations'' should be removed from the rule? Why?

9. Do existing contracts between banking organizations and bank service providers already have provisions that would allow banking organizations to meet the proposed notification incident requirements?

10. Does the definition of ''bank service provider'' in the proposed rule appropriately capture the services about which banking organizations should be informed in the event of disruptions? Should all the services included in the Bank Service Company Act be included for purposes of banking organizations receiving notice of disruptions from their bank service providers? If not, which services should require a bank service provider to notify its affected banking organization customers when those services are disrupted, and why? Should the requirement only attach to a subset of services provided to banking organizations under the BSCA or should it only attach to certain bank service providers, such as those that are examined by the federal banking agencies?

11. Should the proposed rule for bank service providers require bank service providers to notify all banking organization customers or only those affected by a computer-security incident under the proposed rule?

12. Within what timeframe should bank service providers provide notification to banking organizations? Is immediate notification after experiencing a disruption in services provided to affected banking organization customers and to report to those organizations reasonable? If not, what is the appropriate amount of time for a bank service provider to determine it has experienced a material disruption in service that impacts its banking organization customers, and why?

13. The agencies understand that many existing contracts between banking organizations and bank service providers contain notification provisions regarding material incidents and that, generally, bank service providers use automated systems to notify banking organizations of service disruptions. The agencies are seeking information on how bank service providers currently notify banking organizations of service disruptions under existing contracts between bank service providers and banking organizations. Do those contracts contemplate the provision of notice to at least two individuals at an affected banking organization? Is the method of notice specified in existing contracts (for example, email, telephone, etc.) sufficient to allow bank service providers to provide notice of computer-security incidents to at least two individuals at affected banking organizations? If not, how best could the requirement for bank service providers to notify at least two individuals at affected banking organizations be achieved most efficiently and cost effectively for both parties?

14. Describe circumstances in which a bank service provider would become aware of a material disruption that could be a notification incident for banking organization customers but the banking organization customers would not be aware of the incident. Would it be overly burdensome to certain bank service providers, such as smaller bank service providers, to provide notice of material disruptions, degradations, or impairments to their affected banking organization customers and, if so, why?

15. The agencies invite comments on specific examples of computer-security incidents that should, or should not, constitute notification incidents.

16. The agencies invite comments on the methodology used to estimate the number of notification incidents per year that would need to be reported under the proposed rule.

Written comments must be received by the agencies no later than April 12, 2021.

VII. Regulatory Analysis and Procedure

Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies will request new control numbers for this information collection. The information collection requirements contained in this joint notice of proposed rulemaking have been submitted to OMB for review and approval by the OCC and FDIC under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of OMB's implementing regulations (5 CFR part 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

The proposed rule contains a reporting requirement that is subject to the PRA. The reporting requirement is found in §§ 53.3 (OCC), 225.302 (Board), and 304.23 (FDIC) of the proposed rule, which require a banking organization to notify its primary federal bank regulatory agency of the occurrence of a ''notification incident'' at the banking organization.

The proposed rule also contains a disclosure requirement that is subject to the PRA. The disclosure requirement is found in §§ 53.4 (OCC), 225.303 (Board), and 304.24 (FDIC) of the proposed rule, which require a bank service provider to notify at least two individuals at affected banking organization customers immediately after it experiences a computer-security incident that it believes in good faith could disrupt, degrade, or impair services provided subject to the BSCA for four or more hours.

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility, and clarity of the information to be collected;

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

(e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. All comments will become a matter of public record.

Comments on aspects of this document that may affect reporting requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this Supplementary Information. A copy of the comments may also be submitted to the OMB desk officer for the Agencies: By mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by facsimile to (202) 395–5806, Attention, Federal Banking Agency Desk Officer.

Proposed Information Collection

Title of Information Collection: Computer-Security Incident Notification.

Frequency of Response: On occasion; event-generated.[26]

Affected Public: Businesses or other for-profit.

Respondents:

OCC: National banks, federal savings associations, federal branches and agencies, and bank service providers.

FDIC: All insured state nonmember banks, insured state-licensed branches of foreign banks, State savings associations, and bank service providers.

Board: All state member banks (as defined in 12 CFR 208.2(g)), bank holding companies (as defined in 12 U.S.C. 1841), savings and loan holding companies (as defined in 12 U.S.C. 1467a), foreign banking organizations (as defined in 12 CFR 211.21(o)), foreign banks that do not operate an insured branch, state branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(b)(11) and (12)), Edge or agreement corporations (as defined in 12 CFR 211.1(c)(2) and (3)), and bank service providers.

Number of Respondents:[27]

OCC: Reporting—22; Disclosure—801.

FDIC: Reporting—96; Disclosure—802.

Board: Reporting—32; Disclosure—801.

Estimated Hours per Response:

Reporting—Sections 53.3 (OCC), 225.302 (Board), and 304.23 (FDIC): 3 hours.

Disclosure—Sections 53.4 (OCC), 225.303 (Board), and 304.24 (FDIC): 3 hours.

Estimated Total Annual Burden:

OCC: Reporting –66 hours; Disclosure—2,403 hours.

FDIC: Reporting –288 hours; Disclosure—2,406 hours.

Board: Reporting –96 hours; Disclosure—2,403 hours.

Abstract: The proposed rule would establish notification requirements for banking organizations upon the occurrence of a ''computer-security incident'' that rises to the level of a ''notification incident.''

A ''notification incident'' is defined as a ''computer-security incident'' that a banking organization believes in good faith could materially disrupt, degrade, or impair:

- The ability of the banking organization to carry out banking operations, activities, or processes, or deliver banking products and services to a material portion of its customer base, in the ordinary course of business;
- Any business line of a banking organization, including associated operations, services, functions and support, and would result in a material loss of revenue, profit, or franchise value; or
- Those operations of a banking organization, including associated services, functions and support, as applicable, the failure or discontinuance of which would pose a threat to the financial stability of the United States.

A ''computer-security incident'' is defined as an occurrence that results in actual or potential harm to the confidentiality, integrity, or availability of an information system or the information that the system processes, stores, or transmits; or constitutes a violation or imminent threat of violation of security policies, security procedures, or acceptable use policies.

The proposed rule would require a banking organization to notify its primary federal banking regulator upon the occurrence of a ''notification incident'' at the banking organization. The agencies recognize that the proposed rule would impose a limited amount of burden, beyond what is usual and customary, on banking organizations in the event of a computer-security incident even if it does not rise to the level of a notification incident, as banking organizations will need to engage in an analysis to determine whether the relevant thresholds for notification are met. Therefore, the agencies' estimated burden per notification incident takes into account the burden associated with such computer-security incidents.

The proposed rule also would require a bank service provider, as defined herein and in accordance with the BSCA, to notify at least two individuals at affected banking organization customers immediately after it experiences a computer-security incident that it believes in good faith could disrupt, degrade, or impair services provided subject to the BSCA for four or more hours.

Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of $600 million or less and trust companies with total assets of $41.5 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The OCC currently supervises approximately 745 small entities.

Because the proposed rule impacts all OCC-supervised institutions, as well as all bank service providers, it would impact a substantial number of small entities. However, the expected costs of the proposal would be *de minimis.* Many banks already have internal policies for responding to security incidents, which include processes for notifying their primary regulator and other stakeholders of incidents within the scope of the proposal. Additionally, while the OCC believes bank service provider contracts may already include these provisions, if current contracts do not include these provisions, then the OCC does not expect the implementation of these provisions to impose a material burden on bank service providers. Therefore, the OCC certifies that the proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities.

Board: The Board has considered the potential impact of the proposed rule on small entities in accordance with section 603 of the RFA.[28] Based on the Board's analysis, and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial of number of small entities.

As discussed in the **SUPPLEMENTARY INFORMATION**, the agencies are proposing to require a banking organization to notify its primary federal regulator as soon as possible and no later than 36 hours after the banking organization believes in good faith that a notification incident has occurred. The proposed rule would establish a significant computer-security incident notification requirement, which would support the safety and soundness of entities supervised by the agencies. The proposed rule also would require a bank service provider, as defined herein and in accordance with the BSCA, to notify at least two individuals at affected banking organization customers immediately after it experiences a computer-security incident that it believes in good faith could disrupt, degrade, or impair the provision of services subject to the BSCA for four or more hours.

[26] For purposes of these calculations, the agencies assume that the frequency is 1 response per respondent.

[27] The number of respondents for the reporting requirement is based on allocating the estimated 150 notification incidents among the agencies based on the percentage of entities supervised by each agency. The FDIC represents the majority of the banking organizations (64 percent), while the Board supervises approximately 21 percent of the banking organizations, with the OCC supervising the remaining 15 percent of banking organizations. The number of respondents for the disclosure requirement is based on an assumption of an approximately 2 percent per year frequency of incidents from 120,220 firms, which is divided equally among the OCC, FDIC, and Board.

[28] 5 U.S.C. 603.

The Board's rule applies to state-chartered banks that are members of the Federal Reserve System, bank holding companies, savings and loan holding companies, U.S. operations of foreign banking organizations, Edge and agreement corporations (collectively, ''Board-regulated entities''). As described in the Impact Analysis section, requirements under the proposed rule would apply to all Board-regulated entities. Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $600 million or less and trust companies with total receipts of $41.5 million or less.[29] According to Call Reports and other Board reports, there were approximately 472 state member banks, 2,925 bank holding companies, 132 savings and loan holding companies, and 16 Edge and agreement corporations that are small entities.[30] In addition, the proposed rule affects all bank service providers that provide services subject to the BSCA.[31] The Board is unable to estimate the number of bank service providers that are small due to the varying types of banking organizations that may enter into outsourcing arrangements with bank service providers.

The proposed rule would require all banking organizations to notify their primary federal regulator as soon as possible and no later than 36 hours after the banking organization believes in good faith that a notification incident has occurred. The agencies estimate that, upon occurrence of a notification incident, an affected banking organization may incur compliance costs of up to three hours of staff time to coordinate internal communications, consult with its bank service provider, if appropriate, and notify the banking organization's primary federal regulator. As described in the Impact Analysis section above, this requirement is estimated to affect a relatively small number of Board-regulated entities. The agencies believe that any compliance costs associated with the notice requirement would be *de minimis,* because the communications that led to the determination of the notification incident would have occurred regardless of the proposed rule.

The proposed rule also would require a bank service provider, as defined herein and in accordance with the BSCA, to notify at least two individuals at affected banking organization customers immediately after it experiences a computer-security incident that it believes in good faith could disrupt, degrade, or impair the provision of services subject to the BSCA for four or more hours. As described in the Impact Analysis section above, the agencies believe that any compliance costs associated with the implementation of this requirement would be *de minimis* for each affected bank service provider. There are no other recordkeeping, reporting or compliance requirements associated with the proposed rule.

The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed revisions, and the Board is not aware of any significant alternatives to the final rule that would reduce the economic impact on Board-regulated small entities. For the reasons stated above, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Board welcomes comment on all aspects of its analysis. In particular, the Board requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact.

FDIC: The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[32] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million.[33] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons described below, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

As described in the Impact Analysis section, the proposed rule is expected to affect all institutions supervised by the FDIC. According to recent Call Reports, the FDIC supervises 3,270 insured depository institutions (FDIC-supervised IDIs).[34] Of these, approximately 2,492 FDIC-supervised IDIs would be considered small entities for the purposes of RFA.[35] These small entities hold approximately $540 billion in assets, accounting for 14 percent of total assets held by FDIC-supervised institutions. In addition, the rule affects all bank service providers that provide services subject to the BSCA.[36] The FDIC is unable to estimate the number of affected bank service providers that are small. For purposes of this certification, the FDIC assumes, as an upper limit, that all affected bank service providers are small.

The proposed rule would require a banking organization to notify its primary federal regulator as soon as possible and no later than 36 hours after the banking organization believes in good faith that a notification incident has occurred. As described in the Impact Analysis section above, this requirement is estimated to affect a relatively small number of FDIC-supervised institutions and impose a compliance cost of up to three hours per incident. The agencies believe that the regulatory burden of such a requirement would be *de minimis* in nature, since the internal communications that led to the determination of the notification incident would have occurred regardless of the proposed rule.[37]

In addition, the proposed rule would require a bank service provider, as defined herein and in accordance with the BSCA, to notify at least two individuals at affected banking

[29] *See* 13 CFR 121.201; 84 FR 34261 (July 18, 2019).

[30] State member bank data is derived from March 31, 2020 Call Reports. Data for bank holding companies and savings and loan holding companies are derived from the June 30, 2020, FR Y–9C and FR Y–9SP. Data for Edge and agreement corporations are derived from the December 31, 2019 and March 31, 2020, FR–2086b.

[31] Discussed in detail in the Impact Analysis section.

[32] 5 U.S.C. 601 *et seq.*

[33] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. *See* 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). In its determination, the SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates. *See* 13 CFR 121.103. Following these regulations, the FDIC uses a banking organization's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the banking organization is ''small'' for the purposes of RFA.

[34] FDIC Call Reports, June 30, 2020.

[35] *Id.*

[36] Discussed in detail in the Impact Analysis section.

[37] Even at an elevated labor compensation rate of $200 per hour, the proposed rule would impose a cost burden of less than $600 per incident.

organization customers immediately after it experiences a computer-security incident that it believes in good faith could disrupt, degrade, or impair the provision of services subject to the BSCA for four or more hours. As described in the Impact Analysis section above, the agencies believe that any additional compliance costs would be *de minimis* for each affected bank service provider.

Given that the costs of the proposed rule would be *de minimis,* the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this proposed rule have any significant effects on small entities that the FDIC has not identified?

Plain Language

Section 722 of the GLBA [38] requires the agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the proposed rule in a simple and straightforward manner and invite comment on the use of plain language. For example:

1. How could the agencies organize the material to better suit your needs? How could they present the proposed rule more clearly?
2. How could the requirements in the proposed rule be more clearly stated?
3. Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
4. Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
5. Would more, but shorter, sections be better? If so, which sections should be changed?
6. What other changes can the agencies incorporate to make the regulation easier to understand?

OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, adjusted for inflation (currently $157 million). As noted in the OCC's Regulatory Flexibility analysis, the OCC expects that the costs associated with the proposal, if any, would be *de minimis* and, thus, has determined that this proposed rule would not result in expenditures by State, local, and Tribal governments, or the private sector, of $157 million or more in any one year. Accordingly, the OCC has not prepared a written statement to accompany this proposal.

Riegle Community Development and Regulatory Improvement Act of 1994

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) [39] requires that each federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, new regulations and amendments to regulations that impose additional reporting, disclosure, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[40] The agencies invite comments that further will inform their consideration of the RCDRIA.

List of Subjects

12 CFR Part 53

Administrative practice and procedure, Federal Savings Associations, National Banks, Reporting and recordkeeping requirements, Safety and soundness.

12 CFR Part 225

Administrative practice and procedure, Bank holding companies, banking, Edge and agreement corporations, Foreign banking organizations, Reporting and recordkeeping requirements, Safety and soundness, Savings and loan holding companies, State member banks.

12 CFR Part 304

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Freedom of information, Reporting and recordkeeping requirements, Safety and soundness.

Authority and Issuance

For the reasons stated in the Common Preamble and under the authority of 12 U.S.C. 1, 93a, 161, 481, 1463, 1464, 1861–1867, and 3102, the Office of the Comptroller of the Currency proposes to amend chapter I of Title 12, Code of Federal Regulations, as follows:

■ 1. Part 53 is added to read as follows:

PART 53—COMPUTER-SECURITY INCIDENT NOTIFICATION

Sec.
53.1 Authority, purpose, and scope.
53.2 Definitions.
53.3 Notification.
53.4 Bank service provider notification.

Authority: 12 U.S.C. 1, 93a, 161, 481, 1463, 1464, 1861–1867, and 3102.

§ 53.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the authority of 12 U.S.C. 1, 93a, 161, 481, 1463, 1464, 1861–1867, and 3102.

(b) *Purpose.* This part promotes the timely notification of significant computer-security incidents that affect OCC-supervised institutions and their service providers.

(c) *Scope.* This part applies to all national banks, Federal savings associations, and Federal branches and agencies of foreign banks. This part also applies to bank service providers, as defined in § 53.2(b)(2).

§ 53.2 Definitions.

(a) Except as modified in this part, or unless the context otherwise requires, the terms used in this part have the same meanings as set forth in 12 U.S.C. 1813.

(b) For purposes of this part, the following definitions apply—

(1) *Banking organization* means a national bank, Federal savings association, or Federal branch or agency of a foreign bank.

(2) *Bank service provider* means a bank service company or other person providing services to a banking organization that is subject to the Bank Service Company Act (12 U.S.C. 1861–1867).

(3) *Business line* means products or services offered by a banking organization to serve its customers or support other business needs.

(4) *Computer-security incident* is an occurrence that—

(i) Results in actual or potential harm to the confidentiality, integrity, or availability of an information system or the information that the system processes, stores, or transmits; or

(ii) Constitutes a violation or imminent threat of violation of security

[38] Codified at 12 U.S.C. 4809.

[39] Public Law 103–325, 108 Stat. 2160.

[40] 12 U.S.C. 4802(b)(1).

policies, security procedures, or acceptable use policies.

(5) *Notification incident* is a computer-security incident that a banking organization believes in good faith could materially disrupt, degrade, or impair—

(i) The ability of the banking organization to carry out banking operations, activities, or processes, or deliver banking products and services to a material portion of its customer base, in the ordinary course of business;

(ii) Any business line of a banking organization, including associated operations, services, functions and support, and would result in a material loss of revenue, profit, or franchise value; or

(iii) Those operations of a banking organization, including associated services, functions and support, as applicable, the failure or discontinuance of which would pose a threat to the financial stability of the United States.

(6) *Person* has the same meaning as set forth at 12 U.S.C. 1817(j)(8)(A).

§ 53.3 Notification.

A banking organization must notify the OCC of a notification incident through any form of written or oral communication, including through any technological means, to a designated point of contact identified by the OCC. The OCC must receive this notification from the banking organization as soon as possible and no later than 36 hours after the banking organization believes in good faith that a notification incident has occurred.

§ 53.4 Bank service provider notification.

A bank service provider is required to notify at least two individuals at each affected banking organization customer immediately after the bank service provider experiences a computer-security incident that it believes in good faith could disrupt, degrade, or impair services provided subject to the Bank Service Company Act (12 U.S.C. 1861–1867) for four or more hours.

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons stated in the Common Preamble and under the authority of 12 U.S.C. 321–338a, 1467a(g), 1818(b), 1844(b), 1861–1867, 3101 *et seq.,* and 5365 the Board proposes to amend chapter II of Title 12, Code of Federal Regulations, as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 2. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 3. Subpart N is added to read as follows:

Subpart N—Computer-Security Incident Notification

Sec.
225.300 Authority, purpose, and scope.
225.301 Definitions.
225.302 Notification.
225.303 Bank service provider notification.

Subpart N—Computer-Security Incident Notification

§ 225.300 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued under the authority of 12 U.S.C. 1, 321–338a, 1467a(g), 1818(b), 1844(b), 1861–1867, 3101 *et seq.,* and 5365.

(b) *Purpose.* This subpart promotes the timely notification of significant computer-security incidents that affect Board-supervised entities and their service providers.

(c) *Scope.* This subpart applies to all U.S. bank holding companies and savings and loan holding companies; state member banks; the U.S. operations of foreign banking organizations; and, Edge and agreement corporations. This subpart also applies to bank service providers, as defined in § 225.301(a)(2).

§ 225.301 Definitions.

(a) For purposes of this subpart, the following definitions apply—

Banking organization means a U.S. bank holding company; U.S. savings and loan holding company; state member bank; the U.S. operations of foreign banking organizations; and an Edge and agreement corporation.

Bank service provider means a bank service company or other person providing services to a banking organization that is subject to the Bank Service Company Act (12 U.S.C. 1861–1867).

Business line means products or services offered by a banking organization to serve its customers or support other business needs.

Computer-security incident is an occurrence that:

(1) Results in actual or potential harm to the confidentiality, integrity, or availability of an information system or the information that the system processes, stores, or transmits; or

(2) Constitutes a violation or imminent threat of violation of security policies, security procedures, or acceptable use policies.

Notification incident is a computer-security incident that a banking organization believes in good faith could materially disrupt, degrade, or impair—

(1) The ability of the banking organization to carry out banking operations, activities, or processes, or deliver banking products and services to a material portion of its customer base, in the ordinary course of business;

(2) Any business line of a banking organization, including associated operations, services, functions and support, and would result in a material loss of revenue, profit, or franchise value; or

(3) Those operations of a Banking organization, including associated services, functions and support, as applicable, the failure or discontinuance of which would pose a threat to the financial stability of the United States.

(b) [Reserved]

§ 225.302 Notification.

A banking organization must notify the Board of a notification incident through any form of written or oral communication, including through any technological means (*e.g.,* email, telephone, text, etc.), to a designated point of contact identified by the Board (*e.g.,* an examiner-in-charge, local supervisory office, or a cyber-incident operations center). The Board must receive this notification from a banking organization as soon as possible and no later than 36 hours after the banking organization believes in good faith that a notification incident has occurred.

§ 225.303 Bank service provider notification.

A bank service provider is required to notify at least two individuals at each affected banking organization customer immediately after the bank service provider experiences a computer-security incident that it believes in good faith could disrupt, degrade, or impair services provided, subject to the Bank Service Company Act (12 U.S.C. 1861–1867), for four or more hours.

FEDERAL DEPOSIT INSURANCE CORPORATION

Authority and Issuance

For the reasons stated in the Common Preamble, and under the authority of 12 U.S.C. 1463, 1811, 1813, 1817, 1819, and 1861–1867, the FDIC proposes to amend 12 CFR part 304 as follows:

PART 304—FORMS, INSTRUCTIONS, AND REPORTS

■ 4. Revise the authority citation for part 304 to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1463, 1464, 1813, 1817, 1819, 1831, and 1861–1867.

■ 5. Revise § 304.1 to read as follows:

§ 304.1 Purpose.

This subpart informs the public where it may obtain forms and instructions for reports, applications, and other submittals used by the FDIC, and describes certain forms that are not described elsewhere in FDIC regulations.

§ § 304.15–304.20 [Reserved]

■ 6. Reserve §§ 304.15 through 304.20.

■ 7. Add subpart C to read as follows:

Subpart C—Computer-Security Incident Notification

Sec.
304.21 Authority, purpose, and scope.
304.22 Definitions.
304.23 Notification.
304.24 Bank service provider notification.

Subpart C—Computer-Security Incident Notification

§ 304.21 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued under the authority of 12 U.S.C. 1463, 1811, 1813, 1817, 1819, and 1861–1867.

(b) *Purpose.* This subpart promotes the timely notification of significant computer-security incidents that affect FDIC-supervised institutions and their service providers.

(c) *Scope.* This subpart applies to all insured state nonmember banks, insured state licensed branches of foreign banks, and State savings associations. This subpart also applies to bank service providers, as defined in § 304.22(b)(2).

§ 304.22 Definitions.

(a) Except as modified in this subpart, or unless the context otherwise requires, the terms used in this subpart have the same meanings as set forth in 12 U.S.C. 1813.

(b) For purposes of this subpart, the following definitions apply:

(1) *Banking organization* means an FDIC-supervised insured depository institution, including all insured state nonmember banks, insured state-licensed branches of foreign banks, and State savings associations.

(2) *Bank service provider* means a bank service company or other person providing services to a banking organization that is subject to the Bank Service Company Act (12 U.S.C. 1861–1867).

(3) *Business line* means products or services offered by a banking organization to serve its customers or support other business needs.

(4) *Computer-security incident* is an occurrence that:

(i) Results in actual or potential harm to the confidentiality, integrity, or availability of an information system or the information that the system processes, stores, or transmits; or

(ii) Constitutes a violation or imminent threat of violation of security policies, security procedures, or acceptable use policies.

(5) *Notification incident* is a computer-security incident that a banking organization believes in good faith could materially disrupt, degrade, or impair—

(i) The ability of the banking organization to carry out banking operations, activities, or processes, or deliver banking products and services to a material portion of its customer base, in the ordinary course of business;

(ii) Any business line of a banking organization, including associated operations, services, functions and support, and would result in a material loss of revenue, profit, or franchise value; or

(iii) Those operations of a banking organization, including associated services, functions and support, as applicable, the failure or discontinuance of which would pose a threat to the financial stability of the United States.

(6) *Person* has the same meaning as set forth at 12 U.S.C. 1817(j)(8)(A).

§ 304.23 Notification.

A banking organization must notify the FDIC of a notification incident through any form of written or oral communication, including through any technological means, to a designated point of contact identified by the FDIC. The FDIC must receive this notification from the banking organization as soon as possible and no later than 36 hours after the banking organization believes in good faith that a notification incident has occurred.

§ 304.24 Bank service provider notification.

A bank service provider is required to notify at least two individuals at each affected banking organization customer immediately after the bank service provider experiences a computer-security incident that it believes in good faith could disrupt, degrade, or impair services provided subject to the Bank Service Company Act (12 U.S.C. 1861–1867) for four or more hours.

§ § 304.25–304.30 [Reserved]

■ 8. Reserve §§ 304.25 through 304.30.

Brian P. Brooks,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on or about December 15, 2020.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2020–28498 Filed 1–11–21; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–90769; File No. S7–23–20]

Notice of Proposed Conditional Exemptive Order Granting a Conditional Exemption From the Information Review Requirement and the Recordkeeping Requirement Under the Securities Exchange Act of 1934 for Certain Publications or Submissions of Broker-Dealer Quotations on an Expert Market

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed conditional exemptive order; request for comment.

SUMMARY: Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') and Rule 15c2–11 under the Exchange Act (as published in the **Federal Register** on October 27, 2020, ''Amended Rule 15c2–11'' or the ''Amended Rule''), the Securities and Exchange Commission (the ''SEC'' or the ''Commission'') is proposing to grant exemptive relief, subject to certain conditions, to permit broker-dealers to publish or submit proprietary quotations for securities, on a continuous basis, in a market where the distribution of such quotations is restricted to sophisticated or professional investors, without complying with the information review and recordkeeping requirements of Amended Rule 15c2–11(a)(1)(i) and (d)(1)(i)(A), respectively.

DATES: Comments should be received on or before February 11, 2021.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/exorders.shtml*); or
- Send an email to *rule-comments@sec.gov.*

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–23–20. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/exorders.shtml*). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that the Commission does not redact or edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: John Guidroz, Branch Chief, James Curley, Laura Gold, Theresa Hajost, Patrice Pitts, Special Counsels, Elizabeth Sandoe, Senior Special Counsel, Josephine Tao, Assistant Director, or Mark Wolfe, Associate Director, at (202) 551–5777, in the Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

SUPPLEMENTARY INFORMATION:

I. Background

A. Adoption of Amendments to Rule 15c2–11

Rule 15c2–11 specifies key, basic issuer information that must be obtained and reviewed before a broker-dealer may initiate (or resume) quotations for a security in a market other than a national securities exchange, subject to certain exceptions.[1] The Amended Rule becomes effective on December 28, 2020. Except for paragraph (b)(5)(i)(M) of the Amended Rule, compliance is required nine months following the effective date, on September 28, 2021 (the ''Compliance Date'').[2]

Under the Amended Rule, certain applicable issuer information must be ''current'' and ''publicly available,'' as those terms are defined in the Amended Rule,[3] for a broker-dealer to initiate (or resume) a quoted market in the issuer's security after complying with the information review requirement.[4] Further, with respect to the ''piggyback'' exception, which allows a broker-dealer to rely on the quotations of the broker-dealer that initially complied with the information review requirement to maintain continuous quotations for the security in an interdealer quotation system (an ''IDQS''), the amendments require that applicable issuer information also must be current and publicly available, timely filed, or filed within 180 calendar days from the end of the issuer's most recent fiscal year or any quarterly reporting period that is covered by a report required by Section 13 or 15(d) of the Exchange Act, as applicable.[5] As a result, on the Compliance Date, broker-dealers may not rely on the piggyback exception to maintain a quoted market in the securities of issuers for which information is not current and publicly available.

The Commission received comments on the proposed amendments to Rule 15c2–11 that expressed interest in the formation of an ''expert market'' for certain securities that become ineligible for quotation after the Compliance Date because the information required by the Rule is not current and publicly available for the issuers of those securities.[6] In response to comments, the Commission stated that, under certain conditions and circumstances, an ''expert market'' could enhance liquidity for sophisticated or professional investors in grey market securities,[7] as well as for small companies seeking growth opportunities that might prefer to be quoted in a market that is limited to such persons.[8] The Commission stated that it ''preliminarily believes that any such expert market must not have the potential to develop into a parallel market for which quotations are accessible by retail investors and the general public.'' [9]

The Commission stated that it has the authority to issue exemptive relief by order, under Section 36 of the Exchange Act and under the Amended Rule,[10] to facilitate the formation and implementation of such an expert market. The Commission also stated that, in doing so, it may consider certain safeguards to protect retail investors, such as (1) the types of investors who may access quotations in this market (*e.g.,* sophisticated investors that have the ability to assess an investment opportunity, including the ability to analyze its risks and rewards), and (2) the types of securities that may be quoted in such a market (*e.g.,* those that were quoted in reliance on the piggyback exception on the business day preceding the initial quotation that is published or submitted in any such market).[11]

B. Request for Exemptive Relief by OTC Link LLC

In response to the Commission's discussion, OTC Link® LLC (''OTC Link LLC''), a wholly owned subsidiary of OTC Markets Group Inc. (''OTC Markets Group''), has submitted a request on

[1] The ''information review requirement'' refers to the Amended Rule's requirement to obtain and review specified issuer information, and to have a reasonable basis under the circumstances for believing, based on a review of such information, together with any applicable supplemental information also specified under the Amended Rule, that the issuer information is accurate in all material respects and is from reliable sources, before a broker-dealer may publish or submit a quotation to initiate or resume a quoted market in the issuer's security.

[2] *See Publication or Submission of Quotations Without Specified Information,* Exchange Act Release No. 89891 (Sept. 16, 2020), 85 FR 68124, 68172 (Oct. 27, 2020) (''Adopting Release''). The compliance date that is nine months after the effective date of the Rule is referred to herein as the ''Compliance Date.'' Between the effective date and the Compliance Date, broker-dealers must comply with the provisions of Rule 15c2–11 prior to amendment. The compliance date for paragraph (b)(5)(i)(M) of the Amended Rule is two years after the effective date of the Amended Rule.

[3] *See* Amended Rule 15c2–11(e)(2) (defining the term ''current''), (e)(5) (defining the term ''publicly available'').

[4] *See* Amended Rule 15c2–11(a)(1)(i)(B). The Rule's recordkeeping requirement is unchanged under the amendments, except broker-dealers no longer have to preserve documents that are available on the Commission's Electronic Data Gathering, Analysis and Retrieval System (''EDGAR''). *See* Amended Rule 15c2–11(d)(1)(i)(A).

[5] *See* Amended Rule 15c2–11(f)(3)(i)(C) (requiring an issuer's specified information to be, depending on the regulatory status of the issuer, one of the following: (1) Current and publicly available; (2) timely filed (*i.e.,* filed by the prescribed due date for a report or statement as required by an Exchange Act or Securities Act of 1933 (the ''Securities Act'') reporting obligation); or (3) filed within 180 calendar days from a specified period); *see also* Amended Rule 15c2–11(e)(3) (defining the term ''interdealer quotation system''). For purposes of this proposed exemptive order, these requirements with respect to the piggyback exception are referred to as the requirement to be ''current and publicly available.'' The amendments also (1) modify the piggyback exception's frequency-of-quotation requirement by eliminating both the 12-business-day requirement and the 30-calendar-day window while still requiring that no more than four business days in succession elapse without a quotation, *see* Amended Rule 15c2–11(f)(3)(i)(A), and (2) limit the amount of time during which broker-dealers may rely on the exception to quote securities of issuers that they have a reasonable basis under the circumstances for believing are shell companies, *see* Amended Rule 15c2–11(f)(3)(B)(*2*).

[6] Comments are available on the Commission's website at *https://www.sec.gov/comments/s7/14/19/s71419.htm.*

[7] Grey market securities are securities that trade over-the-counter but for which no quoted prices are published or submitted in a quotation medium for buyers and sellers to access.

[8] *See* Adopting Release at 68145.

[9] *Id.*

[10] The exemptive authority provision of Rule 15c2–11 has been re-lettered from paragraph (h) to paragraph (g) under the Amended Rule. In addition, the standard for exemptive authority under the Amended Rule conforms to the provision for exemptive authority in Section 36 of the Exchange Act. *See id.* at 68167.

[11] *See id.* at 68145.

behalf of certain broker-dealers for an exemption from the Amended Rule's information review requirement and recordkeeping requirement to permit such broker-dealers to publish or submit, on a continuous basis, proprietary quotations for certain securities of issuers for which there is no current and publicly available information, and in other specified circumstances, on one of its electronic platforms where the distribution of such quotations is limited to sophisticated or professional investors.

OTC Link LLC operates trading platforms on which broker-dealers provide liquidity and execution services for over 11,000 U.S. and global securities. One such platform is OTC Link ATS, an alternative trading system (''ATS'') that meets the definition of a ''qualified interdealer quotation system'' under paragraph (e)(6) of the Amended Rule. The securities that are quoted on OTC Link ATS are organized into market tiers based on several factors, including the public availability of current issuer information and whether an issuer meets minimum financial thresholds. These market tiers include the OTCQX® Best Market, the OTCQB® Venture Market, the Pink Open Market, and the Expert Market. The Expert Market is a distinct market tier on which OTC Link LLC's broker-dealer subscribers (each, a ''Subscriber'' and collectively, the ''Subscribers'') [12] can, among other things, find price transparency in certain securities that may not be eligible or suitable for retail investors. Currently, the distribution of quotations for securities that are published or submitted on the Expert Market is limited to broker-dealers, and OTC Link ATS does not make such quotations available to the general public. In requesting exemptive relief on behalf of the Subscribers, OTC Link LLC plans to modify the Expert Market to include the safeguards described below.[13]

The Commission is proposing to grant OTC Link LLC's request for exemptive relief and issue a conditional exemptive order as outlined below.

1. Distribution of Expert Market Quotes and Data

Quotations published or submitted on the Expert Market are clearly identified in a data feed to which OTC Markets Group controls which Subscribers, market data distributors, and users have access. OTC Markets Group currently limits the distribution of quotations published or submitted on the Expert Market solely to broker-dealers. Under the proposed conditional exemptive order, OTC Markets Group would authorize market data distributors, including Subscribers, to be eligible to receive quotations published or submitted on the Expert Market and to distribute such data to Subscribers who comply with certain obligations and restrictions on data access. As Expert Market quotations are clearly identified in the data feed, recipients would be able to control their distribution and display.

Under the proposed exemptive relief, all entities that distribute OTC Markets Group's market data, including Subscribers, would be required to enter into a Market Data Distribution Agreement (''MDDA'') directly with OTC Markets Group. OTC Markets Group would control which market data distributors are permitted to receive market data, and the MDDA would require each such market data distributor to report all end-users to OTC Markets Group. OTC Markets Group would distribute quotations published or submitted on the Expert Market to market data distributors that agree to the MDDA's contractual and data access restrictions that limit the distribution and display of quotations to certain eligible investors, as described below. Accordingly, real-time and delayed quotations [14] published or submitted on the Expert Market would not be permitted to be distributed or displayed to the general public. Further, pursuant to the MDDA, market data distributors must require any person to whom they distribute quotations published or submitted on the Expert Market that is not party to the MDDA to agree, by contract, not to distribute such quotations to any person that is not a permitted recipient as described herein.

In operating the Expert Market under the proposed exemptive relief, OTC Link LLC would establish, maintain, and enforce written policies and procedures that are reasonably designed to allow only permitted recipients to view, and to prevent the general public from viewing, quotations published or submitted on the Expert Market. OTC Link LLC also would establish, maintain, and enforce policies and procedures to regularly surveil the use of the Expert Market data feed. Further, under its written policies and procedures, OTC Link LLC would determine whether market data distributors, including Subscribers, are complying with the terms of the MDDA. OTC Link LLC would regularly review activity on the Expert Market and would establish, maintain, and enforce policies and procedures that provide for further review and escalation of issues, including irregular quotation activities that may indicate fraudulent behavior (*e.g.,* unusually high volumes) and non-compliance with the MDDA. Escalation of issues may include a determination of whether any market data distributor or Subscriber should be denied further access to the Expert Market or whether a detailed referral should be made to FINRA or Commission staff, or both.

2. Permitted Recipients of Quotations Published or Submitted on the Expert Market

As described above, the distribution of real-time and delayed quotations published or submitted on the Expert Market would be limited exclusively to market data distributors, including Subscribers, and certain types of sophisticated or professional investors, specifically, the following categories of market participants (each, a ''Qualified Expert'' and collectively, the ''Qualified Experts''): (1) Any qualified institutional buyer, as defined in Rule 144(A)(a)(1) under the Securities Act; and (2) any accredited investor, as defined in Rule 501(a) of Regulation D; [15] and (3) any

[12] All Subscribers to OTC Link ATS are required to be broker-dealer members of the Financial Industry Regulatory Authority (''FINRA'') and must enter into a subscription agreement with OTC Link LLC that outlines the terms and conditions of their use of OTC Link ATS. All OTC Link ATS Subscribers can access all market tiers, including the Expert Market. Under the proposed conditional exemptive order, all quotations published or submitted on the Expert Market would be attributable to Subscribers at prices at which such Subscribers are prepared to trade. *See, e.g.,* FINRA Rule 5220.

[13] Although OTC Link LLC is requesting relief on behalf of its Subscribers using the Expert Market on OTC Link ATS, OTC Link LLC is not requesting the same relief for OTC Link ATS, as a quotation medium, because OTC Link ATS does not publish or submit quotations on the Expert Market and, thus, does not engage in activity that is subject to the provisions of Amended Rule 15c2–11.

[14] ''Delayed'' quotations, for the purpose of this proposal, do not include ''end-of-day'' quotation information, which is defined in the MDDA, and is generally understood to mean information consisting of a snapshot of the best bid price and size and the best ask price and size for a security, taken at the close of regular trading hours. End-of-day quotation information does not include the identity of the broker-dealer(s) that published or submitted the quotation(s) that make up the ''end-of-day'' quotation. End-of-day information is used by broker-dealers, custodian banks, clearing firms, prime brokers and service bureaus for valuation, settlement, accounting, clearing and custody purposes because it can be more accurate, than last transaction information. Thus, end-of-day quotation information that is used by broker-dealers in providing valuation, settlement, accounting, clearing, and custody information to its customers may be viewed by retail investors and the general public; however, it is not actionable for the purposes of effecting transactions.

[15] The term ''accredited investor'' includes, among other things, any bank as defined in Section 3(a)(2) of the Securities Act, broker or dealer

Continued

qualified purchaser, as defined in Section 2(a)(51)(A) of the Investment Company Act of 1940 (the ''Investment Company Act'') and the rules thereunder.[16] Qualified Experts may receive quotations published or submitted on the Expert Market directly from OTC Markets Group, from any market data distributor or Subscriber that has entered into the MDDA with OTC Markets Group, or from both.[17]

OTC Markets Group would also distribute quotations for an issuer's security published or submitted on the Expert Market to the issuer of any such security if the issuer contractually agrees not to distribute such quotations, directly or indirectly, to any person that is not a current officer, director, or employee of the issuer.[18]

3. Categories of Expert Market Securities

The subject of Subscribers' proprietary quotations that can be published or submitted on the Expert Market would be restricted to the following categories of securities: (1) Any security that is quoted in reliance on the piggyback exception prior to the Compliance Date and loses such eligibility upon the Compliance Date due to a lack of current and publicly available information about the issuer of the security; [19] (2) any security that is quoted in reliance on the piggyback exception following the Compliance Date and subsequently loses such eligibility due to a lack of current and publicly available information about the issuer of the security, the issuer's status as a shell company, or a failure to meet the frequency-of-quotation requirement; [20] and (3) any security that is issued in conjunction with a Chapter 11 bankruptcy plan confirmed pursuant to Section 1129 of the U.S. Bankruptcy Code (the ''Code'') [21] and is exempt from registration in accordance with Section 1145 of the Code.[22]

In addition, OTC Link LLC would remove from the Expert Market quotations for any security that fits within the following two categories: (1) Any security of an issuer that is the subject of a registration revocation or trading suspension order issued by the Commission pursuant to Section 12(j) or 12(k) of the Exchange Act, respectively; and (2) any security of an issuer that OTC Link LLC has identified as ''defunct'' (*i.e.,* it has ceased operations, ceased to exist, or has failed to respond to inquiries by OTC Link LLC). Once the applicable Section 12(k) trading suspension order terminates or the subject security is re-registered with the Commission following an applicable Section 12(j) revocation order, in order to be quoted on the Expert Market, the subject security must either (1) gain and then lose eligibility to be quoted in reliance on the piggyback exception or (2) be issued in conjunction with a Chapter 11 bankruptcy plan and be quoted on the Expert Market in accordance with the timing requirements discussed above.[23]

In addition, OTC Link LLC would flag on its website any ''formerly'' suspended security for such period of time as set forth in OTC Link LLC's policies and procedures, which OTC Link LLC represents would be for two years following the applicable trading suspension.[24]

II. Discussion of Proposed Relief

As a result of the amendments to Rule 15c2–11, after the Compliance Date, broker-dealers must withdraw from publishing or submitting quotations in a quotation medium for securities of issuers for which information is not current and publicly available, and such securities may migrate to the grey market, where no quoted prices are published in a quotation medium for buyers and sellers to access and transact. As the Commission stated in the Adopting Release, this may impose costs on potential and existing investors by reducing liquidity for these securities and potentially resulting in less efficient pricing. Further, the loss of a quoted market and the information embedded in share prices may adversely impact an issuer's ability to raise capital through stock issuances or through other channels of finance, such as debt. The Commission also noted that investors in securities in the grey market may be more susceptible to fraud.[25]

As described above, the Commission also stated in the Adopting Release that it could be beneficial to establish an ''expert market'' that would enhance liquidity for sophisticated or professional investors and promote growth opportunities for certain small companies, although the comments received on the proposal provided insufficient detail as to how that market would function, safeguard retail investors from fraud and manipulation, and facilitate regulatory oversight.[26] In its December 21, 2020 request, OTC Link LLC made certain representations regarding how the Expert Market would function with safeguards to reduce the potential for certain retail investors to be harmed by fraud and manipulation, as well as representations regarding how OTC Link LLC would establish, maintain, and enforce written policies and procedures reasonably designed to facilitate the integrity and Commission oversight of the Expert Market. Based on these and other facts and representations made in OTC Link LLC's December 21, 2020 request, the Commission preliminarily believes that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to grant, subject to the conditions described below, exemptive relief pursuant to Section 36(a)(1) of the Exchange Act and Rule 15c2–11 to permit Subscribers to publish or submit proprietary quotations on the Expert Market, on a continuous basis, without complying with the requirements of Amended Rule 15c2–11(a)(1)(i) and (d)(1)(i)(A). The Commission notes that OTC Link LLC may implement additional conditions, criteria, or noticing mechanisms for certain quotations on its platform by Subscribers as it may find appropriate, including as to whether additional

registered pursuant to Section 15 of the Exchange Act, investment adviser registered pursuant to Section 203 of the Investment Advisers Act of 1940, and investment company registered under the Investment Company Act of 1940. *See* Rule 501(a)(1) of Regulation D. The term ''accredited investor'' also includes any entity of a type not listed in Rule 501(a)(1), that is not formed for the specific purpose of acquiring the securities offered, that own investments in excess of $5,000,000, which could include a foreign bank or other non-U.S. financial institution. *See* Rule 501(a)(9) of Regulation D.

[16] OTC Link LLC has requested that foreign broker-dealers, as defined in Exchange Act Rule 15a–6(b)(3), be included in the list of Qualified Experts. The Commission is seeking comment, below, regarding whether foreign broker-dealers, as defined in Exchange Act Rule 15a–6(b)(3), should be included in the list of Qualified Experts.

[17] Qualified Experts that receive Expert Market data directly from OTC Markets Group would be subject to a subscriber agreement that contractually limits any further distribution.

[18] As described above in Part I.B.1, market data distributors, including Subscribers, would be contractually required to ensure that the recipients of quotations published or submitted on the Expert Market meet the definition of a Qualified Expert.

[19] A quoted market on the Expert Market for such security would have to commence within the first four business days from the date on which it loses eligibility to be quoted in reliance on the piggyback exception.

[20] A quoted market on the Expert Market for such security would have to commence within the first four business days from the date on which it loses eligibility to be quoted in reliance on the piggyback exception.

[21] The issuers of such securities would be subject to oversight of the bankruptcy court. After confirmation of the bankruptcy plan, the bankruptcy courts may direct the company and others to carry out the plan. *See* 28 U.S.C. 1142.

[22] A quoted market on the Expert Market for such security must commence within 90 calendar days from the date on which it is issued.

[23] *See supra* notes 19 and 20.

[24] OTC Link LLC would remove any such flag if it becomes aware of a Commission or court order finding for the successful challenge of the applicable trading suspension.

[25] *See* Adopting Release at 68145, 68198.

[26] *Id.* at 68145.

quotations for securities of certain issuers should be transferred to the Expert Market because they may present more risk to certain retail investors.

The proposed conditional exemptive relief would allow the Expert Market to serve as a centralized location for published quotations in certain securities—that otherwise would migrate to the grey market following the Compliance Date—to be viewed exclusively by specified categories of sophisticated or professional investors. Such relief, therefore, could help to advance opportunities for more efficient pricing in such securities, enhance liquidity for sophisticated or professional investors in such securities, and promote capital formation for companies seeking growth opportunities that might prefer to be quoted in a market limited to such persons.

A. Permitted Recipients of Quotations Published or Submitted on the Expert Market

The Commission is proposing to limit the universe of market participants to whom real-time and delayed quotations published or submitted on the Expert Market are distributed. Accordingly, with one exception discussed below, real-time or delayed quotations published or submitted on the Expert Market may not be distributed, whether directly or indirectly from another source,[27] to any person that is not a Qualified Expert. The Commission preliminarily believes that the inability of the general public to view real-time and delayed quotations published or submitted on the Expert Market should help protect investors from incidents of fraud and manipulation in OTC securities for which no or limited publicly available information about the issuers exists to help counteract misinformation, while also allowing Subscribers to maintain a market in certain securities for certain qualified investors to interact.[28]

The Commission preliminarily believes that including in the list of Qualified Experts (1) any qualified institutional buyer, as defined in Rule 144(A)(a)(1) under the Securities Act, and (2) any accredited investor, as defined in Rule 501(a) of Regulation D, would appropriately capture the types of investors who have, among other things, demonstrated the ability to assess an investment opportunity (including the ability to analyze risks and rewards), or the ability to gain access to information about an issuer or about an investment opportunity.[29] Such persons should be able to view quotations published or submitted on the Expert Market because they may not need the same investor protections that are afforded, in part, by current and publicly available issuer information in the same way that the general public may need it to analyze an investment opportunity or to counteract misinformation. In addition, the Commission preliminarily believes that it is appropriate to include qualified purchasers, as defined in Section 2(a)(51)(A) of the Investment Company Act and the rules thereunder, in the list of Qualified Experts because qualified purchasers are investors that have a high degree of financial sophistication who are in a position to appreciate the risks associated with investing in securities that would be quoted on the Expert Market without the protections afforded by the Amended Rule.

Notably, this list of Qualified Experts would exclude customers of broker-dealers and investment advisers (that do not fit into any of the three categories of Qualified Experts) because this market is not available to the general public.[30]

In addition, as an exception to the Qualified Expert requirement, the Commission preliminarily believes that it is appropriate for an issuer to be able to view quotations published or submitted on the Expert Market for its own security, if the issuer agrees not to distribute such quotations, directly or indirectly, to any person that is not a current officer, director, or employee of the issuer, as described above. This is because such information could inform the issuer about the liquidity and market price of the security and allow the issuer to make informed decisions regarding future offerings to raise capital. In order for an issuer to view these quotations, the issuer would need to contractually agree not to distribute such quotations, directly or indirectly, to any person that is not a current officer, director, or employee of the issuer.

B. Expert Market Securities

The Commission preliminarily believes that it is appropriate for the following categories of securities to be eligible to be the subject of Subscribers' proprietary quotations on the Expert Market.

The first category is securities that lose eligibility to be quoted in reliance on the piggyback exception—either (1) upon the Compliance Date due to a lack of current and publicly available information about an issuer, or (2) following the Compliance Date due to (i) a lack of current and publicly available information about the issuer, (ii) the issuer's status as a shell company, or (iii) a failure to meet the frequency-of-quotation requirement—so long as quotations on the Expert Market commence within four business days of such loss of eligibility.[31] As stated in the Adopting Release, the Commission recognizes that holders of such securities may incur costs related to a loss of liquidity when broker-dealers cannot rely on the piggyback exception.[32] The ability of broker-dealers (*i.e.,* Subscribers) to publish or submit proprietary quotations for those securities on the Expert Market could help to facilitate liquidity for such securities because the availability of quotations could reduce trading costs and facilitate pricing efficiency. This is because investors that are Qualified Experts would be able to view those quotations and use such information in the mix of information (*e.g.,* in addition to their own due diligence or issuer disclosures that might not be publicly available but to which they otherwise have access) that they take into account as part of a meaningful investment analysis when making investment decisions.[33] Without the proposed exemption, as discussed above, these securities may migrate to the grey market, to which retail investors and the general public have access, without access to information embedded in prices published in a quotation medium. The ability of Subscribers to publish or submit quotations in a quotation medium for such securities could help protect retail investors and

[27] As discussed above in Part I.B, quotations published or submitted on the Expert Market would be accessible to market data distributors, including Subscribers, that have contractually agreed to not distribute quotations published or submitted on the Expert Market to persons who are ineligible to access such information (*i.e.,* non-Qualified Experts), including to the general public.

[28] *See, e.g.,* Adopting Release at 68145.

[29] *See, e.g., Amending the* ''*Accredited Investor*'' *Definition,* Securities Act Release No. 10824 (Aug. 26, 2020), 85 FR 64234 (Oct. 9, 2020) (''Accredited Investor Release'').

[30] Any Subscriber that distributes quotations published or submitted on the Expert Market to any person that is not a Qualified Expert would not be eligible for the relief proposed herein and may violate Rule 15c2–11.

[31] This four-business-day window mirrors the time frame provided in the piggyback exception that quotations occur with no more than four business days in succession without a priced quotation. *See* Amended Rule 15c2–11(f)(3)(i). As an example, if eligibility to be quoted in reliance on the piggyback exception were lost on Monday, January 4, 2021, a Subscriber's quotations on the Expert Market must commence no later than Friday, January 8, 2021 to be eligible for this proposed exemption.

[32] Adopting Release at 68141.

[33] *See, e.g.,* Accredited Investor Release at 64269–70.

the general public from potential incidents of fraud and manipulation in the grey market and facilitate liquidity for such securities.

The second category captures securities issued in conjunction with a Chapter 11 bankruptcy plan that is confirmed pursuant to Section 1129 of the Code and are exempt from registration in accordance with Section 1145 of the Code, so long as quotations on the Expert Market commence within 90 calendar days from the date on which any such security is issued.[34] A bankruptcy proceeding is a significant event involving an issuer that a broker-dealer should carefully consider before it publishes or submits a quotation for the issuer's security in a quotation medium.[35] But, the Commission preliminarily believes that the inclusion of this category of securities as eligible to be the subject of Subscribers' quotations published or submitted on the Expert Market is appropriate given that Qualified Experts are more likely than the general public to possess the ability to evaluate the merits and risks of a prospective investment opportunity and, therefore, it would provide an efficient means to liquidate positions acquired through a bankruptcy proceeding. The inclusion of this second category could help promote capital formation opportunities for certain companies in limited circumstances while ensuring, for investor protection, that the distribution of quotations for the securities of such companies is limited to investors that have a demonstrated ability to assess such an investment opportunity.

The Commission believes that it would be appropriate for OTC Link LLC to remove from the Expert Market quotations published or submitted for any security of an issuer that is the subject of a registration revocation or trading suspension order issued by the Commission pursuant to Section 12(j) or 12(k) of the Exchange Act, respectively. Pursuant to any such registration revocation or trading suspension order and the Commission's finding that it is in the public interest and for the protection of investors,[36] Subscribers would not be able to effect transactions in such securities. Therefore, such quotations must be removed.

In addition, the Commission preliminarily believes that it is appropriate for OTC Link LLC to remove from the Expert Market quotations published or submitted for any security of an issuer that OTC Link LLC has identified as ''defunct,'' to prevent the publication or submission of quotations for securities of issuers that have ceased operations, ceased to exist, or have failed to respond to inquiries by OTC Link LLC. Furthermore, the issuer of such security may not have a transfer agent to allow investors to receive or transfer their stock certificates. Thus, the quotations for such securities should be removed from the Expert Market to help prevent such securities from becoming vehicles for fraud and manipulation.

Further, the Commission preliminarily believes that requiring OTC Link LLC to flag on its website any ''formerly suspended'' security for such period of time as set forth in OTC Link LLC's policies and procedures (which would be for two years following the applicable trading suspension) would help to promote investor protection.[37] Such a flag would serve as a notice to market participants that there was, in the recent past, the presence of any number of factors (such as uncertainty about the accuracy of publicly available issuer information or questions about trading in the issuer's security) that led the Commission to conclude that it was in the public interest and for the protection of investors to suspend trading in the security.[38] Accordingly, the Commission preliminarily believes that this flag requirement would improve the overall mix of information about issuers and their securities and would help investors make better-informed investment decisions.[39]

C. Policies and Procedures

The Commission is proposing to condition the exemptive relief upon OTC Link LLC establishing, maintaining, and enforcing reasonably designed written policies and procedures to operate the Expert Market in a manner that is consistent with how the Expert Market is described herein. Such policies and procedures would account for the following: (1) The manner in which the distribution of real-time and delayed quotations on the Expert Market is limited, directly and indirectly, only to Qualified Experts and, as applicable, issuers of securities for which quotations are published or submitted on the Expert Market with respect to their own securities; (2) specific actions that will be taken if OTC Link LLC becomes aware that any Subscriber or market data distributor or user has violated the contractual obligations described above, and specific actions that will be taken if OTC Link LLC becomes aware that an issuer has violated its contractual obligation not to distribute, directly or indirectly, quotations published or submitted on the Expert Market for its security to any person that is not a current officer, director, or employee of the issuer; and (3) the regular surveillance of the Expert Market data feed and quotation activity on the Expert Market to determine whether a Subscriber or market data distributor or user has facilitated access, directly or indirectly, to quotations published or submitted on the Expert Market to any person that is not a Qualified Expert or, as applicable, an issuer of a security for which quotations are published or submitted on the Expert Market with respect to its own security.

The Commission preliminarily believes that the obligation to establish, maintain, and enforce such written policies and procedures as part of the proposed exemptive relief would help to prevent the general public from accessing quote information, promote the integrity of the Expert Market, and facilitate Commission oversight of the Expert Market. In particular, OTC Link LLC's reasonably designed written policies and procedures would provide transparency of, and set expectations for, the manner in which OTC Link LLC operates the Expert Market; would encompass compliance considerations relevant to the operations of the Expert Market; and would assist Commission staff in examining the Expert Market.

[34] This 90-calendar-day window is consistent with the Amended Rule's requirement for the information of prospectus issuers (*i.e.,* issuers that filed a registration statement under the Securities Act) to be ''current'' for broker-dealers to commence a quoted market in these issuers' securities in a quotation medium. *See* Amended Rule 15c2–11(b)(1). The Commission preliminarily believes that it is appropriate to use a measurement of time that is consistent with the Amended Rule's requirement for prospectus issuers' information because both requirements pertain to the commencement of a quoted market in securities of an issuer with which the market is unfamiliar and are designed to ensure that the Amended Rule's specified information about the issuers of these securities is not stale or outdated with respect to such issuance.

[35] *See* Adopting Release at 68171.

[36] *See* Exchange Act Section 12(j) (''The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to . . . revoke the registration of a security, if the Commission finds . . . that the issuer of such security has failed to comply with any provision of this chapter or the rules and regulations thereunder.''); Exchange Act Section 12(k)(1)(A) (''If in its opinion the public interest and the protection of investors so require, the Commission is authorized by order—summarily to suspend trading in any security . . . for a period not exceeding 10 business days . . . .'').

[37] As discussed above in Part I.B.3, this period of time would be for two years following the applicable trading suspension, unless the trading suspension is successfully challenged.

[38] *See, e.g.,* Adopting Release at 68151.

[39] *See id.* at 68144.

D. Recordkeeping Requirement

Finally, the Commission is proposing to require as part of the exemptive relief that OTC Link LLC preserve, for a period of not less than three years, the first two years in an easily accessible place, the following records:

1. Documents and information regarding OTC Link LLC's written policies and procedures related to the Expert Market, including records related to the implementation of such written policies and procedures;

2. Documents and information regarding any processes undertaken by OTC Link LLC that analyze information over time to identify whether the distribution of quotations published or submitted on the Expert Market is limited only to Qualified Experts and, as applicable, issuers of securities for which quotations are published or submitted on the Expert Market with respect to their own securities; and

3. Documents and information regarding OTC Link LLC's ongoing surveillance of the quoting activity and distribution of quotations published or submitted on the Expert Market, including any reports that identify exceptions to compliance with the written policies and procedures and the resolution of such exceptions.

The Commission preliminarily believes that this recordkeeping condition will help facilitate the Commission's oversight of the Expert Market, including of Subscribers that publish or submit quotations on the Expert Market and the distribution of such quotations. In particular, the documents and information that would be required to be maintained will provide the Commission with a record of how OTC Link LLC has (1) implemented its reasonably designed written policies and procedures described above; (2) conducted its ongoing maintenance of such written policies and procedures in response to analysis of whether quotations published or submitted on the Expert Market are distributed only to market data distributors (including Subscribers), Qualified Experts, and, as applicable, issuers of securities for which quotations are published or submitted on the Expert Market with respect to their own securities; and (3) enforced such written policies and procedures as part of its ongoing surveillance of exceptions to compliance with those written policies and procedures. The Commission also preliminarily believes that these proposed recordkeeping conditions would aid the Commission's oversight of OTC Link LLC's limitation on the distribution of quotations published or submitted on the Expert Market only to Qualified Experts (and, as applicable, issuers of securities for which quotations are published or submitted on the Expert Market with respect to their own securities).

E. Additional Considerations for Market Participants Relying on the Proposed Exemption

In addition, Subscribers that publish or submit quotations in compliance with this proposed exemption remain subject to liability under the antifraud provisions of the federal securities laws. Further, the proposed exemption would not create an exemption or change existing exemptions from the registration requirements or any other requirements under the federal securities laws, including the Securities Act, for any party. Accordingly, for example, if a Subscriber were to publish or submit a quotation on the Expert Market in reliance on the proposed exemption, the Subscriber would need to determine whether the security, or any offer or sale of such security, is registered in accordance with any applicable requirement under federal securities laws or whether an exemption from any such registration requirement exists.

III. Request for Comments

The Commission is seeking comment on all aspects of the proposed exemption. In particular, the Commission requests comment on the following questions about the proposed exemption. When responding to the request for comment, please explain your reasoning. Additionally, the Commission requests that commenters identify sources of data and information as well as provide data and information to assist the Commission in analyzing the impact of the proposed relief.

1. Are there any other categories of securities that should be eligible for Subscribers' proprietary quotations on the Expert Market? Are there any other categories of securities that should be excluded from Subscribers' proprietary quotations on the Expert Market? For example, should only those securities that meet certain reported trade thresholds be eligible for quoting? Please explain, including how this suggestion would be necessary or appropriate in the public interest and consistent with the protection of investors.

2. Are there categories of investors included in the proposed list of Qualified Experts who should be excluded? For example, should all accredited investors, as defined in Rule 501(a) of Regulation D, be considered Qualified Experts, or should the list be limited to a narrower set of sophisticated investors? What steps should broker-dealers and investment advisers be required to take, if any, to verify the accredited investor status of customers before providing them access to quotations published or submitted on the Expert Market? Should all employees of an issuer, including those who would not otherwise qualify as Qualified Experts, be allowed to view quotations published or submitted on the Expert Market? Please explain, including how this suggestion would be necessary or appropriate in the public interest and consistent with the protection of investors.

3. Are there any other categories of persons or entities that should be eligible to view real-time or delayed quotations published or submitted on the Expert Market? The Commission understands that foreign broker-dealers, as defined in Exchange Act Rule 15a–6(b)(3), similar to broker-dealers registered under Section 15 of the Exchange Act—an entity included in the definition of ''accredited investor''—may demonstrate the ability to assess an investment opportunity, the capacity to allocate investments in such a way as to mitigate or avoid risks of unsustainable loss, the ability to gain access to information about an issuer or about an investment opportunity, or the ability to bear the risk of a loss. OTC Link LLC has requested that such foreign broker-dealers be included in the list of Qualified Experts. Should foreign broker-dealers, as defined in Exchange Act Rule 15a–6(b)(3), be added to the list of Qualified Experts? Please explain why or why not, including how this suggestion would be necessary or appropriate in the public interest and consistent with the protection of investors.

4. What costs would be associated with the proposed Expert Market exemption? Please specify the market participant(s) that would incur such costs (*e.g.,* issuers, broker-dealers, etc.), if any. Would the cost of the proposed policies and procedures and recordkeeping conditions prevent the formation of an ''expert market'' for any eligible securities? Would the ability for issuers' securities to be quoted on the Expert Market reduce incentives for relevant issuers to provide public information?

5. How active would quotations in these securities likely be if the proposed exemptive relief were granted? What degree of liquidity and price discovery would likely be facilitated by the ability of Subscribers to publish or submit

quotations on the Expert Market? Where possible, please provide data or identify sources of information the Commission could use to analyze the impact of the relief on liquidity and price discovery.

6. Does the proposed policies and procedures condition provide appropriate assurance that real-time and delayed quotations published or submitted on the Expert Market would not be accessible to the general public, including retail investors, other than the Qualified Experts? Please explain why or why not. If not, please explain how the condition should be modified, including the minimum requirements that should be included in OTC Link's policies and procedures to (1) ensure that only Qualified Experts can view quotations published or submitted on the Expert Market and (2) address concerns about fraud and manipulation?

7. Does the proposed recordkeeping condition for OTC Link LLC provide appropriate means to facilitate the Commission's oversight of the Expert Market, including of Subscribers that publish or submit quotations on the Expert Market and the distribution of such quotations? Please explain why or why not. If not, please explain how the condition should be modified.

8. Are the proposed safeguards appropriate to ensure that only investors who are able to assess the risks and merits of investment in the categories of securities proposed to be included in the Expert Market are able to access quotations? Are the proposed conditions of this exemptive order (in conjunction with FINRA rules that govern this market) sufficient to prevent the general public from accessing quotations published or submitted in the Expert Market, or should the Commission impose additional conditions? Are there any other safeguards that should be implemented in the Expert Market to protect investors?

9. Are there additional conditions that the exemptive order providing the relief proposed herein should include to help prevent persons who are not Qualified Experts from accessing quotations published or submitted on the Expert Market? If yes, please specify such condition and explain how this suggestion would be necessary or appropriate in the public interest and consistent with the protection of investors.

10. Should the exemptive order providing the relief proposed herein include a sunset provision so that the relief would expire on a particular date? If yes, what would be an appropriate date on which the relief should expire (*e.g.,* one year after the issuance of the exemptive order, etc.) and why? Please discuss the costs and benefits of including such a sunset provision in the exemptive order. Additionally, please explain why such a sunset provision would be necessary or appropriate in the public interest and consistent with the protection of investors. Alternatively, please explain why the exemptive order should omit a sunset provision, including a discussion of the benefits and costs of such omission or any distortive effects on the market. Lastly, please discuss whether there are alternative means of achieving any benefits of a sunset provision.

By the Commission.

Dated: December 22, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–28700 Filed 1–11–21; 8:45 am]

BILLING CODE 8011–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0440; FRL–10018–44–Region 9]

Clean Air Plans; 2008 8-Hour Ozone Nonattainment Area Requirements; Western Nevada County, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve, or conditionally approve, all or portions of a state implementation plan (SIP) revision submitted by the State of California to meet Clean Air Act (CAA or ''Act'') requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS or ''standards'') in the Nevada County (Western part), California ozone nonattainment area (''Western Nevada County''). The SIP revision is the ''Ozone Attainment Plan, Western Nevada County, State Implementation Plan for the 2008 Primary Federal 8-Hour Ozone Standard of .075 ppm'' (''2018 Western Nevada County Ozone Plan'' or ''Plan''). The 2018 Western Nevada County Ozone Plan addresses the Serious nonattainment area requirements for the 2008 ozone NAAQS, including the requirements for emissions inventories, attainment demonstration, reasonable further progress, reasonably available control measures, and contingency measures, among others; and establishes motor vehicle emissions budgets. The EPA is proposing to approve the 2018 Western Nevada County Ozone Plan as meeting all the applicable ozone nonattainment area requirements except for the contingency measures requirement, for which the EPA is proposing conditional approval. In addition, the EPA is beginning the adequacy process for the 2020 motor vehicle emissions budgets in the 2018 Western Nevada County Ozone Plan through this proposed rulemaking.

DATES: Written comments must arrive on or before February 11, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0440 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* 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.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: T. Khoi Nguyen, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4120, or by email at *nguyen.thien@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

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I. Regulatory Context

A. Ozone Standards, Area Designations, and SIPs

Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the presence of sunlight.[1] These two pollutants, referred to as ozone precursors, are emitted by many types of sources, including on-and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints.

Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases.[2]

Under section 109 of the CAA, the EPA promulgates NAAQS for pervasive air pollutants, such as ozone. The NAAQS are concentration levels that, the attainment and maintenance of which, the EPA has determined to be requisite to protect public health and welfare. Section 110 of the CAA requires states to develop and submit SIPs to implement, maintain, and enforce the NAAQS.

In 1979, the EPA established the 1-hour ozone NAAQS of 0.12 parts per million (ppm) (referred to herein as the ''1-hour ozone NAAQS'').[3] All of Nevada County was designated ''Unclassifiable/Attainment'' for the 1-hour standard on November 15, 1990.[4]

In 1997, the EPA revised the NAAQS for ozone, setting it at 0.08 ppm averaged over an 8-hour timeframe (referred to herein as the ''1997 ozone NAAQS'') to replace the existing 1-hour ozone NAAQS.[5] In 2004, the EPA initially designated and classified Western Nevada County as a ''Subpart 1'' nonattainment area for the 1997 ozone NAAQS.[6] In response to a decision of the United States Court of Appeals for the District of Columbia Circuit vacating the EPA's subpart 1 designations, the EPA in 2012 revised the area's classification for the 1997 ozone NAAQS to ''Moderate,'' with an outermost attainment date of June 15, 2011.[7] In 2011, the design value for the area was 0.079 ppm, and the EPA published a clean data determination on December 3, 2012, suspending attainment-related planning requirements for the 1997 ozone NAAQS.[8]

In 2008, the EPA lowered the 8-hour ozone NAAQS to 0.075 ppm (referred to herein as the ''2008 ozone NAAQS'') to replace the 1997 ozone NAAQS of 0.08 ppm.[9] In 2012, the EPA designated Western Nevada County as nonattainment for the 2008 ozone NAAQS and classified the area as Marginal.[10] Areas classified as Marginal must attain the NAAQS within 3 years of the effective date of the nonattainment designation. For Western Nevada County, the applicable Marginal area attainment date was as expeditiously as practicable but no later than July 20, 2015. The area failed to attain the 2008 ozone NAAQS by this date, and the EPA published a reclassification to Moderate on May 4, 2016.[11] Upon reclassification, Western Nevada County was required to attain the 2008 ozone NAAQS as expeditiously as practicable but no later than July 20, 2018.

In November 2018, pursuant to CAA section 181(b)(2), the EPA proposed to determine that the Western Nevada County Moderate nonattainment area failed to attain the 2008 ozone NAAQS by the Moderate area attainment date.[12] Additionally, following the EPA's November 2018 proposal, the California Air Resources Board (CARB) submitted a request under CAA section 181(b)(3) to voluntarily reclassify the Western Nevada County nonattainment area from Moderate to Serious nonattainment for the 2008 ozone standards accompanied by a SIP revision to address planning elements for a Serious area.[13]

In a final rule dated August 23, 2019, the EPA found that Western Nevada County failed to attain the 2008 ozone NAAQS by the applicable attainment date, and reclassified the area as Serious by operation of law, effective September 23, 2019.[14] Once reclassified to Serious, the area is required to attain the standard as expeditiously as practicable, but no later than 9 years after the initial designation as nonattainment, *i.e.,* July 20, 2021.

The SIP revision that is the subject of today's proposed action addresses the Serious nonattainment area requirements that apply to Western Nevada County for the 2008 ozone NAAQS.

B. The Western Nevada County Ozone Nonattainment Area

The Western Nevada County nonattainment area for the 2008 ozone NAAQS consists of the portion of Nevada County west of the ridge of the Sierra Nevada mountains. Western Nevada County encompasses an area of approximately 800 square miles. The nonattainment area is bounded on the north by the Middle Yuba River and most of the southern border is defined by the Bear River. The eastern boundary is a line running north/south that generally follows the ridge of the Sierra

[1] The State of California refers to reactive organic gases (ROG) rather than VOC in some of its ozone-related SIP submissions. As a practical matter, ROG and VOC refer to the same set of chemical constituents, and for the sake of simplicity, we refer to this set of gases as VOC in this proposed rule.

[2] ''Fact Sheet—2008 Final Revisions to the National Ambient Air Quality Standards for Ozone'' dated March 2008.

[3] 44 FR 8202 (February 8, 1979).

[4] 56 FR 56694 (November 6, 1991).

[5] 62 FR 38856 (July 18, 1997). The 1-hour ozone standard was revoked effective June 15, 2005. See 70 FR 44470 (August 3, 2005).

[6] 69 FR 23857 (April 30, 2004).

[7] 77 FR 28423 (May 14, 2012). For more details on the revised classification, see 77 FR 56775, 56776 (September 14, 2012).

[8] 77 FR 71551 (December 3, 2012).

[9] 73 FR 16436 (March 27, 2008). The EPA further tightened the 8-hour ozone NAAQS to 0.070 ppm in 2015, but today's proposed action relates to the requirements for the 2008 ozone NAAQS only. Information on the 2015 ozone NAAQS is available at 80 FR 65292 (October 26, 2015).

[10] 77 FR 30088 (May 21, 2012).

[11] 81 FR 26697 (May 4, 2016).

[12] 83 FR 56781 (November 14, 2018).

[13] See letter dated December 2, 2018, from Richard W. Corey, Executive Officer, CARB, to Michael Stoker, Regional Administrator, EPA Region IX, and letter dated November 14, 2018 from Gretchen Bennitt, Executive Director, NSAQMD, to Richard W. Corey, Executive Officer, CARB, subject ''Submittal of the Northern Sierra Air Quality Management District Ozone Attainment Plan for the 2008 Federal 8-hour Ozone Standard.''

[14] 84 FR 44238. The notice for this action acknowledges CARB's request for voluntary reclassification, and notes that the EPA's determination resulted in the same outcome as would occur with an approval of that request.

Nevada mountains.[15] The population of the Western Nevada County nonattainment area is about 83,000 people.[16]

Air quality in Western Nevada County is regulated jointly by the Northern Sierra Air Quality Management District (NSAQMD or ''District'') and CARB. The Nevada County Transportation Commission (NCTC) is the regional transportation planning agency for the County of Nevada. For transportation planning purposes, the area is an isolated rural area.[17]

C. CAA and Regulatory Requirements for 2008 Ozone Nonattainment Area SIPs

States must implement the 2008 ozone NAAQS under title I, part D of the CAA, including sections 171–179B of subpart 1, ''Nonattainment Areas in General,'' and sections 181–185 of subpart 2, ''Additional Provisions for Ozone Nonattainment Areas.'' To assist states in developing effective plans to address ozone nonattainment problems, in 2015, the EPA issued a SIP Requirements Rule (SRR) for the 2008 ozone NAAQS (''2008 Ozone SRR'') that addressed implementation of the 2008 standards, including attainment dates, requirements for emissions inventories, attainment and reasonable further progress (RFP) demonstrations, among other SIP elements, as well as the transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS and associated anti-backsliding requirements.[18] The 2008 Ozone SRR is codified at 40 CFR part 51, subpart AA. We discuss the CAA and regulatory requirements for the elements of 2008 ozone plans relevant to this proposal in more detail in Section III of this document.

The EPA's 2008 Ozone SRR was challenged, and on February 16, 2018, the U.S. Court of Appeals for the D.C. Circuit (''D.C. Circuit'') published its decision in *South Coast Air Quality Management. District* v. *EPA* (''*South Coast II*'') [19] vacating portions of the 2008 Ozone SRR. The only aspect of the *South Coast II* decision that relates to this proposed action is the vacatur of the alternative baseline year for RFP plans. More specifically, the 2008 Ozone SRR required states to develop the baseline emissions inventory for RFP plans using the emissions inventory for the most recent calendar year for which states submit a triennial inventory to the EPA under subpart A, ''Air Emissions Reporting Requirements,'' of 40 CFR part 51, which was 2011. The 2008 Ozone SRR, however, allowed states to use an alternative year, between 2008 and 2012, for the baseline emissions inventory provided the state demonstrated why the alternative baseline year was appropriate. In the *South Coast II* decision, the D.C. Circuit vacated the provisions of the 2008 Ozone SRR that allowed states to use an alternative baseline year for demonstrating RFP.

II. The 2018 Western Nevada County Ozone Plan

A. Summary of Submission

On December 2, 2018, CARB submitted the 2018 Western Nevada County Ozone Plan to the EPA as a revision to the California SIP to address the nonattainment area requirements for Western Nevada County for the 2008 ozone NAAQS.[20] The 2018 Western Nevada County Ozone Plan includes various chapters and appendices, described further below, plus the District's resolution of adoption for the Plan (District Resolution 2018–07) and CARB's resolution of adoption of the Plan as a revision to the California SIP (CARB Resolution 18–36).[21] The Plan addresses the CAA requirements for emissions inventories, air quality modeling demonstrating attainment, reasonably available control measures (RACM), RFP, and motor vehicle emissions budgets, among other requirements.

The 2018 Western Nevada County Ozone Plan begins with an executive summary, an introductory section discussing ozone pollution and the Western Nevada County nonattainment area generally, a discussion about specific challenges in meeting air quality standards in the area, and a formal request to reclassify the area to Serious for the 2008 ozone NAAQS. Chapters IV through XIII address specific planning elements for a Serious area, including emissions inventory, transportation conformity budgets, emissions statements, new source review (NSR), RACM, RFP, attainment demonstration, and contingency measures. The Plan also includes eight appendices providing additional information on emissions inventories, CARB control measures, CARB analysis of key mobile source regulations and programs, a mobile sources and consumer products RACM demonstration, and the modeled attainment demonstration, a modeling emissions inventory for the nonattainment area, a description of the conceptual model for the nonattainment area, and CARB's modeling protocol used for the photochemical modeling.

Additionally, to further supplement the contingency measures element of the 2018 Western Nevada County Ozone Plan, CARB forwarded an October 26, 2020 letter from the District [22] committing to adopt as a rule the most recent Architectural Coatings Suggested Control Measure (SCM) developed and approved by CARB to serve as a contingency measure that would be triggered if the area fails to meet an RFP milestone for the 2008 ozone NAAQS or to reach attainment by a July 20, 2021 attainment date. In the letter forwarding this commitment, dated November 16, 2020, CARB commits to submit the new District rule to the EPA as a SIP revision within 12 months of the EPA's final action on the contingency measures element of the 2018 Western Nevada County Ozone Plan.

In a technical memorandum submitted by email on October 27, 2020, CARB provided additional information related to the motor vehicle emissions budgets in the 2018 Western Nevada County Ozone Plan.[23] Additionally, CARB has provided a copy of the 2019 emissions inventory for the

[15] For a precise definition of the boundaries of the Western Nevada County 2008 ozone nonattainment area, see 40 CFR 81.305.

[16] 2018 Western Nevada County Ozone Plan, page 12.

[17] Isolated rural nonattainment and maintenance areas are defined in 40 CFR 93.101 as areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations.

[18] 80 FR 12264 (March 6, 2015).

[19] *South Coast Air Quality Management District* v. *EPA,* 882 F.3d 1138 (D.C. Cir. 2018). The term ''*South Coast II*'' is used in reference to the 2018 court decision to distinguish it from a decision published in 2006 also referred to as ''*South Coast.*'' The earlier decision involved a challenge to the EPA's Phase 1 implementation rule for the 1997 ozone NAAQS. *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006).

[20] Letter dated December 2, 2018, from Richard Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, U.S. Environmental Protection Agency Region 9.

[21] NSAQMD Board Resolution 2018–7, October 22, 2018; CARB Board Resolution 18–36, 2018 Ozone Attainment Plan for Western Nevada County.

[22] Letter dated November 16, 2020, from Richard Corey, Executive Officer, CARB, to John Busterud, Regional Administrator, EPA Region IX. CARB's letter also forwarded the District's commitment letter to the EPA. The District's letter is dated October 26, 2020, from Gretchen Bennitt, NSAQMD Air Pollution Control Officer, to Richard Corey, CARB Executive Officer.

[23] See attachment to email dated October 27, 2020 from Nesamani Kalandiyur, CARB, to Khoi Nguyen and Karina O'Connor, EPA Region 9.

nonattainment area,[24] and clarifications to emissions tables in the Plan.[25]

B. Clean Air Act Procedural Requirements for Adoption and Submission of SIP Revisions

CAA sections 110(a) and 110(l) require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submission of a SIP or SIP revision. To meet this requirement, every SIP submittal should include evidence that adequate public notice was given and an opportunity for a public hearing was provided consistent with the EPA's implementing regulations in 40 CFR 51.102.

Both the District and CARB have satisfied the applicable statutory and regulatory requirements for reasonable public notice and hearing prior to the adoption and submittal of the 2018 Western Nevada County Ozone Plan. On September 21, 2018, the District published a notice in the local newspaper of a public hearing to be held on October 22, 2018, for the adoption of the 2018 Western Nevada County Ozone Plan.[26] The District adopted the Plan through Resolution #2018–07 at the October 22, 2018 hearing, and directed the Executive Director to forward the Plan to CARB for inclusion in the California SIP.[27]

CARB also provided public notice and opportunity for public comment on the 2018 Western Nevada County Ozone Plan. On October 12, 2018, CARB released for public review its Staff Report for the Plan and published a notice of public meeting to be held on November 15, 2018, to consider adoption.[28] At the November 15, 2018 hearing, CARB adopted the Plan as a revision to the California SIP, excluding those portions not required to be submitted to the EPA, and directed the Executive Officer to submit the Plan to the EPA for approval into the California SIP. On December 2, 2018, the Executive Officer of CARB submitted the Plan to the EPA, including the CARB Board resolution adopting the 2018 Western Nevada County Ozone Plan.[29] On June 20, 2019, the EPA determined that certain portions of this submittal applicable to the 2008 ozone NAAQS were complete.[30]

Based on information provided in the SIP revision summarized above, the EPA has determined that all hearings were properly noticed. Therefore, we find that the submittal of the 2018 Western Nevada County Ozone Plan meets the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l) and 40 CFR 51.102.

III. Evaluation of the 2018 Western Nevada County Ozone Plan

A. Emissions Inventories

1. Statutory and Regulatory Requirements

CAA sections 172(c)(3) and 182(a)(1) require states to submit for each ozone nonattainment area a ''base year inventory'' that is a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the area. In addition, the 2008 Ozone SRR requires that the inventory year be selected consistent with the baseline year for the RFP demonstration, which is the most recent calendar year for which a complete triennial inventory is required to be submitted to the EPA under the Air Emissions Reporting Requirements.[31]

The EPA has issued guidance on the development of base year and future year emissions inventories for ozone and other pollutants.[32] Emissions inventories for ozone must include emissions of VOC and NO_X and represent emissions for a typical ozone season weekday.[33] States should include documentation explaining how the emissions data were calculated. In estimating mobile source emissions, states should use the latest emissions models and planning assumptions available at the time the SIP is developed.[34]

Future baseline emissions inventories must reflect the most recent population, employment, travel and congestion projections for the area. In this context, future ''baseline'' emissions inventories refer to emissions estimates for a given year and area that reflect rules and regulations and other measures that are already adopted and that consider expected growth. Future baseline emissions inventories are necessary to show the projected effectiveness of SIP control measures. Both the base year and future year inventories are necessary for photochemical modeling to demonstrate attainment.

2. Summary of State's Submission

The 2018 Western Nevada County Ozone Plan includes base year (2011) and future year (2012, 2014, 2017, 2020, and 2021) baseline inventories for NO_X and VOC for the Western Nevada County ozone nonattainment area. Documentation for the inventories are found in Chapter IV, ''Emissions Inventory Background,'' Chapter V, ''Summary of Emissions Inventory Methodologies,'' Appendix A, ''Emissions Inventories for 2011, 2012, 2014, 2017, 2020 and 2021,'' and Appendix F, ''Modeling Emission Inventory for the 8-Hour Ozone State Implementation Plan in Western Nevada County Non-attainment Area (WNNA).''

The emissions inventories represent average summer day emissions, consistent with the observation that higher ozone levels in Western Nevada County typically occur from May through October. The 2011 base year and future year inventories in the 2018 Western Nevada County Ozone Plan reflect District rules and CARB regulations submitted through November 2016.[35] The mobile source portions of both base year and projected future year inventories were developed using California's EPA-approved mobile source emissions model, EMFAC2014,

[24] Email dated May 14, 2020 from Earl Withycombe, CARB, to Khoi Nguyen, EPA Region 9, for attachment of the 2019 emission inventory for the nonattainment area.

[25] Email dated August 17, 2020 from Webster Tasat, CARB, to Khoi Nguyen, EPA Region 9, for clarifications of the emission tables.

[26] Affidavit of Publication from Nevada County Publishing Company including a copy of the proof of publication and of the September 21, 2018 notice for the October 22, 2018 public hearing.

[27] See NSAQMD Resolution #2018–07, October 22, 2018.

[28] Notice of Public Meeting to Consider the Ozone Attainment Plan for Western Nevada County, signed by Richard Corey, Executive Officer, CARB, October 12, 2018.

[29] CARB Resolution 18–36.

[30] Letter dated June 20, 2019, from Elizabeth Adams, Director, Air and Radiation Division, EPA Region IX, to Richard Corey, Executive Officer, CARB. The Plan was deemed complete by operation of law on June 2, 2019, 6 months after submittal, but the EPA completeness finding for the following SIP elements: Contingency measures for VOC and NO_X; emissions statement; ozone attainment demonstration; and RFP demonstration for VOC and NO_X for moderate nonattainment areas was necessary to stop clocks for mandatory sanctions in the Western Nevada nonattainment area under section 179(a) of the CAA resulting from a December 11, 2017 finding of failure to submit. See 82 FR 58118.

[31] 2008 Ozone SRR at 40 CFR 51.1115(a) and the Air Emissions Reporting Requirements at 40 CFR part 51, subpart A.

[32] ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' EPA–454/B–17–002, May 2017. At the time the 2018 Western Nevada County Ozone Plan was developed, the following EPA emissions inventory guidance applied: ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' EPA–454–R–05–001, August 2005.

[33] 40 CFR 51.1115(a) and (c), and 40 CFR 51.1100(bb) and (cc).

[34] 80 FR 12264, at 12290 (March 6, 2015).

[35] ''Staff Report: CARB Review of the Ozone Attainment Plan for Western Nevada County,'' CARB, October 12, 2018, page 6 (''CARB Staff Report'').

for estimating on-road motor vehicle emissions.[36]

Emissions estimates of VOC and NO_X in the 2018 Western Nevada County Ozone Plan are grouped into three categories: (1) Stationary point sources, (2) areawide sources, (3) on-road and other mobile sources. Stationary point sources refer to larger sources that have a fixed geographic location, such as power plants, industrial engines, and oil storage tanks. This inventory includes emissions from stationary internal combustion engines and gasoline dispensing facilities; these are not inventoried individually but estimated as a group and reported as an aggregated total. Areawide sources are emissions sources occurring over a wide geographic area, such as consumer products and architectural coatings. The on-road sources include light-duty automobiles, light-, medium-, and heavy-duty trucks, and motorcycles. Other mobile (off-road) sources include aircraft, recreational boats, and off-road equipment.

For the 2018 Western Nevada County Ozone Plan, stationary point source emissions for the 2011 base year emissions inventory are based on reported data from all stationary point sources in Western Nevada County using the District's annual emissions reporting program, which applies under District Rule 513, ''Emissions Statements and Recordkeeping,'' to stationary sources that emit VOC or NO_X.[37] Areawide sources include smaller emissions sources distributed across the nonattainment area. CARB and the District estimate emissions for areawide sources using the most recent models and methodologies, including publicly available emission factors and activity information. CARB also reviewed the growth profiles for point and areawide source categories and updated them as necessary to ensure that the emission projections are based on data that reflect historical trends, current conditions, and recent economic and demographic forecasts. Growth forecasts for most point and areawide sources were developed by CARB.

On-road emissions inventories in the 2018 Western Nevada County Ozone Plan are based on 2012 travel activity data provided by the California Department of Motor Vehicles. CARB provided emissions inventories for off-road equipment, including locomotives, pleasure craft and recreational vehicles, in-use off-road equipment, transport refrigeration units, cargo handling equipment, diesel agricultural equipment, and fuel storage and handling. Emissions from off-road sources were estimated using a suite of category-specific models or, where a new model was not available, the OFFROAD2007 model. A detailed list of the updates made to specific emissions inventory categories can be found in Chapter V.

CARB developed the emission forecasts in the 2018 Western Nevada County Ozone Plan by applying growth and control profiles to the base year inventory. Growth profiles for stationary point and areawide sources are derived from surrogates such as economic activity, fuel usage, population, housing units, etc. Growth projections were obtained from government entities with expertise in developing forecasts for specific sectors, and from econometric models. Control profiles, which account for emissions reductions resulting from adopted rules and regulations, are derived from data provided by the regulatory agencies responsible for the affected emission categories.[38]

Table 1 provides a summary of the District's 2011 base year, 2012 baseline year for modeling, and 2020 attainment year baseline VOC and NO_X emissions estimates in tons per day (tpd) for an average summer day. All inventory years in the 2018 Western Nevada County Ozone Plan are derived from the 2011 base year inventory, except that 2012 is used as the baseline year for attainment modeling. These inventories provide the basis for the control measure analysis and the attainment demonstration in the Plan. Based on the inventory for 2011, mobile sources are the predominant sources for both VOC and NO_X emissions. For a more detailed discussion of the inventories, see Appendix A of the Plan.

TABLE 1—WESTERN NEVADA 2011 BASE YEAR, 2012 BASELINE YEAR FOR MODELING, AND 2020 ATTAINMENT YEAR EMISSIONS INVENTORIES

[Summer planning inventory, tpd]

Category	2011		2012		2020	
	VOC	NO_X	VOC	NO_X	VOC	NO_X
Stationary	0.7620	0.0999	0.7006	0.0997	0.7843	0.0918
Area Sources	1.4109	0.1452	1.3946	0.1349	1.5150	0.1377
On-Road and Other Mobile Sources	3.3227	5.4415	3.1131	4.9124	1.9559	2.8886
Total for Western Nevada County Nonattainment Area	5.4956	5.6866	5.2083	5.1470	4.2552	3.1181

Source: 2018 Western Nevada County Ozone Plan, Appendix A. The sum of the emissions values may not equal the total shown due to rounding of the numbers.

3. The EPA's Review of the State's Submission

We have reviewed the 2011 base year emissions inventory in the 2018 Western Nevada County Ozone Plan and the inventory methodologies used by the District and CARB for consistency with CAA requirements and EPA guidance. First, as required by EPA regulation, we find that the 2011 inventory includes estimates for VOC and NO_X for a typical ozone season

[36] EMFAC is short for EMission FACtor. In December 2015, the EPA approved EMFAC2014 for SIP development and transportation conformity purposes in California. 80 FR 77337 (December 14, 2015). EMFAC2014 was the most recently approved version of the EMFAC model that was available at the time of preparation of the Western Nevada County Ozone Attainment Plan. The EPA recently approved an updated version of the EMFAC model, EMFAC2017, for future SIP development and transportation purposes in California. 84 FR 41717 (August 15, 2019).

[37] The Air Pollution Control Officer of the NSAQMD may waive the applicability of the reporting required by District Rule 513 for certain classes or categories of sources with actual emissions or potential to emit less than 10 tons per year of actual facility-wide VOC or NO_X emissions if the emissions for the class or category of source are included in the base year and periodic emission inventories and the emissions are calculated using emission factors established by the EPA or other methods acceptable to the EPA. As described in Section B of this document, this approach is consistent with CAA section 182(a)(3)(B)(ii).

[38] 2018 Western Nevada County Ozone Plan, page 23.

weekday, and that the Plan provides adequate documentation explaining how the emissions are calculated.

Second, we find that the 2011 base year emissions inventory in the Plan reflects appropriate emissions models and methodologies, and, therefore, represents a comprehensive, accurate, and current inventory of actual emissions during that year in the Western Nevada County nonattainment area. Therefore, the EPA is proposing to approve the 2011 emissions inventory in the 2018 Western Nevada County Ozone Plan as meeting the requirements for a base year inventory set forth in CAA section 182(a)(1) and 40 CFR 51.1115.

With respect to future year baseline projections, we have reviewed the growth and control factors and find them acceptable and conclude that the future baseline emissions projections in the 2018 Western Nevada County Ozone Plan reflect appropriate calculation methods and the latest planning assumptions.

Furthermore, we note that the future year baseline projections take into account emissions reductions from control measures in adopted state and local rules and regulations. As a general matter, the EPA will approve a SIP revision that takes emissions reduction credit for such control measures only where the EPA has approved the control measures as part of the SIP. See Appendix B of the 2018 Western Nevada County Ozone Plan, ''CARB Control Measures, 1985 to 2016,'' 2018 Western Nevada County Ozone Plan for the list of control measures.

With respect to mobile sources, the EPA has taken action in recent years to approve CARB mobile source regulations into the California SIP.[39] We therefore find that the future year baseline projections in the 2018 Western Nevada County Ozone Plan are properly supported by SIP-approved stationary and mobile source control measures.

B. Emissions Statements

1. Statutory and Regulatory Requirements

Section 182(a)(3)(B)(i) of the Act requires each state to submit a SIP revision requiring owners or operators of stationary sources of VOC or NO_X to provide the state with statements of actual emissions from such sources. Statements must be submitted at least every year and must contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement. Section 182(a)(3)(B)(ii) of the Act allows states to waive the emissions statement requirement for any class or category of stationary sources that emit less than 25 tpy of VOC or NO_X, if the state provides an inventory of emissions from such class or category of sources as part of the base year or periodic inventories required under CAA sections 182(a)(1) and 182(a)(3)(A), based on the use of emission factors established by the EPA or other methods acceptable to the EPA.

The preamble of the 2008 Ozone SRR states that if an area has a previously approved emissions statement rule for the 1997 ozone NAAQS or the 1-hour ozone NAAQS that covers all portions of the nonattainment area for the 2008 ozone NAAQS, such rule should be sufficient for purposes of the emissions statement requirement for the 2008 ozone NAAQS.[40] The state should review the existing rule to ensure it is adequate and, if so, may rely on it to meet the emission statement requirement for the 2008 ozone NAAQS. Where an existing emissions statement program is still adequate to meet the requirements of this rule, states can provide the rationale for that determination to the EPA in a written statement in the SIP to meet this requirement. States should identify the various requirements and how each is met by the existing emissions statement program. Where an emissions statement requirement is modified for any reason, states must provide the revision to the emissions statement as part of its SIP.

2. Summary of the State's Submission

The 2018 Western Nevada County Ozone Plan addresses compliance with the emissions statement requirement in CAA section 182(a)(3)(B) for the 2008 ozone NAAQS by reference to District Rule 513, ''Emission Statements and Recordkeeping,'' which, among other things, requires emissions reporting from all stationary sources of NO_X and VOC greater than or equal to 10 tpy. The EPA approved District Rule 513 as a revision to the California SIP on June 21, 2017, finding that Rule 513 fulfills the relevant emissions statement requirements of CAA section 182(a)(3)(B)(i).[41]

3. The EPA's Review of the State's Submission

We find that District Rule 513 applies within the entire ozone nonattainment area; applies to all stationary sources emitting NO_X and VOC, except those emitting less than 10 tpy for which the District has waived the requirement (consistent with CAA section 182(a)(3)(B)(ii)); and requires reporting, on an annual basis, of total emissions of VOC and NO_X. Also, as required under CAA section 182(a)(3)(B), District Rule 513 requires certification that the information provided to the District is accurate to the best knowledge of the individual certifying the emissions data.

Therefore, for the reasons described in the preceding paragraph, we propose to find that District Rule meets the emissions statement requirements for the 2008 ozone NAAQS under CAA section 182(a)(3)(B).

C. Reasonably Available Control Measures Demonstration

1. Statutory and Regulatory Requirements

CAA section 172(c)(1) requires that each attainment plan provide for the implementation of all RACM as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through implementation of reasonably available control technology (RACT)), and also provide for attainment of the NAAQS. The 2008 Ozone SRR requires that, for each nonattainment area required to submit an attainment demonstration, the state concurrently submit a SIP revision demonstrating that it has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements.[42]

The EPA has previously provided guidance interpreting the RACM requirement in the General Preamble for the Implementation of the CAA Amendments of 1990 (''General Preamble'') and in a memorandum entitled ''Guidance on the Reasonably Available Control Measure Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.''[43] In short, to address the requirement to adopt all RACM, states should consider all potentially reasonable control measures for source categories in the nonattainment area to determine whether they are reasonably available for implementation in that area and whether they would, if implemented individually or collectively, advance the area's

[39] See 81 FR 39424 (June 16, 2016), 82 FR 14446 (March 21, 2017), and 83 FR 23232 (May 18, 2018).

[40] 80 FR 12264, at 12291 (March 6, 2015).

[41] 82 FR 28240.

[42] 40 CFR 51.1112(c).

[43] See General Preamble, 57 FR 13498 at 13560 (April 16, 1992) and memorandum dated November 30, 1999, from John Seitz, Director, OAQPS, to Regional Air Directors, titled ''Guidance on the Reasonably Available Control Measure Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.''

attainment date by one year or more.[44] Any measures that are necessary to meet these requirements that are not already either federally promulgated, or part of the state's SIP, must be submitted in enforceable form as part of the state's attainment plan for the area.[45]

2. Summary of the State's Submission

For the 2018 Western Nevada County Ozone Plan, the District and CARB each undertook a process to identify and evaluate potential RACM that could contribute to expeditious attainment of the 2008 ozone NAAQS in Western Nevada County. We describe each agency's efforts below.

a. District's RACM Analysis

The District's RACM demonstration for the 2008 ozone NAAQS is described in Chapter X, ''Reasonably Available Control Measures Demonstration,'' of the 2018 Western Nevada County Ozone Plan. This discussion summarizes the District's analysis of potential additional control measures for stationary sources conducted in the District's RACT SIP,[46] and describes additional controls in place for ''areawide'' source categories, such as architectural and automotive coatings. Chapter X and Appendices B–D discuss CARB's mobile source and consumer products RACM assessment. The District concludes that there are no additional control measures reasonably available in the area that can advance attainment by a year or more.

The District's RACM analysis builds upon a foundation of District rules developed for earlier ozone plans and approved as part of the SIP.[47] The District has adopted rules to address various source categories of NO_X and VOC. We provide a list of the District's NO_X and VOC rules approved into the California SIP in Table 1 of our December 3, 2020 memorandum to file in the docket for this proposed action. The SIP-approved District VOC or NO_X rules listed in Table 1 of our memorandum establish emission limits or other types of emissions controls for a wide range of sources, including incinerator burning, orchard or citrus heaters, fossil fuel steam generator facilities, gas stations, and more. These rules have already provided significant and ongoing reductions toward attainment of the 2008 ozone NAAQS by 2021.

Tables 2 and 3 of the December 3, 2020 memorandum provide a crosswalk of the area's top-emitting stationary and area source categories of NO_X and VOC with related District control rules. As shown in these tables, the area's 2020 stationary and area source emissions inventory includes about 0.23 tpd of NO_X and 2.20 tpd of VOC. The top NO_X source categories for this year are residential fuel combustion (0.13 tpd; 4.26 percent of 2020 inventory) and service/commercial fuel combustion (0.04 tpd; 1.25 percent of 2020 inventory); all other categories each represent less than 1 percent of the 2020 inventory.[48] The top VOC source categories for this year are consumer products (0.44 tpd; 10.28 percent of 2020 inventory), asphalt paving/roofing (0.38 tpd; 8.98 percent of 2020 inventory), and architectural coatings (0.32 tpd; 7.55 percent of 2020 inventory).

The District's October 26, 2020 commitment letter for contingency measures includes further analysis of potential additional controls for regulated high-emission source categories. As mentioned above, the two largest NO_X source categories are residential fuel combustion and service/commercial fuel combustion. For residential fuel combustion, the District evaluated Sacramento Metropolitan Air Quality Management District (SMAQMD) Rule 414 for water heaters, boilers, and process heaters rated less than a million BTU per hour. Based on its analysis, and considering especially the low population in the nonattainment area, the District concluded that potential cumulative reductions in NO_X from a similar rule in the District would produce only about 0.0005 tpd each year, and that these reductions would occur too slowly to make any meaningful difference in attainment. For service/commercial fuel combustion, the District evaluated SMAQMD Rule 419 for miscellaneous combustion units. The District concluded that emission reductions from applying Rule 419 controls in the area would be approximately zero, because applying the rule would not be feasible for two of the three sources in the nonattainment area that would be subject to the rule and would not result in a more stringent emissions limit for the last applicable source in the nonattainment area. For VOC reductions, the District evaluated state measures for architectural coatings and automotive coatings,[49] and found that reductions would be equivalent to 0.010 tpd and 0.003 tpd, respectively. The District found that the estimated reductions for automotive coatings was negligible and not cost effective but committed to adopting a rule for architectural coatings as a contingency measure.[50]

Transportation Control Measures (TCMs) are projects that reduce air pollutants from transportation sources by reducing vehicle use, traffic congestion, or vehicle miles traveled. The Nevada County Regional Transportation Plan 2015–2035 (''Transportation Plan''), prepared by NCTC in January 2018, summarizes and highlights TCMs in Nevada County, including the Western portion of Nevada County, and is included in the docket for this action. Sample measures in Western Nevada County are included within the TCM categories of CAA section 108(f)(1)(A). They include proposed bikeways, for example, in Grass Valley,[51] a 511 traveler

[44] Id. See also 44 FR 20372 (April 4, 1979), and memorandum dated December 14, 2000, from John S. Seitz, Director, OAQPS, to Regional Air Directors, titled ''Additional Submission on RACM From States with Severe One-Hour Ozone Nonattainment Area SIPs.''

[45] For ozone nonattainment areas classified as Moderate or above, CAA section 182(b)(2) also requires implementation of RACT for all major sources of VOC and for each VOC source category for which the EPA has issued a control techniques guideline. CAA section 182(f) requires that RACT under section 182(b)(2) also apply to major stationary sources of NO_X. In Serious areas, a major source is a stationary source that emits or has the potential to emit at least 50 tpy of VOC or NO_X (see CAA section 182(c) and (f)). Under the 2008 Ozone SRR, states were required to submit SIP revisions meeting the RACT requirements of CAA sections 182(b)(2) and 182(f) no later than 24 months after the effective date of designation for the 2008 Ozone NAAQS and to implement the required RACT measures as expeditiously as practicable but no later than January 1 of the 5th year after the effective date of designation (see 40 CFR 51.1112(a)). California submitted the CAA section 182 RACT SIP for Western Nevada County for the 2008 ozone NAAQS on June 7, 2018. Although Western Nevada County was classified as Moderate nonattainment for the 2008 ozone NAAQS at the time of submittal, the RACT SIP evaluated the area for compliance with applicable RACT requirements based on the 50 tpy Serious major source thresholds, in anticipation of the area's reclassification to the higher classification. The EPA found this submission complete on November 29, 2018 (see letter dated November 29, 2018 from Elizabeth Adams, Acting Director, Air Divison, EPA Region IX, to Richard Corey, Executive Officer, California Air Resources Board, and finalized the RACT SIP submission on January 15, 2020 (85 FR 2313).

[46] The EPA approved the District's RACT SIP on January 15, 2020. 85 FR 2313.

[47] 2018 Western Nevada County Ozone Plan, page 42.

[48] For a further breakdown of the area's NO_X and VOC sources, see Table 3 of the EPA's December 3, 2020 memorandum to file.

[49] Architectural coatings is Western Nevada County's third largest VOC source category. The largest VOC source categories in the area are consumer products and asphalt paving/roofing, and they are already regulated, respectively, by multiple CARB regulations and District Rule 227. See Table 3 of our December 3, 2020 memorandum to file.

[50] The emission reductions from the adopting an architectural coatings rule for VOC (0.010 tpd) is less than the value needed to advance attainment by a year for VOC (0.075 tpd), as calculated below in Section III.C.3.

[51] Transportation Plan, Appendix D, page D–1.

information system that provides information on ridesharing and directs drivers to other regional resources for carpools and vanpools,[52] and programs for improved public transit,[53] including improvements and maintenance for bus stops and shelters.

As explained above, the District identified potential candidate measures for RACM based upon categories with high NO_X and VOC emissions and relevant local or state measures. This analysis was included in the District's commitment letter for contingency measures and is further described in Section III.F.2. Based on its evaluation of all available measures and the NO_X-limited nature of the nonattainment area, the District concludes that the District's existing rules for stationary and area sources are generally as stringent as, or more stringent than the analogous rules in other districts. Further, the District concludes that, based on its comprehensive review and evaluation of potential candidate measures, the District meets the RACM requirement for the 2008 ozone NAAQS for all sources under the District's jurisdiction.

b. CARB's RACM Analysis

CARB's RACM analysis is contained in Chapter X as well as Appendices B–D of the 2018 Western Nevada County Ozone Plan. CARB's RACM analysis provides a general description of CARB's existing mobile source programs. A more detailed description of CARB's mobile source control program, including a comprehensive table listing on- and off-road mobile source regulatory actions taken by CARB since 1985, is contained in Appendix A. The RACM assessment contains CARB's evaluation of mobile source and other statewide control measures that reduce emissions of NO_X and VOC in Western Nevada County.

Source categories for which CARB has primary responsibility for reducing emissions in California include most new and existing on- and off-road engines and vehicles, motor vehicle fuels, and consumer products.

Given the need for substantial emissions reductions from mobile and area sources to meet the NAAQS in California nonattainment areas, CARB has established stringent control measures for on-road and off-road mobile sources and the fuels that power them. California has authority under CAA section 209 (subject to a waiver by the EPA) to adopt and implement new emission standards for many categories of on-road vehicles and engines, and new and in-use off-road vehicles and engines.

CARB's mobile source program extends beyond regulations that are subject to the waiver or authorization process set forth in CAA section 209 to include standards and other requirements to control emissions from in-use heavy-duty trucks and buses, gasoline and diesel fuel specifications, and many other types of mobile sources. Generally, these regulations have been submitted and approved as revisions to the California SIP.[54]

CARB's Consumer Products Program has established regulations that limit VOC emissions from 129 consumer product categories, which apply in Western Nevada County.[55] The EPA has approved many CARB measures into the California SIP that limit VOC emissions from a wide array of products, including antiperspirants and deodorants, aerosol coating products, and other consumer products.[56]

CARB's RACM analysis determines that, with the current mobile source program and proposed measures, there are no additional RACM that would advance attainment of the 2008 ozone NAAQS in Western Nevada County. As a result, CARB concludes that California's mobile source programs fully meet the RACM requirement.[57]

3. The EPA's Review of the State's Submission

As described above and in our December 3, 2020 memorandum to file in the docket for this proposed action, the District has implemented rules to reduce VOC and NO_X emissions from stationary sources in the Western Nevada nonattainment area. For the 2018 Western Nevada County Ozone Plan, the District indicates that its ozone precursor control strategy focuses on NO_X emission reductions due to the NO_X-limited nature of the nonattainment area.[58]

The District evaluated a range of potentially available measures and was unable to find a combination of potential additional control measures for RACM. The EPA further calculated the additional reductions that would be necessary to advance attainment by a year. Subtracting the District's 2020 attainment year emissions inventory from the 2019 emissions inventory yields a difference of 0.21 tpd NO_X and 0.075 tpd VOC, equivalent to the reductions needed to advance attainment by a year.[59] Based on our review of the District's analysis, we agree that no additional control measures are available for stationary and area source categories in the nonattainment area that would provide the emissions reductions needed to advance attainment by a year.

With respect to mobile sources, CARB's current program addresses the full range of mobile sources in the Western Nevada County nonattainment area through regulatory programs for both new and in-use vehicles. With respect to TCMs, we find that the TCMs being implemented in Western Nevada County (*i.e.,* the TCMs described in the Transportation Plan) are inclusive of all TCM RACM to be reasonably justified and supported.

We also find that CARB's consumer products program comprehensively addresses emissions from consumer products in the Western Nevada County nonattainment area. CARB measures are more stringent than the EPA's consumer products regulation promulgated in 1998,[60] and generally exceed the controls in place throughout other areas of the country.

Based on our review of these RACM analyses and the District's and CARB's adopted rules, we propose to find that there are, at this time, no additional RACM (including RACT) that would advance attainment of the 2008 ozone NAAQS in Western Nevada County. For the foregoing reasons, we propose to find that the 2018 Western Nevada

[52] Transportation Plan, page 126.

[53] Transportation Plan, Tables 42–46.

[54] See, *e.g.,* the EPA's approval of standards and other requirements to control emissions from in-use heavy-duty diesel-powered trucks, at 77 FR 20308 (April 4, 2012), revisions to the California on-road reformulated gasoline and diesel fuel regulations at 75 FR 26653 (May 12, 2010), and revisions to the California motor vehicle inspection and maintenance program at 75 FR 38023 (July 1, 2010).

[55] 2018 Western Nevada County Ozone Plan, page 51 and Appendix D, ''Reasonably Available Control Measures Assessment for Mobile Sources and Consumer Products.''

[56] CARB's consumer product measures are found in Title 17 California Code of Regulations section 94500 *et seq.* The compilation of such measures that have been approved into the California SIP, including **Federal Register** citations, is available at: *https://www.epa.gov/sips-ca/epa-approved-regulations-california-sip.* EPA's most recent approval of amendments to California's consumer products regulations was in 2014. 79 FR 62346 (October 17, 2014).

[57] Appendix VI–A, Attachment VI–A–3, page VI–A–106.

[58] 2018 Western Nevada County Ozone Plan, page 41. As explained in Section III.D.2.a of this document, Western Nevada County is ''NO_X limited'' because ozone formation in the area is driven primarily by NO_X emissions. As a result, reducing NO_X emissions is more effective for reducing ozone than reducing VOC emissions.

[59] The Plan's RACM analysis incorrectly identifies the necessary year-to-year reductions as 0.06 tpd of VOC and 0.23 tpd of NO_X, based on a comparison of 2020 and 2021 inventories. Given the small discrepancy in these numbers, relative to the emission reductions available in the area, we find that the District's RACM analysis is adequately supported.

[60] 63 FR 48819 (September 11, 1998).

County Ozone Plan provides for the implementation of all RACM as required by CAA section 172(c)(1) and 40 CFR 51.1112(c).

D. Attainment Demonstration

1. Statutory and Regulatory Requirements

Section 182(c)(2)(A) of the CAA requires that a plan for an ozone nonattainment area classified Serious or above include a ''demonstration that the plan . . . will provide for attainment of the ozone [NAAQS] by the applicable attainment date. This attainment demonstration must be based on photochemical grid modeling or any other analytical method determined . . . to be at least as effective.'' The attainment demonstration predicts future ambient concentrations for comparison to the NAAQS, making use of available information on measured concentrations, meteorology, and current and projected emissions inventories of ozone precursors, including the effect of control measures in the Plan.

Areas classified Serious for the 2008 ozone NAAQS must demonstrate attainment as expeditiously as practicable, but no later than 9 years after the effective date of designation as nonattainment. Western Nevada County was designated as a Marginal nonattainment area for the 2008 ozone NAAQS effective July 20, 2012.[61] It was subsequently reclassified to Moderate,[62] and then to Serious,[63] and accordingly must demonstrate attainment of the standards by no later than July 20, 2021.[64] An attainment demonstration must show attainment of the standards for a full calendar year before the attainment date, so in practice, Serious nonattainment areas must demonstrate attainment for the attainment year 2020.

The EPA's recommended procedures for modeling ozone as part of an attainment demonstration are contained in ''Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze'' (''Modeling Guidance'').[65] The Modeling Guidance includes recommendations for a modeling protocol, model input preparation, model performance evaluation, use of model output for the numerical NAAQS attainment test, and modeling documentation. Air quality modeling is performed using meteorology and emissions from a base year, and the predicted concentrations from this base case modeling are compared to air quality monitoring data from that year to evaluate model performance. Once the model performance is determined to be acceptable, future year emissions are simulated with the model. The relative (or percent) change in modeled concentration due to future emissions reductions provides a relative response factor (RRF). Each monitoring site's RRF is applied to its monitored base year design value to give the future design value for comparison to the NAAQS. The Modeling Guidance also recommends supplemental air quality analyses, which may be used as part of a weight of evidence (WOE) analysis. A WOE analysis corroborates the attainment demonstration by considering evidence other than the main air quality modeling attainment test, such as trends and additional monitoring and modeling analyses.

Unlike the RFP demonstration and the emissions inventory requirements, the 2008 SRR does not specify that a specific year must be used for the modeled base year for the attainment demonstration. The Modeling Guidance also does not require a particular year to be used as the base year for 8-hour ozone plans.[66] The Modeling Guidance states that the most recent year of the National Emissions Inventory may be appropriate for use as the base year for modeling, but that other years may be more appropriate when considering meteorology, transport patterns, exceptional events, or other factors that may vary from year to year.[67] Therefore, the base year used for the attainment demonstration need not be the same year used to meet the requirements for emissions inventories and RFP.

With respect to the list of adopted measures, CAA section 172(c)(6) requires that nonattainment area plans include enforceable emissions limitations, and such other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for timely attainment of the NAAQS.[68] Under the 2008 Ozone SRR, all control measures needed for attainment must be implemented no later than the beginning of the attainment year ozone season.[69] The attainment year ozone season is defined as the ozone season immediately preceding a nonattainment area's maximum attainment date;[70] in the case of the Western Nevada County area, the attainment year is 2020.

2. Summary of the State's Submission

a. Photochemical Modeling

CARB performed the air quality modeling for the Western Nevada Ozone Plan, and has included documentation of this modeling within the Plan and the Staff Report that accompanied CARB's submittal of the 2018 Ozone Plan (''CARB Staff Report'').[71] The modeling relies on a 2012 base year and projects design values for 2020. The Plan's modeling protocol is in Appendix H of the 2018 Western Nevada County Ozone Plan and contains all the elements recommended in the Modeling Guidance, with the exception of a conceptual description and a WOE analysis, which appear in the CARB Staff Report.[72] The area is dominated by transport of ozone and precursors from the Sacramento Metro nonattainment area, which has a much higher population and emissions about twenty times larger.[73] Concentrations at Western Nevada County's single monitor, Grass Valley, have paralleled those in the eastern portions of the Sacramento area for the past two decades. The Western Nevada County area has multiple valleys extending from southwest to northeast into the higher elevations of the Sierra Nevada mountain range. Upslope-downslope

[61] 77 FR 30088 (May 21, 2012).

[62] 81 FR 26697 (April 4, 2015).

[63] 84 FR 44238 (August 23, 2019).

[64] Nine years after the initial designation, 84 FR 44244.

[65] ''Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,'' EPA 454/R–18–009, EPA OAQPS, November 2018; available at *https://www.epa.gov/scram/state-implementation-plan-sip-attainment-demonstration-guidance.* See also December 2014 draft of this guidance, available at *https://www3.epa.gov/ttn/scram/guidance/guide/Draft-O3-PM-RH-Modeling_Guidance-2014.pdf.* The December 2014 draft guidance was available during development of the Plan; the final version differs mainly in organization, and in updates to the regional haze portion and to other document references. Additional EPA modeling guidance can be found in 40 CFR 51 Appendix W, *Guideline on Air Quality Models,* 82 FR 5182 (January 17, 2017); available at *https://www.epa.gov/scram/clean-air-act-permit-modeling-guidance.*

[66] Modeling Guidance section 2.7.1, 35.

[67] Id.

[68] See also CAA section 110(a)(2)(A).

[69] 40 CFR 51.1108(d).

[70] 40 CFR 51.1100(h).

[71] ''Staff Report: CARB Review of the Ozone Attainment Plan for Western Nevada County,'' CARB, October 12, 2018.

[72] CARB Staff Report, 2 and 20.

[73] The summer 2020 emissions inventories for the Sacramento nonattainment area and Western Nevada Nonattainment NO_X are 63.2 and 3.1 tpd, respectively; VOC emissions are 86.8 and 4.3 tpd, respectively, 2018 Western Nevada County Ozone Plan, E–27. The 2020 Sacramento County population is 1,543,522, about 14 times the size of the Nevada County population of 104,343, Almanac of Emissions & Air Quality, California Air Resources Board, 2013, Appendix C, available at *https://ww2.arb.ca.gov/our-work/programs/resource-center/technical-assistance/air-quality-and-emissions-data/almanac.*

flows in those valleys lead to recirculation of pollutants, and the Sierra crest tends to block flow further east; both of these enhance ozone concentrations. The area is mainly rural, with generally low NO_X emissions and relatively high VOC emissions, so that ozone formation there is expected to be NO_X-limited.[74] The recirculation and the lack of NO_X emissions prevents the removal of ozone through the NO_X titration process. This allows carryover of pollution from the previous day, leading to high ozone values that persist through the night at the start of the following morning, unlike the typical pattern for areas with ozone caused by locally generated emissions.[75]

The modeling and the modeled attainment demonstration are described in Chapter XII of the 2018 Western Nevada County Ozone Plan and in more detail in Appendix E, which provides a description of model input preparation procedures and various model configuration options. Appendix F of the 2018 Western Nevada County Ozone Plan provides the coordinates of the modeling domain and thoroughly describes the development of the modeling emissions inventory, including its chemical speciation, its spatial and temporal allocation, its temperature dependence, and quality assurance procedures. The modeling analysis uses version 5 of the Community Multiscale Air Quality (CMAQ) photochemical model developed by the EPA, using the 2007 version of the Statewide Air Pollution Research Center (SAPRC07) chemical mechanism. The CMAQ modeling domain covers most of California, nested within a domain covering the entire state. To prepare meteorological inputs for CMAQ, CARB used the Weather and Research Forecasting model version 3.6 (WRF) from the National Center for Atmospheric Research. The WRF domain covers the entire state of California, nested within a domain covering most of the western United States. The modeling used inputs prepared from routinely available meteorological and air quality data collected during 2012. Those data cover May through September, a period that spans the period of highest ozone concentrations in Western Nevada County. The Modeling Guidance recognizes both CMAQ and WRF as technically sound, state-of-the-art models. The areal extent and the horizontal and vertical resolution used in these models is adequate for modeling Western Nevada County ozone.

The WRF meteorological model results and performance statistics are described in Appendix E.[76] The performance evaluation focuses on a smaller area than the full domain but encompassing the Western Nevada County nonattainment area and the greater Sacramento area, with special attention on the winds for high ozone days. There is a slight overprediction of wind speeds and underprediction of temperatures in the eastern portion of the nonattainment area, but overall, modeled wind speed, wind direction, and temperature all track observations very well, as shown in scatter and time series plots. The modeling replicates some important meteorological features such as the upslope-downslope flows in the Sierra Nevada foothills, and the ''Schulz eddy'' known to occur in the greater Sacramento area. The 2018 Western Nevada County Ozone Plan states that the bias and error are relatively small and are comparable to those seen in previous meteorological modeling of central California and cited in the Plan. In summary, the 2018 Western Nevada County Ozone Plan's meteorological modeling performance statistics appear satisfactory.

Ozone model performance statistics are described in the 2018 Western Nevada County Ozone Plan at Appendix E.[77] Appendix E includes tables of statistics recommended in the Modeling Guidance for 8-hour and 1-hour daily maximum ozone concentrations. Predicted concentrations have a small negative bias (underprediction) of 4.1 ppb.[78] This compares well to the range of 2.7 to 10.8 ppb seen in a previous modeling exercise for central California that is cited in the Plan; bias and error are both at the low end of those seen in a comparative study of 69 modeling exercises.[79] The Plan's supplemental figures with hourly time series show good performance; although some individual daily ozone peaks are missed in May and September, there are days for which the modeled highest concentration is close to the value of the highest observed concentration. This supports the adequacy of the model for use in the attainment demonstration.

As noted in the 2018 Western Nevada County Ozone Plan's modeling protocol, the Modeling Guidance recognizes that limited time and resources can constrain the extent of the diagnostic and dynamic evaluation of model performance undertaken.[80] The Plan describes a dynamic evaluation [81] in which model predictions of ozone concentrations for weekdays and weekends were compared to each other and to observed concentrations. This evaluation provides useful information on how well the model simulates the effect of emissions changes, since NO_X emissions are lower on weekends than on weekdays, but the days are otherwise similar. The modeled ozone decreased in response to the weekend NO_X reductions, which matches the observed decrease, and indicates that the model is simulating the chemistry correctly. The Plan also contains results of an analysis of weekday and weekend ozone concentrations during the 2000–2015 period. It notes a shift over the years toward lower ozone on weekends, especially after 2010, showing that lower NO_X emissions lead to lower ozone concentrations.[82] Both the modeling and the observed weekday-weekend trends show that ozone responds to NO_X emissions reductions, *i.e.,* that ozone formation is NO_X-limited. The modeled 2012 base year is also NO_X-limited, with the weekday-weekend difference comparable to those seen historically. This match lends confidence to the modeling.

After accepting the model performance for the 2012 base case, CARB used the model to develop RRFs for the attainment demonstration.[83] This entailed running the model with the same meteorological inputs as before, but with emissions inventories to reflect

[74] Ozone is generally NO_X-limited in rural areas and downwind suburban areas. See pages 24 and 38 of CARB Staff Report and also Chapter 2.1 Ozone Chemistry, ''Final Ozone NAAQS Regulatory Impact Analysis,'' March 2008, EPA Office of Air Quality Planning and Standards, available at *https://www3.epa.gov/ttnecas1/regdata/RIAs/452_R_08_003.pdf.* The term ''NO_X-limited'' can mean either that reducing NO_X emissions decrease ozone (as opposed to increasing it); or that reducing NO_X is much more effective at decreasing ozone than is reducing VOC. As discussed below and on page 42 of CARB Staff Report, ozone in Western Nevada County are decreased by reducing NO_X emissions.

[75] 2018 Western Nevada Ozone Plan, page H–16.

[76] Appendix E, section 3.2, E–17; also, refer to supplemental figures S.1–S.11, E–48.

[77] Appendix E, section 5.2, E–32; also, refer to supplemental figures S.12–S.16, E–55.

[78] Because only the relative response to emissions changes (RRF) from the modeling is used, the underprediction of absolute ozone concentrations does not mean that future concentrations will be underestimated.

[79] Simon, H., Baker, K.R., Phillips, S, 2012, Compilation and Interpretation of Photochemical Model Performance Statistics Published Between 2006 and 2012, *Atmos. Environ.,* 61, 124–139. doi:10.1016/j.atmosenv.2012.07.012.

[80] 2018 Western Nevada County Ozone Plan, Appendix H, ''Modeling Protocol,'' H–31; Modeling Guidance, 63.

[81] See ''Diagnostic Evaluation'' in Appendix E section 5.2.1, E–36.

[82] 2018 Western Nevada County Ozone Plan, Appendix E, E–40.

[83] Id. at 57, and Appendix H, ''Modeling Protocol,'' section 10.3, H–34.

the expected changes between the 2012 base year and the 2020 future year. These modeling inventories exclude ''emissions events which are either random and/or cannot be projected to the future . . . wildfires, and events such as the [San Francisco Bay Area] Chevron refinery fire.'' [84] The future inventories project the base year with these exclusions into the future by including the effect of economic growth and emissions control measures.

The 2018 Western Nevada County Ozone Plan carries out the attainment test procedure consistent with the Modeling Guidance. The RRF is calculated as the ratio of future to base year concentrations; these are then applied to the 2013 weighted design values for the Grass Valley monitor to arrive at a future year design value.[85] Typically the RRFs would be applied to a weighted design value for 2012, the model base year,[86] but in this case CARB used the somewhat higher value for 2013, considering the upward trend design values starting in 2013.[87] The predicted 2020 ozone design value is 67 ppb or 0.067 ppm, well below the level of the 2008 8-hour ozone NAAQS of 0.075 ppm.

Finally, the 2018 Western Nevada County Ozone Plan modeling includes an ''Unmonitored Area Analysis'' (UAA) to assess whether locations without a monitor are able to reach attainment; the standard attainment test procedure covers only locations with a monitor.[88] The Modeling Guidance describes a procedure utilizing ''gradient adjusted spatial fields,'' as well as the EPA software used to carry it out.[89] This procedure uses a form of interpolation, combining monitored concentrations and modeled gradients (modeled changes in concentration with distance from a monitor) to estimate future concentrations at locations without a monitor. The 2018 Western Nevada County Ozone Plan describes a UAA carried out using software developed by CARB and implemented in ''R,'' [90] using a procedure virtually the same as that outlined in the Modeling Guidance. The Plan states that the 2020 results show concentrations below 75 ppb at all locations in the nonattainment area; it did not examine the surrounding area. Because the results are well below the 2008 ozone NAAQS level of 75 ppb, the UAA supports the demonstration that all locations in Western Nevada County will attain the NAAQS in 2020.

In addition to the formal attainment demonstration, the Plan also contains a WOE analysis within Appendix A to the CARB Staff Report. It mainly shows the long-term downward trends that continue through 2017, the latest year available prior to development of the 2018 Western Nevada County Ozone Plan. As described in the WOE, Western Nevada County has shown a general downward trend in measured ozone concentrations and number of days above the ozone NAAQS but has recently seen increases in 2017 and 2018. Atypical high ozone concentrations were observed in 2017, though CARB's staff analysis does not point to specific anthropogenic or biogenic emission increases or meteorology as likely causes for the unusual number of exceedances. Additionally, the area may have experienced higher than normal ozone concentrations in 2018 due to wildfire impacts in the surrounding areas during the summer and fall months. Despite the recent exceptions, there are strong downward trends in emissions of ozone and of the ozone precursors NO_X and VOC, both within the Western Nevada County area and in the upwind Sacramento and San Francisco Bay areas.[91] These all show the substantial air quality progress made in the Western Nevada County Area and add support to the attainment demonstration for 2020.

b. Control Strategy

The control strategy for attainment of the 2008 ozone NAAQS is detailed in Chapter IV of the 2018 Western Nevada County Ozone Plan. The Plan's strategy relies primarily on emissions reductions from control measures that have been adopted by the Districts and CARB prior to the submittal of the Plan. The District has adopted rules for reducing emissions from a broad scope of stationary and area sources into its RACT SIP. Additionally, a detailed description of the mobile source control programs and a comprehensive list of CARB regulations are included in Appendices B and C of the Plan. CARB's comprehensive strategy to reduce emissions from mobile sources consists of emissions standards for new vehicles, in-use programs to reduce emissions from existing vehicle and equipment fleets, cleaner fuels, and incentive programs to accelerate the penetration of the cleanest vehicles beyond that achieved by regulations alone.

As Table 2 and Table 3 show, the vast majority of emissions reductions relied upon by the Plan's control strategy are from the on- and off-road mobile source inventory and can be largely attributed to control measures adopted by CARB, subsequently approved by the EPA, and cited in detail in Section III.C. Generally, the bulk of the emissions reductions on which the control strategies rely is expected to come from already-adopted measures, which are discussed in Section III.C of this document. For the 2008 ozone NAAQS, already-adopted measures are expected to achieve all of the reductions needed from the 2012 base year to attain the NAAQS in 2020.

TABLE 2—2012 AND 2020 NO_X EMISSIONS FOR WESTERN NEVADA COUNTY

[Summer planning inventory, tpd]

Source category	2012	2020	Emissions difference from 2012 to 2020	Percentage of total emissions change (%)
Stationary Sources	0.106	0.096	−0.010	−9.4
Area Sources	0.135	0.138	+0.003	2.2
On-Road Mobile Sources	3.976	2.160	−1.816	−45.7
Other Mobile Sources	0.944	0.738	−0.206	−21.8

[84] Id. at Appendix H, H–33; and, Appendix F, ''Modeling Emissions Inventory,'' F–35. To include the fires in the base year but not the future year would effectively credit the Plan's control measures with eliminating emissions from the fire.

[85] Id. at 57, and Appendix H, ''Modeling Protocol,'' section 10.3, H–34. The combination of years used is illustrated in Appendix E, Table 1, E–11.

[86] The Modeling Guidance recommends that RRFs be applied to the average of three three-year design values, for the base year and the two subsequent years. This amounts to a 5-year weighted average of individual year 4th high concentrations, centered on the base year, and so is referred to as a weighted design value.

[87] 2018 Western Nevada County Ozone Plan, Appendix E, E–10; also Plan, 58.

[88] 2018 Western Nevada County Ozone Plan, Appendix E, section 5.4, E–41.

[89] Modeling Guidance section 4.7, 138.

[90] The R Project for Statistical Computing, *https://www.r-project.org.*

[91] 2018 Western Nevada County Ozone Plan, page 41.

TABLE 2—2012 AND 2020 NO_X EMISSIONS FOR WESTERN NEVADA COUNTY—Continued

[Summer planning inventory, tpd]

Source category	2012	2020	Emissions difference from 2012 to 2020	Percentage of total emissions change (%)
Total	5.160	3.131	−2.029	−39.3

Source: 2018 Western Nevada County Ozone Plan, Chapter XII, Table 11, 57. The sum of the emissions values may not equal the total shown due to rounding.

TABLE 3—2012 AND 2020 ANTHROPOGENIC VOC EMISSIONS FOR WESTERN NEVADA COUNTY

[Summer planning inventory, tpd]

Source category	2012	2020	Emissions difference from 2012 to 2020	Percentage of total emissions change (%)
Stationary Sources	0.702	0.785	+0.083	11.8
Area Sources	1.394	1.515	+0.121	8.7
On-Road Mobile Sources	1.793	1.007	−0.786	−43.8
Other Mobile Sources	1.327	0.958	−0.369	−27.8
Total	5.215	4.265	−0.950	−18.2

Source: 2018 Western Nevada County Ozone Plan, Chapter XII, Table 11, 57. The sum of the emissions values may not equal the total shown due to rounding.

c. Attainment Demonstration

Chapter XII of the Plan describes the attainment demonstration in general terms, including photochemical modeling results, while Appendix E to the Plan provides more detail concerning photochemical modeling. Other aspects of this demonstration are included throughout the Plan, including emissions inventory forecasts included in Appendix A and the control strategy described in Chapter IV. The WOE analysis in Appendix A to the CARB Staff Report includes additional supporting information to complement the photochemical modeling and to provide context for this attainment demonstration, such as analyses of anthropogenic emissions, ambient ozone data, and meteorological analyses.

3. The EPA's Review of the State's Submission

a. Photochemical Modeling

To approve a SIP's attainment demonstration, the EPA must make several findings. First, we must find that the demonstration's technical bases, including the emissions inventories and air quality modeling, are adequate. As discussed above in Section III.A of this document, we are proposing to approve the base year emissions inventory and to find that the future year emissions projections in the 2018 Western Nevada County Ozone Plan reflect appropriate calculation methods and that the latest planning assumptions are properly supported by SIP-approved stationary and mobile source measures.

The modeling followed the Modeling Guidance in essentially all respects, and both the meteorological and the photochemical models showed good performance. One difference between CARB's modeling and the Modeling Guidance was that the state applied RRFs to a weighted design value based on the year 2013, instead of 2012, as would be typical for modeling of a 2012 base year. The Modeling Guidance recognizes that there is no one correct method for choosing base design values,[92] and provides for other calculations with appropriate justification, such as consideration of unusual meteorological conditions. As noted above, the state's choice of 2013 was based on design values increasing relative to 2012. Since a higher starting point base design value will yield a higher 2020 attainment year design value, the state's use of 2013 adds conservatism to the attainment demonstration.

An important difference from the Modeling Guidance is that the state presented a model performance evaluation only for the single monitoring site in the nonattainment area, in Grass Valley. The Modeling Guidance recommends a performance evaluation using all available ambient monitoring data.[93] This is of particular importance for the Western Nevada County area. As described in the conceptual description in the Plan discussed above, ozone in the area is largely due to emissions in and transport from the upwind Sacramento area. The chemical evolution of the pollutant plume as it travels from Sacramento to Nevada County necessitates evaluation at more than a single downwind location. This means that the submitted modeling performance evaluation alone may not be adequate for assessing the performance model, which is influenced by emissions from a much larger area, with various meteorological and terrain impacts. However, because the 2012 modeling exercise in the Plan was essentially the same as that undertaken for the 2017 Sacramento Regional Ozone Plan, the EPA is relying on the latter plan's more complete model performance evaluation. As discussed in the technical support document[94] accompanying the EPA's proposed action on the Sacramento plan, the state followed EPA recommended modeling procedures and the modeling had good performance. That was shown in statistical and dynamic performance analyses that covered a larger portion of the modeling domain than the analyses in the submittal for the 2018 Western Nevada County Ozone Plan, encompassing the Western Nevada County as well as the Sacramento area. Overall, the EPA therefore considers the modeling in the 2018 Western Nevada

[92] Modeling Guidance, section 4.1.1, ''Establishing the Base Design Value,'' 103.

[93] Modeling Guidance, section 3.1, ''Overview of Model Performance Evaluation,'' 68.

[94] Docket EPA–R09–OAR–2020–0425, item A–85, ''Modeling Technical Support Document (TSD) for the '2017 Sacramento Regional Ozone Plan', 2008 8-hour ozone National Ambient Air Quality Standard,'' September 14, 2020, Air and Radiation Division, EPA Region IX.

County Ozone Plan to be adequate for establishing modeling performance.

The modeling shows that existing control measures from CARB and the Districts are sufficient to attain the 2008 8-hour ozone NAAQS by 2020 at all monitoring sites in the Western Nevada County area. The Plan follows the procedures recommended in the EPA Modeling Guidance, properly incorporates all modeling and input preparation procedures, tests, and performance analyses called for in the modeling protocol, demonstrates good model performance, and responds to emission changes consistent with observations. Therefore, based on the documentation included in the modeling performance analysis, UAA, and WOE analysis, the EPA finds that the photochemical modeling is adequate for purposes of supporting the attainment demonstration.

b. Control Strategy

As discussed above, the 2018 Western Nevada County Ozone Plan relies on previously adopted measures to achieve all of the emissions reductions needed to attain the 2008 ozone NAAQS in 2020. For the reasons described above, we find that the emissions reductions that are relied on for attainment are creditable and are sufficient to provide for attainment.

c. Attainment Demonstration

The 2018 Western Nevada County Ozone Plan follows the modeling procedures recommended in the EPA's Modeling Guidance and shows excellent performance in simulating observed ozone concentrations in the 2012 base year. Given the extensive discussion of modeling procedures, tests, and performance analyses called for in the modeling protocol, the good model performance, and the model response to emissions changes consistent with observations, the EPA finds that the modeling is adequate for purposes of supporting the attainment demonstration. Based on our review of the 2018 Western Nevada County Ozone Plan and our proposed findings that the photochemical modeling and control strategy are acceptable and demonstrate attainment by the applicable attainment date, we propose to approve the attainment demonstration for the 2008 ozone NAAQS in the Western Nevada County Ozone Plan as meeting the requirements of CAA section 182(c)(2)(A) and 40 CFR 51.1108.

E. Rate of Progress Plan and Reasonable Further Progress Demonstration

1. Statutory and Regulatory Requirements

Requirements for RFP for ozone nonattainment areas are specified in CAA sections 172(c)(2), 182(b)(1), and 182(c)(2)(B). CAA section 172(c)(2) requires that plans for nonattainment areas provide for RFP, which is defined at CAA section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required under part D, ''Plan Requirements for Nonattainment Areas,'' or may reasonably be required by the EPA for the purpose of ensuring attainment of the applicable NAAQS by the applicable date. CAA section 182(b)(1) specifically requires that ozone nonattainment areas that are classified as Moderate or above demonstrate a 15 percent reduction in VOC within the first six years of the planning period. The EPA has typically referred to section 182(b)(1) as the Rate of Progress (ROP) requirement. For ozone nonattainment areas classified as Serious or higher, section 182(c)(2)(B) requires reductions averaged over each consecutive 3-year period, beginning 6 years after the baseline year until the attainment date, of at least 3 percent of baseline emissions per year. CAA section 182(c)(2)(B)(ii) allows an amount less than 3 percent of such baseline emissions each year if the state demonstrates to the EPA that a plan includes all measures that can feasibly be implemented in the area in light of technological achievability. To meet CAA sections 172(c)(2) and 182(c)(2)(B) RFP requirements, the state may substitute NO_X emissions reductions for VOC reductions.[95]

The 2008 Ozone SRR provides that areas classified Moderate or higher for the 2008 8-hour ozone standard will have met the ROP requirements of CAA section 182(b)(1) if the area has a fully approved 15 percent ROP plan for the 1979 1-hour or 1997 8-hour ozone standards, provided the boundaries of the ozone nonattainment areas are the same.[96] Western Nevada County does not have a fully approved 15 percent ROP plan for either the 1979 1-hour or the 1997 8-hour ozone standards.[97] Therefore, the 15 percent ROP requirement of section 182(b)(1) remains applicable to Western Nevada County, and the area must show a 15 percent reduction in VOC within the first six years of the planning period.

Except as specifically provided in CAA section 182(b)(1)(C), emissions reductions from all SIP-approved, federally promulgated, or otherwise SIP-creditable measures that occur after the baseline year are creditable for purposes of demonstrating that the RFP targets are met. Because the EPA has determined that the passage of time has caused the effect of certain exclusions to be de minimis, the RFP demonstration is no longer required to calculate and specifically exclude reductions from measures related to motor vehicle exhaust or evaporative emissions promulgated by January 1, 1990; regulations concerning Reid vapor pressure promulgated by November 15, 1990; measures to correct previous RACT requirements; and, measures required to correct previous inspection and maintenance (I/M) programs.[98]

The 2008 Ozone SRR requires the RFP baseline year to be the most recent calendar year for which a complete triennial inventory was required to be submitted to the EPA. For the purposes of developing RFP demonstrations for the 2008 ozone NAAQS, the applicable triennial inventory year is 2011. As discussed previously, the 2008 Ozone SRR provided states with the opportunity to use an alternative baseline year for RFP,[99] but this provision was vacated by the D.C. Circuit in the *South Coast II* decision.

2. Summary of the State's Submission

Documentation for the Western Nevada County RFP baseline and milestone emissions inventories is found in the 2018 Western Nevada County Ozone Plan on pages 21–34, 54–56, and in Appendix A. Consistent with the *South Coast II* decision, CARB's RFP demonstration for Western Nevada County uses a 2011 RFP baseline emissions inventory.[100] To develop the 2011 RFP baseline inventory, CARB relied on actual emissions reported from industrial point sources for year 2011 and backcasted emissions from smaller stationary sources and area sources from

[95] 40 CFR 51.1110(a)(2)(i)(C) and 40 CFR 51.1110(a)(2)(ii)(B); and 70 FR 12264, at 12271 (March 6, 2015).

[96] 70 FR 12264, 12271 (March 6, 2015). For more information about how the RFP requirement of section 172(c)(2) applies in such areas, see 84 FR 28132, 28157 (June 17, 2019).

[97] As explained above in Section I, for the 1979 1-hour ozone NAAQS, the EPA classified Western Nevada County as Unclassifiable/Attainment and, thus, it was not subject to the ROP requirement. 62 FR 38856 (July 18, 1997). For the 1997 8-hour ozone NAAQS, the EPA initially designated Western Nevada County as a ''Subpart 1'' nonattainment area and later reclassified the area to Moderate, triggering the ROP requirement, but subsequently issued a clean data determination, which suspended attainment-related planning requirements, including the ROP requirement. 69 FR 23857 (April 30, 2004); 77 FR 28423 (May 14, 2012); 77 FR 71551 (December 3, 2012).

[98] 40 CFR 51.1110(a)(7).

[99] See 40 CFR 51.1110(b).

2012 to 2011 using the same growth and control factors used for future years.[101] The Plan indicates that the 2012 inventory base year for modeling and the 2011 baseline year inventory for RFP are consistent with each other since they both use actual emissions for stationary sources and the same growth profiles. Emissions estimates in the baseline emissions inventory reflect District and CARB rules submitted to the EPA through November 2016.

The RFP demonstration for Western Nevada County for the 2008 ozone NAAQS is shown in Table 10 of the 2018 Western Nevada County Ozone Plan, which is reproduced as Table 4 below. As Western Nevada County is a Serious nonattainment area without a previously approved ROP plan, the Plan demonstrates a reduction in VOC of 15 percent from baseline emissions within six years of the RFP baseline year period, consistent with CAA 182(b)(1). The Plan shows an additional 3 percent reduction of VOC or NO_X emissions, averaged over each consecutive 3-year period until the attainment year. The RFP demonstration calculates future year VOC targets from the 2011 baseline, consistent with CAA 182(c)(2)(B)(i), and it substitutes NO_X reductions for VOC reductions beginning in milestone year 2020 to meet VOC emission targets as allowed under CAA section 182(c)(2)(C).[102] CARB concludes that the RFP demonstration meets the applicable requirements for each milestone year as well as the attainment year.

TABLE 4—2008 OZONE RFP DEMONSTRATION WESTERN NEVADA COUNTY

[Summer planning inventory, tpd or percent]

	VOC		
	2011	2017	2020
Baseline VOC	5.50	4.50	4.20
Required change since 2011 (VOC or NO_X), %	.....	15	24
Target VOC level	.....	4.7	4.2
Apparent shortfall (−)/surplus (+) in VOC	.....	+0.2	−0.1
Apparent shortfall (−)/surplus (+) in VOC, %	.....	+3.2	−1.4
Actual VOC shortfall (−)/surplus (+), %	.....	+3.2	−1.4
	NO_X		
	2011	2017	2020
Baseline NO_X	5.69	3.74	2.89
Change in NO_X since 2011	.....	1.95	2.8
Change in NO_X since 2011, %	.....	34	49
NO_X reductions used for VOC substitution through last milestone year, %	.....	.....	3.1
NO_X reductions since 2011 available for VOC substitution in this milestone year, %	.....	34	49
NO_X reductions since 2011 used for VOC substitution in this milestone year, %	.....	0	3.1
NO_X reductions since 2011 surplus after meeting VOC substitution needs in this milestone year, %	.....	34	45.9
Total shortfall for RFP	.....	0	0
RFP met?	.....	Yes	Yes

Source: 2018 Western Nevada County Ozone Plan, Table 10, p. 55.

3. The EPA's Review of the State's Submission

Based on our review of the emissions inventory documentation in the 2018 Western Nevada County Ozone Plan, we find that CARB and the District have used the most recent planning and activity assumptions, emissions models, and methodologies in developing the RFP baseline and milestone year emissions inventories. We have also reviewed the calculations in Table 10 of the Plan and presented in Table 4 above and find that the District and CARB have used an appropriate calculation method to demonstrate RFP.

We have also reviewed the comparison of the VOC emission reductions against the 15 percent ROP requirement. As shown in Table 4, the RFP demonstration shows that Western Nevada County meets the 15 percent reduction in VOC emissions with an additional 3.2 percent surplus in VOC emissions reductions from 2011 to 2017. Such reductions satisfy the ROP requirement for Western Nevada County for the 2008 ozone NAAQS. As a result, we find that the District and CARB have met the ROP requirements of CAA section 182(b)(1) for Western Nevada County with respect to the 2008 ozone NAAQS.

We find that the District's use of substitution of NO_X reductions for VOC reductions in this demonstration is appropriate under CAA section 182(c)(2)(C). As described in Section III.D.2.a of this document, ozone formation in Western Nevada County is NO_X-limited, and the substituted NO_X reductions are expected to achieve an equal or greater reduction in ozone concentrations as would result from the VOC emissions reductions described in CAA section 182(c)(2)(B).[103]

[101] 2018 Western Nevada County Ozone Plan, page 23.

[102] See also 40 CFR 51.1110(a)(2)(i)(C) and 40 CFR 51.1110(a)(2)(ii)(B); and 70 FR 12264, at 12271 (March 6, 2015). The District's RFP demonstration substitutes NO_X reductions for VOC reductions on a percentage basis. See EPA, NO_X Substitution Guidance (December 1993).

[103] As discussed above, modeling for the Sacramento nonattainment area used a modeling domain that encompassed the Western Nevada nonattainment area, and was used to create an isopleth diagram showing ozone for various levels of NO_X and VOC emissions. Sacramento Regional 2008 NAAQS 8-hour Attainment and Reasonable Further Progress Plan (''2017 Sacramento Regional Ozone Plan''), July 24, 2017, Appendix B–4, p.B–158, Figure 16, available at *https://ww2.arb.ca.gov/resources/documents/2017-sacramento-regional-2008-8-hour-ozone-attainment-and-further-reasonable.* The EPA used this information to estimate the sensitivity of ozone to NO_X reductions and to VOC reductions, and found NO_X reductions to be 23 times as effective at reducing ozone as VOC reductions, on a tonnage basis, and 13 times as effective on a percentage basis. Docket EPA–R09–OAR–2020–0425, item A–86, ''Assessment of Sacramento Metro NAA Conformity Motor Vehicle Emissions Budget Consistency with O3 NAAQS Attainment,'' September 14, 2020, Air and Radiation Division, EPA Region IX.

For these reasons, we have determined that the 2018 Western Nevada County Ozone Plan demonstrates RFP in each milestone year and the attainment year, consistent with applicable CAA requirements and EPA guidance. We therefore propose to approve the RFP demonstrations for the Western Nevada County nonattainment area for the 2008 ozone NAAQS under sections 172(c)(2), 182(b)(1) and 182(c)(2)(B) of the CAA and 40 CFR 51.1110(a)(2)(ii).

F. Contingency Measures

1. Statutory and Regulatory Requirements

Under the CAA, 8-hour ozone nonattainment areas classified under subpart 2 as Moderate or above must include in their SIPs contingency measures consistent with sections 172(c)(9) and 182(c)(9). Contingency measures are additional controls or measures to be implemented in the event the area fails to make reasonable further progress or to attain the NAAQS by the attainment date. The SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measure will be implemented without significant further action by the state or the EPA.[104]

Neither the CAA nor the EPA's implementing regulations establish a specific level of emissions reductions that implementation of contingency measures must achieve, but the EPA's 2008 Ozone SRR reiterates the EPA's policy that contingency measures should generally provide for emissions reductions approximately equivalent to one year's worth progress, amounting to reductions of 3 percent of the baseline emissions inventory for the nonattainment area.[105]

It has been the EPA's longstanding interpretation of CAA section 172(c)(9) that states may rely on federal measures (*e.g.,* federal mobile source measures based on the incremental turnover of the motor vehicle fleet each year) and local measures already scheduled for implementation that provide emissions reductions in excess of those needed to provide for RFP or expeditious attainment. The key is that the Act requires that contingency measures provide for additional emissions reductions that are not relied on for RFP or attainment and that are not included in the RFP or attainment demonstrations as meeting part or all of the contingency measures requirements. The purpose of contingency measures is to provide continued emissions reductions while the plan is being revised to meet the missed milestone or attainment date.

The EPA has approved numerous SIPs under this interpretation, *i.e.,* SIPs that use as contingency measures one or more federal or local measures that are in place and provide reductions that are in excess of the reductions required by the attainment demonstration or RFP plan,[106] and there is case law supporting the EPA's interpretation in this regard.[107] However, in *Bahr* v. *EPA,* the United States Court of Appeals for the Ninth Circuit (''Ninth Circuit'') rejected the EPA's interpretation of CAA section 172(c)(9) as allowing for early implementation of contingency measures.[108] The Ninth Circuit concluded that contingency measures must take effect at the time the area fails to make RFP or attain by the applicable attainment date, not before.[109] Thus, within the geographic jurisdiction of the Ninth Circuit, states cannot rely on early-implemented measures to comply with the contingency measures requirements under CAA section 172(c)(9) and 182(c)(9).[110]

2. Summary of the State's Submission

In the 2018 Western Nevada County Ozone Plan, CARB calculates the extent of surplus emission reductions (*i.e.,* surplus to meeting the RFP milestone requirement for a given milestone year) in the milestone years and estimates the incremental emissions reductions in the year following the attainment year.[111] In light of the *Bahr* v. *EPA* decision, however, the 2018 Western Nevada County Ozone Plan does not rely on the surplus or incremental emissions reductions to comply with the contingency measures requirements of sections 172(c)(9) and 182(c)(9) but, rather, to provide context in which to evaluate the adequacy of *Bahr*-compliant (*i.e.,* to take effect if triggered) contingency measures for the 2008 ozone NAAQS.

To comply with sections 172(c)(9) and 182(c)(9), as interpreted in the *Bahr* v. *EPA* decision, the state must develop, adopt and submit a contingency measure to be triggered upon a failure to meet RFP milestones or failure to attain the NAAQS by the applicable attainment date regardless of the extent to which already-implemented measures would achieve surplus emissions reductions beyond those necessary to meet RFP milestones and beyond those predicted to achieve attainment of the NAAQS. Therefore, to fully address the contingency measures requirement for the 2008 ozone NAAQS in the Western Nevada nonattainment area, the District has committed to develop, adopt and submit a contingency measure to CARB in sufficient time to allow CARB to submit the contingency measure as a SIP revision to the EPA within 12 months of the EPA's final conditional approval of the contingency measures element of the 2018 Western Nevada County Ozone Plan.[112]

The District's commitment is to adopt the 2019 (or most recent) Architectural Coatings Suggested Control Measure (SCM), developed and approved by CARB, as a rule to take effect upon adoption throughout the nonattainment area upon a determination that the Western Nevada County nonattainment area failed to meet an RFP milestone or failed to attain the 2008 ozone NAAQS by the applicable attainment date. The District estimates that adoption of this new measure will yield an estimated 0.010 tpd in VOC emissions reductions in the nonattainment area. The District also evaluated three other additional categories for potential contingency measures. The categories are automotive coatings, water heaters, boilers, and process heaters rated less than a million BTU per hour, and miscellaneous combustion units. However, the District determined that these categories did not yield meaningful reductions.[113]

CARB attached the District's commitment to a letter committing CARB to adopt and submit the revised

[104] 70 FR 71612 (November 29, 2005). See also 2008 Ozone SRR, 80 FR 12264, at 12285 (March 6, 2015).

[105] 80 FR 12264 at 12285 (March 6, 2015).

[106] See, *e.g.,* 62 FR 15844 (April 3, 1997) (direct final rule approving an Indiana ozone SIP revision); 62 FR 66279 (December 18, 1997) (final rule approving an Illinois ozone SIP revision); 66 FR 30811 (June 8, 2001) (direct final rule approving a Rhode Island ozone SIP revision); 66 FR 586 (January 3, 2001) (final rule approving District of Columbia, Maryland, and Virginia ozone SIP revisions); and 66 FR 634 (January 3, 2001) (final rule approving a Connecticut ozone SIP revision).

[107] See, *e.g., LEAN* v. *EPA,* 382 F.3d 575 (5th Cir. 2004) (upholding contingency measures that were previously required and implemented where they were in excess of the attainment demonstration and RFP SIP).

[108] *Bahr* v. *EPA,* 836 F.3d 1218, at 1235–1237 (9th Cir. 2016).

[109] Id. at 1235–1237.

[110] The *Bahr* v. *EPA* decision involved a challenge to an EPA approval of contingency measures under the general nonattainment area plan provisions for contingency measures in CAA section 172(c)(9), but, given the similarity between the statutory language in section 172(c)(9) and the ozone-specific contingency measures provision in section 182(c)(9), we find that the decision affects how both sections of the Act must be interpreted.

[111] CARB Staff Report, Section D, 10–11.

[112] Letter dated October 26, 2020, from Gretchen Bennitt, Executive Director, NSAQMD, to Richard Corey, Executive Officer, CARB.

[113] Appendix to Letter dated October 26, 2020, from Gretchen Bennitt, Executive Director, NSAQMD, to Richard Corey, Executive Officer, CARB.

NSAQMD rule to the EPA within one year of the EPA's final conditional approval of the contingency measures element of the 2018 Western Nevada County Ozone Plan.[114]

3. The EPA's Review of the State's Submission

CAA sections 172(c)(9) and 182(c)(9) require contingency measures to address potential failures to achieve RFP milestones or to attain the NAAQS by the applicable attainment date through implementation of additional emissions controls in the event the area fails to make RFP or to attain the NAAQS by the applicable attainment date. Contingency measures must provide for the implementation of additional emissions controls, if triggered, without significant further action by the state or the EPA. For the purposes of evaluating the adequacy of the emissions reductions from the contingency measures (once adopted and submitted), we find it useful to distinguish between contingency measures to address potential failure to achieve RFP milestones (''RFP contingency measures'') and contingency measures to address potential failure to attain the NAAQS (''attainment contingency measures'').

With respect to the RFP contingency measures requirement, we have reviewed the surplus emissions estimates in each of the RFP milestone years, as shown in CARB's Staff Report, and find that the calculations are correct. We therefore agree that the 2018 Western Nevada County Ozone Plan provides surplus emissions reductions well beyond those necessary to demonstrate RFP in all of the RFP milestone years. While such surplus emissions reductions in the RFP milestone years do not represent contingency measures themselves, we believe they are relevant in evaluating the adequacy of RFP contingency measures that are submitted (or will be submitted) to meet the requirements of sections 172(c)(9) and 182(c)(9).

The attainment year for the 2008 ozone NAAQS in Western Nevada County coincides with the 2020 RFP milestone, and thus, we have reviewed the emissions reductions estimated by the District for the committed contingency measures in light of the facts and circumstances in Western Nevada County in the year following the attainment year, to determine whether there will be sufficient continued progress in that area in the event the area fails to achieve the 2020 RFP milestone or fails to attain the 2008 ozone NAAQS by the 2020 attainment year.[115]

As discussed above, 2018 Western Nevada County Ozone Plan provides estimates of emissions reductions that are surplus of the reductions necessary for RFP or attainment, but does not include measures that would implement additional emissions controls, if triggered, without significant further action by the state or the EPA. However, CARB and the District have submitted commitments to adopt and submit a revised District rule with the necessary provisions as a SIP revision within one year of the EPA's final action on the contingency measures element of the Plan. The specific revisions the District has committed to make, such as tightening control efficiencies or establishing content limits, upon a failure to achieve a milestone or a failure to attain, would comply with the requirements in CAA sections 172(c)(9) and 182(c)(9) because the additional controls would be undertaken if the area fails to achieve a milestone or fails to attain, and would take effect without significant further action by the State or the EPA.

We find that the contingency measures described in the District and CARB's commitment letters would provide adequate emissions reductions when triggered. Neither the CAA nor the EPA's implementing regulations for the ozone NAAQS establish a specific amount of emissions reductions that implementation of contingency measures must achieve, but we generally expect that contingency measures should provide for emissions reductions approximately equivalent to one year's worth of RFP, which, for ozone, amounts to reductions of 3 percent of the RFP baseline year emissions inventory for the nonattainment area. For the 2008 ozone NAAQS in Western Nevada County, one year's worth of RFP is approximately 0.16 tpd of VOC or 0.17 tpd of NO_X reductions.[116] The District's commitment letter estimates the potential additional emission reductions from its contingency measure commitment at 0.010 tpd VOC. However, emissions in the year following the attainment year (2021) in Western Nevada County are expected to be approximately 0.048 tpd lower for VOC and 0.23 tpd lower for NO_X than in the attainment year (2020).[117] The downward trend in emissions reflects the continuing benefits of already-implemented measures and is primarily the result of vehicle turnover, which refers to the ongoing replacement by individuals, companies, and government agencies of older, more polluting vehicles and engines with newer vehicles and engines. While the continuing reductions from such already-implemented measures do not constitute contingency measures themselves, they provide context in which we evaluate the adequacy of the contingency measures submitted (or, in this case, to be submitted) to fulfill the requirements of CAA sections 172(c)(9) and 182(c)(9).

In this instance, we find that the emissions reductions from the to-be-adopted contingency measures together with the reductions expected to occur due to already-implemented measures are consistent with our guidance recommending that contingency measures provide for one year's worth of progress in the event of a failure to meet an RFP milestone or a failure to attain the NAAQS by the applicable attainment date. Therefore, in light of the year-to-year reductions in the VOC and NO_X inventories, we find that the contingency measures described in the District's and CARB's commitment letters would provide sufficient emissions reductions even though reductions from the measures would be lower than the EPA normally recommends for such measures.

For these reasons, and in light of commitments from the District and CARB to adopt and submit a District rule that will apply tighter limits or requirements upon a failure to achieve an RFP milestone or the 2008 ozone NAAQS by the applicable attainment date, we propose to approve conditionally the contingency measures element of the 2018 Western Nevada County Ozone Plan as meeting the contingency measures requirements of CAA sections 172(c)(9) and 182(c)(9). Our proposed approval is conditional because it relies upon commitments to adopt and submit a specific enforceable

[114] Letter dated November 16, 2020, from Richard W. Corey, Executive Officer, CARB, to John Busterud, Regional Administrator, EPA Region IX.

[115] CAA section 182(g)(2) provides that states must submit RFP milestone compliance demonstrations within 90 days after the date on which an applicable milestone occurs, except where the milestone and attainment date are the same and the standard has been attained.

[116] One year's worth of RFP for Western Nevada County corresponds to 3 percent of the 2011 RFP baseline year inventories for VOC (5.496 tpd) and NO_X (5.687 tpd).

[117] Estimates for the emissions reductions in the year following the attainment year are based on the emissions inventories for Western Nevada County in Appendix A of the Plan. The estimate of the reductions in emissions of 0.048 tpd of VOC and 0.23 tpd of NO_X in 2021 (relative to 2020) amounts to approximately 29 percent and 132 percent of one year's worth of progress, respectively in this area based on the 2011 RFP baseline inventory.

contingency measure (*i.e.,* a revised District rule or rules with contingent provisions). Conditional approvals are authorized under CAA section 110(k)(4).

G. Motor Vehicle Emissions Budgets for Transportation Conformity

1. Statutory and Regulatory Requirements

Section 176(c) of the CAA requires federal actions in nonattainment and maintenance areas to conform to the SIP's goals of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of the standards. Conformity to the SIP's goals means that such actions will not: (1) Cause or contribute to violations of a NAAQS, (2) worsen the severity of an existing violation, or (3) delay timely attainment of any NAAQS or any interim milestone.

Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule, codified at 40 CFR part 93, subpart A. Under this rule, metropolitan planning organizations in nonattainment and maintenance areas coordinate with state and local air quality and transportation agencies, the EPA, the FHWA, and the FTA to demonstrate that an area's regional transportation plans and transportation improvement programs conform to the applicable SIP.[118] This demonstration is typically done by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (''budgets'') contained in all control strategy SIPs. Budgets are generally established for specific years and specific pollutants or precursors. Ozone plans should identify budgets for on-road emissions of ozone precursors (NO_X and VOC) in the area for each RFP milestone year and, if the plan demonstrates attainment, the attainment year.[119]

For budgets to be approvable, they must meet, at a minimum, the EPA's adequacy criteria (40 CFR 93.118(e)(4)) and be approvable under all pertinent SIP requirements. To meet these requirements, the budgets must be consistent with the attainment and RFP requirements and reflect all of the motor vehicle control measures contained in the attainment and RFP demonstrations.[120]

The EPA's process for determining adequacy of a budget consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the budget during a public comment period; and (3) making a finding of adequacy or inadequacy.[121]

2. Summary of the State's Submission

Chapter VI of the 2018 Western Nevada County Ozone Plan includes budgets for the 2020 RFP milestone and attainment year. The budgets were derived from the 2011 base year. The budgets were calculated using EMFAC2014, CARB's then-current and latest approved version of the EMFAC model for estimating emissions from on-road vehicles operating in California and are rounded up to the nearest whole number. The budgets in the Plan reflect updated VMT estimates from the NCTC 2015–2035 Regional Transportation Plan, adopted by NCTC in January 2018, which are lower than the conservative estimate of on-road emissions in the emissions inventory. Given the use of updated travel data and CARB's convention of rounding emissions up to the next tenth (0.1), there are some differences between the budgets and the emissions inventories in the Plan for the RFP and attainment demonstrations. CARB's addendum to the technical clarification memorandum dated October 27, 2020 indicates that the differences are quite small (VOC: 0.55 tpd; NO_X: 0.26 tpd) and do not impact the RFP or attainment demonstrations.[122] The conformity budgets for NO_X and VOC in the Plan for the Western Nevada County area are provided in Table 5 below.

TABLE 5—TRANSPORTATION CONFORMITY BUDGETS FOR 2020 FOR THE 2008 OZONE NAAQS IN WESTERN NEVADA COUNTY

[Summer planning inventory, tpd]

	2020	
	VOC	NO_X
Motor vehicle emissions budget	0.8	1.7

Source: Table 7 of the 2018 Western Nevada County Ozone Plan.

3. The EPA's Review of the State's Submission

As part of our review of the approvability of the budgets in the 2018 Western Nevada County Ozone Plan, we have evaluated the budgets using our adequacy criteria in 40 CFR 93.118(e)(4) and (5). We will complete the adequacy review concurrent with our final action on the 2018 Western Nevada County Ozone Plan. The transportation conformity rule does not require the EPA to find budgets adequate prior to proposing approval of them.[123] Today, the EPA is announcing the beginning of the adequacy process for these budgets, and the public has 30 days to comment on their adequacy, per the transportation conformity regulation at 40 CFR 93.118(f)(2)(i) and (ii).

As documented in a separate memorandum included in the docket for

[118] As mentioned in Section I.B, Western Nevada County is an isolated rural area. Isolated rural areas do not have federally required metropolitan transportation plans and transportation improvement programs, and they are not subject to the frequency requirements for conformity determinations on transportation plans and transportation improvement programs (40 CFR 93.104(b), (c), and (e)). Instead, in an isolated rural area, a conformity determination is required for the 2008 ozone and other applicable NAAQS only when a non-exempt FHWA/FTA project(s) needs funding or approval, based on the conformity requirements for isolated rural areas at 40 CFR 93.109(g). See also ''Transportation Conformity Guidance for 2008 Ozone Nonattainment Areas,'' July 2012, EPA Office of Transportation and Air Quality, Transportation and Climate Division, available at *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20120701_otaq_epa-420_b-12-045_guidance_transport_conformity_2008_oxone_naaqs.pdf.*

[119] 40 CFR 93.102(b)(2)(i).

[120] 40 CFR 93.118(e)(4)(iii), (iv) and (v). For more information on the transportation conformity requirements and applicable policies on budgets, please visit our transportation conformity website at: *http://www.epa.gov/otaq/stateresources/transconf/index.htm.*

[121] 40 CFR 93.118(f)(2).

[122] This is addressed in more detail in our memorandum for the budgets, as detailed in Section III.G.3.

[123] Under the transportation conformity regulations, the EPA may review the adequacy of submitted motor vehicle emission budgets simultaneously with the EPA's approval or disapproval of the submitted implementation plan. 40 CFR 93.118(f)(2).

this rulemaking, we preliminarily conclude that the budgets in the 2018 Western Nevada County Ozone Plan meet each adequacy criterion.[124] While adequacy and approval are two separate actions, reviewing the budgets in terms of the adequacy criteria informs the EPA's decision to propose to approve the budgets. We have completed our detailed review of the 2018 Western Nevada County Ozone Plan and are proposing herein to approve the SIP's attainment and RFP demonstrations. We have also reviewed the budgets in the 2018 Western Nevada County Ozone Plan and found that they are consistent with the attainment and RFP demonstrations for which we are proposing approval, are based on control measures that have already been adopted and implemented, and meet all other applicable statutory and regulatory requirements including the adequacy criteria in 40 CFR 93.1118(e)(4) and (5). Therefore, we are proposing to find adequate and approve the 2020 budgets in the 2018 Western Nevada County Ozone Plan (and shown in Table 5, above). If we finalize our adequacy determination and approval of the budgets for the 2008 ozone NAAQS in the Plan as proposed, then they will be approved for use in transportation conformity determinations.

Under our transportation conformity rule, as a general matter, once budgets are approved, they cannot be superseded by revised budgets submitted for the same CAA purpose and the same period of years addressed by the previously approved SIP until the EPA approves the revised budgets as a SIP revision. In other words, as a general matter, such approved budgets cannot be superseded by revised budgets found adequate, but rather only through approval of the revised budgets, unless the EPA specifies otherwise in its approval of a SIP by limiting the duration of the approval to last only until subsequently submitted budgets are found adequate.[125]

In this instance, CARB originally requested that we limit the duration of our approval of the budgets in the 2018 Western Nevada County Ozone Plan only until the effective date of the EPA's adequacy finding for any subsequently submitted budgets.[126] However, in an email dated August 17, 2020, CARB indicated its decision to no longer request limited approval of the budgets for Western Nevada.[127]

H. Other Clean Air Act Requirements Applicable to Serious Ozone Nonattainment Areas

In addition to the SIP requirements discussed in the previous sections, the CAA includes certain other SIP requirements applicable to Serious ozone nonattainment areas, such as Western Nevada County. We describe these provisions and their current status below for informational purposes only.

1. Enhanced Vehicle Inspection and Maintenance Programs

Section 182(c)(3) of the CAA requires states with ozone nonattainment areas classified under subpart 2 as Serious or above to implement an enhanced motor vehicle I/M program in each urbanized area within the nonattainment area, as defined by the Bureau of the Census, with a 1980 population of 200,000 or more. The requirements for those programs are provided in CAA section 182(c)(3) and 40 CFR part 51, subpart S.

Consistent with the 2008 Ozone SRR, no new I/M programs are currently required for nonattainment areas for the 2008 ozone NAAQS.[128] Further, because there are no urbanized areas in Nevada County, the Western Nevada County nonattainment area is not required to implement an enhanced I/M program. Nevada County has had a basic smog check program in place since 1998.[129]

2. New Source Review Rules

Section 182(a)(2)(C) of the CAA requires states to develop SIP revisions containing permit programs for each of its ozone nonattainment areas. The SIP revisions are to include requirements for permits in accordance with CAA sections 172(c)(5) and 173 for the construction and operation of each new or modified major stationary source for VOC and NO_X anywhere in the nonattainment area. The 2008 Ozone SRR includes provisions and guidance for nonattainment NSR programs.[130]

The 2018 Western Nevada County Ozone Plan cites District Rule 428, ''New Source Review Requirements for New and Modified Major Sources in Federally Designated Non-attainment Areas,'' as amended by the District on June 27, 2016, as the rule that meets Serious area requirements for nonattainment NSR.[131] Since the Plan's submittal, the District rescinded the previously adopted Rule 428 and concurrently adopted a new Rule 428, ''NSR Requirements for New and Modified Major Sources in Nonattainment Areas,'' on November 25, 2019. The rule was submitted to the EPA on February 19, 2020. We approved this version of Rule 428 into the SIP on November 20, 2020.[132]

3. Clean Fuels Fleet Program

Sections 182(c)(4)(A) and 246 of the CAA require California to submit to the EPA for approval into the SIP measures to implement a Clean Fuels Fleet Program. Section 182(c)(4)(B) of the CAA allows states to opt out of the federal clean-fuel vehicle fleet program by submitting a SIP revision consisting of a program or programs that will result in at least equivalent long-term reductions in ozone precursors and toxic air emissions.

In 1994, CARB submitted a SIP revision to the EPA to opt out of the federal clean-fuel fleet program. The submittal included a demonstration that California's low-emissions vehicle program achieved emissions reductions at least as large as would be achieved by the federal program. The EPA approved the SIP revision to opt out of the federal program on August 27, 1999.[133] There have been no changes to the federal Clean Fuels Fleet program since the EPA approved the California SIP revision to opt out of the federal program, and thus, no corresponding changes to the SIP are required. Thus, we find that the California SIP revision to opt out of the federal program, as approved in 1999, meets the requirements of CAA sections 182(c)(4)(A) and 246 for Western Nevada County for the 2008 ozone NAAQS.

4. Gasoline Vapor Recovery

Section 182(b)(3) of the CAA requires states to submit a SIP revision by November 15, 1992, that requires owners or operators of gasoline dispensing systems to install and operate gasoline vehicle refueling vapor recovery (''Stage II'') systems in ozone nonattainment areas classified as Moderate and above. California's ozone nonattainment areas implemented Stage

[124] Memorandum dated December 4, 2020, from Khoi Nguyen, Air Planning Office, EPA Region 9, to the docket for this proposed rulemaking, titled ''Adequacy Documentation for Plan Motor Vehicle Emission Budgets in 2018 Western Nevada County Ozone Plan.''

[125] 40 CFR 93.118(e)(1).

[126] CARB's request to limit the duration of the approval of the Western Nevada County ozone budgets is contained in a letter dated December 2, 2018, from Richard Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX.

[127] See email dated August 17, 2020 from Nesamani Kalandiyur, CARB, to EPA Region 9.

[128] 2008 Ozone SRR, 80 FR 12264, 12283 (March 6, 2015).

[129] 2018 Western Nevada County Ozone Plan, page 50.

[130] 80 FR 12264 (March 6, 2015).

[131] 2018 Western Nevada County Ozone Plan, 40.

[132] 85 FR 74263 (November 20, 2020).

[133] 64 FR 46849 (August 27, 1999).

II vapor recovery well before the passage of the CAA Amendments of 1990.[134]

Section 202(a)(6) of the CAA requires the EPA to promulgate standards requiring motor vehicles to be equipped with onboard refueling vapor recovery (ORVR) systems. The EPA promulgated the first set of ORVR system regulations in 1994 for phased implementation on vehicle manufacturers, and since the end of 2006, essentially all new gasoline-powered light and medium-duty vehicles are ORVR-equipped.[135] Section 202(a)(6) also authorizes the EPA to waive the SIP requirement under CAA section 182(b)(3) for installation of Stage II vapor recovery systems after such time as the EPA determines that ORVR systems are in widespread use throughout the motor vehicle fleet. Effective May 16, 2012, the EPA waived the requirement of CAA section 182(b)(3) for Stage II vapor recovery systems in ozone nonattainment areas regardless of classification.[136] Thus, a SIP submittal meeting CAA section 182(b)(3) is not required for the 2008 ozone NAAQS.

While a SIP submittal meeting CAA section 182(b)(3) is not required for the 2008 ozone NAAQS, under California State law (*i.e.,* Health and Safety Code section 41954), CARB is required to adopt procedures and performance standards for controlling gasoline emissions from gasoline marketing operations, including transfer and storage operations. State law also authorizes CARB, in cooperation with local air districts, to certify vapor recovery systems, to identify defective equipment and to develop test methods. CARB has adopted numerous revisions to its vapor recovery program regulations and continues to rely on its vapor recovery program to achieve emissions reductions in ozone nonattainment areas in California.

In Western Nevada County, the installation and operation of CARB-certified vapor recovery equipment is required and enforced through NSAQMD Rule 215, ''Phase II Vapor Recovery System Requirements,'' which was most recently approved into the SIP on July 26, 2011.[137]

5. Enhanced Ambient Air Monitoring

Section 182(c)(1) of the CAA requires that all ozone nonattainment areas classified as Serious or above implement measures to enhance and improve monitoring for ambient concentrations of ozone, NO_X, and VOC, and to improve monitoring of emissions of NO_X and VOC. The enhanced monitoring network for ozone is referred to as the Photochemical Assessment Monitoring Station (PAMS) network. The EPA promulgated final PAMS regulations on February 12, 1993.[138]

Prior to 2006, the EPA's ambient air monitoring regulations in 40 CFR part 58, ''Ambient Air Quality Surveillance,'' set forth specific SIP requirements (see former 40 CFR 52.20). In 2006, the EPA significantly revised and reorganized 40 CFR part 58.[139] Under revised 40 CFR part 58, SIP revisions are no longer required; rather, compliance with EPA monitoring regulations is established through review of required annual monitoring network plans.[140] The 2008 Ozone SRR made no changes to these requirements.[141]

The 2018 Western Nevada County Ozone Plan does not specifically address the enhanced ambient air monitoring requirement in CAA section 182(c)(1). However, we note that CARB includes the ambient monitoring network within Western Nevada County, in its annual monitoring network plan that is submitted to the EPA, and that we have approved the most recent annual monitoring network plan (''Annual Network Plan Covering Monitoring Operations in 25 California Air Districts, July 2020'' or ''2020 ANP'') with respect to Western Nevada County.[142] In addition, CARB has fulfilled the requirement under 40 CFR part 58, Appendix D, section 5(h), to submit an enhanced monitoring plan for Western Nevada County.[143] Based on our review and approval of the 2020 ANP with respect to Western Nevada County and CARB's submittal of an enhanced monitoring plan for Western Nevada County, we propose to find that CARB and the NSAQMD meet the enhanced monitoring requirements under CAA section 182(c)(1) for Western Nevada County with respect to the 2008 ozone NAAQS.

IV. Proposed Action

For the reasons discussed in this notice, under CAA section 110(k)(3), the EPA is proposing to approve as a revision to the California SIP the following portions of the 2018 Western Nevada County Ozone Plan submitted by CARB on December 2, 2018:

- Base year emissions inventory element as meeting the requirements of CAA sections 172(c)(3) and 182(a)(1) and 40 CFR 51.1115 for the 2008 ozone NAAQS;
- RACM demonstration element as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.1112(c) for the 2008 ozone NAAQS;
- Attainment demonstration element for the 2008 ozone NAAQS as meeting the requirements of CAA section 182(c)(2)(A) and 40 CFR 51.1108;
- ROP demonstration element as meeting the requirements of CAA 182(b)(1) and 40 CFR 51.1110(a)(4)(i) for the 2008 ozone NAAQS;
- RFP demonstration element as meeting the requirements of CAA sections 172(c)(2), 182(b)(1), and 182(c)(2)(B), and 40 CFR 51.1110(a)(4)(iii) for the 2008 ozone NAAQS;
- Motor vehicle emissions budgets for the RFP milestone and attainment year of 2020 (see Table 5) because they are consistent with the RFP and attainment demonstrations for the 2008 ozone NAAQS proposed for approval herein and meet the other criteria in 40 CFR 93.118(e);

We are also proposing to find that the:

- California SIP revision to opt-out of the federal Clean Fuels Fleet Program meets the requirements of CAA sections 182(c)(4)(A) and 246 and 40 CFR 51.1102 for the 2008 ozone NAAQS with respect to Western Nevada County; and
- Requirements for enhanced monitoring under CAA section 182(c)(1) and 40 CFR 51.1102 for Western Nevada County for the 2008 ozone NAAQS have been met.

In addition, we are proposing, under CAA section 110(k)(4), to approve conditionally the contingency measures element of the 2018 Western Nevada County Ozone Plan as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9) for RFP and attainment contingency measures. Our proposed approval is based on commitments by the District and CARB to supplement the element through submission, as a SIP revision (within one year of our

[134] General Preamble, 57 FR 13498 at 13514 (April 16, 1992).

[135] 77 FR 28772, at 28774 (May 16, 2012).

[136] See 40 CFR 51.126(b).

[137] 76 FR 44493 (July 26, 2011).

[138] 58 FR 8452 (February 12, 1993).

[139] 71 FR 61236 (October 17, 2006).

[140] 40 CFR 58.2(b) now provides ''The requirements pertaining to provisions for an air quality surveillance system in the SIP are contained in this part.''

[141] The 2008 ozone SRR addresses PAMS-related requirements at 80 FR 12264, at 12291 (March 6, 2015).

[142] Letter dated November 5, 2020, from Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX, to Ravi Ramalingam, Chief, Consumer Products and Air Quality Assessment Branch, Air Quality Planning and Science Division, CARB.

[143] Letter dated November 9, 2020, from Dr. Michael T. Benjamin, Chief, Air Quality Planning and Science Division, CARB, to Meredith Kurpius, Assistant Director, EPA Region 9, enclosing the ''2020 Monitoring Network Assessment (October 2020).'' The assessment includes a five-year network assessment and an updated enhanced monitoring plan, as required by 40 CFR 58, Appendix D, Section 5(a).

final conditional approval action), of a new District rule that would add new limits or other requirements if an RFP milestone is not met or if Western Nevada County fails to attain the 2008 ozone NAAQS by the applicable attainment date.

V. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: December 21, 2020.

John Busterud,

Regional Administrator, Region IX.

[FR Doc. 2020–28885 Filed 1–11–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 95

[ET Docket No. 20–382; FCC 20–180; FRS 17351]

Allowing Earlier Equipment Marketing and Importation Opportunities

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to update its radiofrequency (RF) device marketing and importation rules in order to allow equipment manufacturers to better gauge consumer interest and prepare for new product launches. In particular, the Commission proposes limited exceptions to its requirement that RF devices receive equipment authorization prior to marketing in or importation to the United States and it seeks comment on the conditions necessary to ensure that parties who utilize such exceptions ultimately bring such devices into full compliance with the Commission's equipment authorization rules.

DATES: Comments are due February 11, 2021. Reply comments are due February 26, 2021.

FOR FURTHER INFORMATION CONTACT: Brian Butler, Office of Engineering and Technology, 202–418–2702, *Brian.Butler@fcc.gov,* or Thomas Struble at 202–418–2470 or *Thomas.Struble@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), FCC 20–180, ET Docket No. 20–382, adopted December 10, 2020, and released December 10, 2020. The full text of this document is available for public inspection and can be downloaded at: *https://www.fcc.gov/document/fcc-proposes-rules-expedite-release-new-devices-and-technologies-0* or by using the search function for ET Docket No. 20–382 on the Commission's ECFS web page at *www.fcc.gov/ecfs.*

Synopsis

1. *Discussion.* In June 2020 CTA filed a petition seeking modification of the equipment authorization rules pertaining to the marketing and importation of radiofrequency devices. An FCC-issued Public Notice seeking comment on CTA's petition yielded eight comments and two reply comments. The Commission took this record into consideration when it issued this rulemaking proposal. The Commission observed that the existing rules often limit the ability of device manufacturers to market and import radiofrequency devices in the most efficient and cost-effective manner and proposed specific rule changes that would allow device manufacturers to take full advantage of modern marketing and importation practices. Specifically, the proposals relate to the marketing and importation of radiofrequency devices. Although CTA also asked the Commission to grant a rule waiver to permit conditional sales to consumers during the pendency of the rulemaking proceeding and other parties asked for similar action, the Commission determined that an interim waiver was not warranted in this case. The Commission notes that it would need to consider several complex issues before allowing conditional sales of radiofrequency devices, or additional imports of radiofrequency devices, prior to the receipt of equipment authorization.

2. The Commission's equipment authorization rules are based on Section 302 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 302a, which gives the Commission authority to make reasonable regulations governing the interference potential of devices that emit radiofrequency energy and can cause harm to consumers or

other radio operations. The Commission uses the equipment authorization program, codified in Part 2 of its rules, 47 CFR part 2, to ensure that radiofrequency devices comply with its technical and equipment authorization requirements before they can be marketed in or imported to the United States. There are two different approval procedures for equipment authorization—Certification and Supplier's Declaration of Conformity (SDoC). Certification, the most rigorous approval process for radiofrequency devices, results in an equipment authorization issued by an FCC-recognized Telecommunication Certification Body (TCB) based on an evaluation of the supporting documentation and test data submitted to the TCB. SDoC is a procedure that requires the party responsible for compliance (who must be located in the United States) to ensure that the equipment complies with the appropriate technical standards. Unlike with Certification, equipment authorized under the SDoC procedure is not listed in a Commission database.

3. Subpart I of part 2 of the Commission's rules sets out the conditions under which radiofrequency devices that are capable of causing harm to consumers or other radio operations may be marketed in the United States. Marketing is broadly defined to include ''sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.'' 47 CFR 2.803(a). In general, parties may not market radiofrequency devices unless the devices have been properly authorized or otherwise comply with all applicable technical, labeling, identification, and administrative requirements. 47 CFR 2.803(b). An existing limited exception permits conditional sales contracts—that is, sales whereby the actual delivery of the product to the buyer is postponed—to wholesalers and retailers. The Commission proposes to modernize its rules to also allow conditional sales, but not delivery, of radiofrequency devices to consumers prior to authorization.

4. The Commission expresses belief that the marketplace and the consumer experience have changed such that there is good reason to modify the rules to allow for some conditional sales. These reasons include that such sales would allow manufacturers to better gauge consumer interest and demand, would improve supply-chain management and thus reduce waste, and would support the highly competitive communications market where the development and life cycles of new devices are short. The Commission further recognizes that the its proposal has the potential to better align its processes with popular consumer expectations and noted CTA's claim that pre-ordering consumer goods has become commonplace. The Commission seeks comment on its observations and asks whether there are other benefits or risks associated with the proposed marketing rule that it had not identified. The Commission asks if expanding the scope of marketing to include conditional sales of radiofrequency devices directly to consumers would yield the anticipated benefits for industry and consumers and whether there are other actions the FCC could take that would more effectively meet its objective.

5. The Commission also recognizes the continuing importance of ensuring that unauthorized radiofrequency devices do not reach consumers where they could potentially cause harm. As a fundamental matter, the Commission proposes to prohibit the delivery of radiofrequency devices to consumers prior to authorization. The Commission notes that its rules are designed to prevent the sale and operation of non-compliant devices, and that manufacturers and vendors who market and deliver non-compliant devices to purchasers in the United States, as well as domestic consumers who operate non-compliant devices, can be held liable for violating these rules.

6. The Commission seeks comment on whether there are additional safeguards that it should implement. Are there certain types of devices for which conditional sales to consumers would not be appropriate? These could include devices designed to operate in particular frequency bands where extensive pre-operation coordination is required; equipment designed for commercial operation that could pose a greater risk of harmful interference or harm to persons if not installed properly; and medical or other equipment that require review or approval by other regulatory bodies. How can the Commission prevent devices that have no likelihood of being approved from being marketed? Should equipment that could only operate under a Commission waiver be prohibited from marketing prior to a waiver being granted? The Commission recognizes that certain types of devices are used to ensure the safety of life and property on board ships and aircraft. Should the Commission exclude those types of devices? If not, the Commission notes that certain rules in parts 80, 87, and 95 of the Commission's rules may need to be adjusted and proposed to revise these rules accordingly. To this end, the Commission identifies Section 95.391, 47 CFR 95.391, and seeks comment on whether other rules, such as those provided under Sections 80.1061, 87.147, and 95.2991, 47 CFR 80.1061, 87.147, and 95.2991, would also need to be revised or clarified. The Commission asks whether there are other specific devices subject to certain rules that might also need to be excluded and directed commenters to be specific in detailing which rules and what types of equipment would be implicated, and why these would need to be treated differently.

7. The Commission's proposed rule would require the prospective buyer to be advised at the time of marketing the conditional sale that the equipment is subject to the Commission's rules and delivery to the buyer is contingent upon compliance with the applicable equipment authorization and technical requirements. The Commission asks whether it should require the seller to make additional disclosures throughout the marketing and sales process, including up to the time of delivery, noting that TechFreedom had suggested that the Commission require any seller to display specific language warning potential customers that they are pre-ordering a device that is not yet certified under the Commission's rules, and it ultimately may never be delivered. The Commission proposes that sellers should be required to prominently display language clarifying the conditional nature of a sale at the time of offer, as set forth in the proposed rules.

8. The Commission asks whether there are other disclosures that sellers should make when marketing radiofrequency devices to consumers prior to equipment authorization. Should the Commission require sellers to provide information on how to seek a refund in the event the device does not receive authorization? If so, how should the seller provide this information? How would consumers be notified that authorization was not granted, and that the devices will not be delivered? What records of such notice are needed? Should the Commission require online marketplaces to ensure all advertisements of devices marketed through conditional sales include the required disclosures? If unique identifying information (*e.g.,* model numbers, expected FCC ID) is known at the time of marketing, should the Commission require that information to be disclosed in online advertisements?

9. The Commission asks if it should require manufacturers to include a label on device packaging noting that it shall not be delivered to consumers prior to

obtaining equipment authorization and, if so, how it should implement this requirement as any such label notice would only have temporary applicability. The Commission asks what information should be included on the label and whether there are other steps the Commission could take to ensure that all parties are fully aware that device delivery is prohibited prior to authorization.

10. The Commission asks if it should impose particular recordkeeping requirements on the manufacturer so that such equipment can be accounted for if equipment authorization is ultimately not granted or enforcement action needs to be taken. If so, the Commission proposes to require that the manufacturer retain these records and provide them to the Commission upon request; it further asks what time period would be appropriate. The Commission also asks if the seller should be required to provide the Commission with a monthly update on the number of units pre-ordered, and what requirements for maintaining a designated agent or point of contact based in the United States would be appropriate.

11. The Commission asks what effect its proposal might have on its enforcement activities. Acknowledging that its proposal could lead to situations that might upset consumers' expectations, the Commission asks what scenarios could cause problems and seeks comment on whether it should adopt specific rules to address any potential harms that may result from allowing conditional sales of radiofrequency devices to consumers. For example, if equipment authorization is not granted, what actions should be required of the manufacturer to ensure that unauthorized equipment is not made available to consumers? If an unauthorized device is delivered to a consumer prior to receipt of the equipment authorization, what are the appropriate sanctions? What should the base forfeiture be for such violations? Should the forfeiture be based on the number of unauthorized units that are delivered? Should the Commission deny future equipment authorization applications from grantees who deliver unauthorized devices to consumers, either directly or indirectly through a third-party retailer? Should the Commission require additional protections to prevent potential harm from online vendors or from overseas vendors? What would those protections look like? If a manufacturer delivers a device that has failed to receive authorization, should domestic consumers who operate the non-compliant device be liable for violating the Commission's rules? The Commission seeks comment on these questions as well as any other enforcement measures that may be appropriate.

12. The Commission seeks comment on the government's role when a conditionally sold radiofrequency device cannot be delivered and consumers may be entitled to a refund or similar remedy under the sales agreement. The Commission asks if there were actions it could take to set appropriate consumer expectations, direct consumers to appropriate resources, and avoid becoming overwhelmed with general questions and complaints for which other agencies or entities may be a more appropriate contact. Should sellers make additional product and contact information readily available—such as on their websites or that of a relevant industry trade group (such as CTA), or as a specific disclosure to the Commission—to make it easier to identify what a caller is talking about and where they should direct their concerns? The Commission asks about the role of the Federal Trade Commission, state attorneys general, or other enforcement entities outside of the Commission in providing consumer relief. Are these the best authorities for redressing potential consumer injuries from conditional sales of radiofrequency devices? How should the information about these authorities be provided to consumers? What role, if any, should the Commission have in providing this information to consumers? What role, if any, should the Commission have in assisting other official bodies in seeking redress for consumers? Should the Commission make contact information available on its website to identify where consumers should direct their concerns? The Commission tentatively concludes that adequate remedies exist for contractual and similar harms that are external to the Commission and seeks comment on this observation. The Commission asks if it should establish a memorandum of understanding with the Federal Trade Commission to share information on potential violations or best practices in this area, as it has done in the past to facilitate coordination on issues that span multiple jurisdictions.

13. The Commission notes that its proposed rule would retain the existing reference to ''manufacturers'' entering into conditional sales contracts, but seeks comment on CTA's request that, ''[t]o the extent entities become responsible for a device's FCC compliance, those 'responsible parties' also should be permitted to engage in conditional sales with consumers.'' The Commission recognizes that ''manufacturers'' may be too limiting for the wide range of creators and innovators who are likely to take advantage of conditional sales of radiofrequency devices to consumers, but was not sure that CTA's suggested addition of ''responsible parties, as defined in Section 2.909 [of the Commission's rules]'' was the most appropriate way to expand the scope of the exemption because that rule addresses the chain of responsibility for the equipment authorization process. For certain conditional sales situations, such as the beginning stages of a Kickstarter campaign, the seller may neither be a ''manufacturer'' nor a ''responsible party'' for purposes of the Commission's Part 2 rules; indeed, for equipment in the conceptual stage, the seller may not have even begun the equipment authorization process. The Commission asks how it should account for such sellers. Alternately, are there benefits or risks to retaining the existing limitation to manufacturers? Would doing so, for example, help ensure that unauthorized and non-compliant radiofrequency devices do not make their way to consumers and cause harm?

14. The Commission did not propose to change Section 2.803(c)(2)(ii), 47 CFR 2.803(c)(2)(ii), as CTA suggested in its petition. The Commission states that that this is a separate provision that allows limited marketing, in the form of sales, to a narrow class of specialized entities and that it explicitly prohibits the offering for sale to other parties or to end users located in a residential environment. The Commission states that it did not believe it would be necessary to change this portion of the rule to satisfy its discrete objective and that doing so might actually eliminate an important avenue for limited marketing that exists outside the conditional sales contract context. The Commission seeks comment on this conclusion. The Commission also notes that CTA proposed replacing this section with language that would allow manufacturers to enter into contracts for importation and preparatory activities prior to sale. The Commission states that it did not believe that such activities constitute ''marketing'' that would be prohibited if not explicitly permitted under the conditional sales contract rule, but seeks comment from parties that might hold a different view.

15. Finally, the Commission asks about the relative costs and benefits of its proposal to modify the marketing rule. Can the benefits of allowing conditional sales of radiofrequency devices be quantified in terms of cost savings to equipment developers and manufacturers? How would this rule

change affect the development time for devices and how long it takes to get new innovative devices to market? How should conditional sales of goods and services pre-sold in other contexts inform the Commission's analysis of conditional sales for radiofrequency devices? The Commission encourages commenters to provide data on how common conditional sales are and, to the extent possible, quantify the benefits such conditional sales yield for both industry and consumers. What would be the costs and benefits of expanding conditional sales beyond manufacturers to include a broader class of responsible parties? What would be the costs and benefits of the proposals for record keeping of authorized and unauthorized equipment? How often do crowd-funding campaigns, like those on Kickstarter and other platforms, result in technology products being delivered to consumers? What are the average refund rates for unsuccessful crowd-funding or pre-sale events featuring a technology product that is ultimately not brought to market?

16. Subpart K of part 2 of the Commission's rules sets out the conditions under which radiofrequency devices may be imported into the United States. These rules are designed to provide assurance that radiofrequency devices brought into the United States comply with the technical standards that the Commission has developed to minimize the potential for harm to consumers or other radio operations. These rules also recognize narrowly defined conditions where equipment that has not completed the Commission's equipment authorization process nevertheless may be imported under controlled circumstances, such as for compliance testing, repair, or use by the Federal government. The Commission proposes to allow a limited number of radiofrequency devices subject to Certification to be imported into the United States prior to equipment authorization for pre-sale activities, including imaging, packaging, and delivery to retail locations, by adding a new condition under which limited quantities of radiofrequency devices are permitted to be imported. The Commission states that the proposal would allow device manufacturers to better prepare for new product launches while guarding against the proliferation of unauthorized and non-compliant devices that might increase the risk of causing harm to consumers or other radio operations.

17. The Commission states that it believes that its proposal could provide substantial benefits to device manufacturers and retailers that operate in a marketplace characterized by out-of-country production of many radiofrequency devices, shortened product cycles, and the importance of quickly familiarizing consumers with new electronic devices. The Commission says the proposed change would allow consumers to see and examine devices more quickly to allow them to make more timely purchase decisions and will assist sales associates who need to become familiar with the features associated with mobile 5G devices, Internet of Things devices, and augmented reality and virtual reality devices once those devices are Certified and may be operated. Facilitating an accelerated rollout of such devices, the Commission asserted, is an important way to maintain the United States' global leadership in these industries.

18. The Commission states that it must continue to protect against the possibility of unauthorized devices making their way to consumers and causing harm to consumers or other radio operations. The Commission says that it believes that the proposal would not fundamentally change the general importation practice, in which the overwhelming majority of radiofrequency devices that are imported will satisfy the condition that an equipment authorization has already been obtained, and seeks comment on this observation. The Commission also notes that the proposal would only apply to devices subject to Certification, under which devices are subject to an authorization process that involves rigorous review by a TCB and listing in a Commission database, which should make importers well equipped to satisfy the controls placed in the proposed importation condition. The Commission states that there is no compelling reason to provide for pre-authorization importation of devices that are approved under SDoC, which is a self-certification process that gives the manufacturer substantially greater control over the timing of the equipment authorization process. Because the proposed rule would only allow for specified pre-sale activities, which explicitly exclude marketing and operation, the Commission asks if its proposed definition of pre-sale activities is appropriate. Would this definition of pre-sale activities conflict with other rules, including the proposed rule discussed above to allow marketing of devices prior to authorization? Are there other pre-sale activities that should be included or excluded? Should operation by a limited class of parties (such as agents of the manufacturer) be allowed or prohibited, and if allowed, under what circumstances and how should those parties be defined?

19. The Commission states that it will need to provide additional safeguards as part of any final rules it adopts. The Commission first seeks comment on specific safeguards based on what CTA had identified in its petition. The Commission asks if it should limit the number of radiofrequency devices that can be imported for pre-sale activities to 4,000, which would be a nationwide total as opposed to a limit on each shipment of devices imported into the United States. The Commission asks if specific controls are needed to ensure manufacturers cannot exceed this limit by, for example, making separate 4,000-unit shipments through multiple ports of entry. If so, what controls would be needed? The proposed rule would also codify a method to exceed this number by providing for written approval to be obtained from the Commission's Chief Engineer, which is consistent with the approach the Commission has taken in other situations. Should this written approval be made public? Would this numerical limitation, with a provision for allowing a greater number of devices, provide a suitable balance between meeting manufacturer and importer needs and limiting the number of unauthorized devices that may be imported under this condition? The Commission notes some commenters discussed the need for a larger number and asks, for these commenters, if 8,000 would be sufficient. The Commission also asks if, given that thousands of devices are granted Certification each year, a smaller limit would result in a meaningful reduction in the risk of unauthorized devices being imported. The Commission asks commenters addressing this matter to provide specific data to justify their suggested limit.

20. The Commission seeks comment on implementing a requirement that manufacturers using the proposed importation exception must have a reasonable basis to believe authorization will be granted within 30 days of importation. Is 30 days an appropriate length of time? Would a longer or shorter timeline for obtaining authorization be appropriate here? What does it mean for a manufacturer to have a reasonable basis to believe authorization will be obtained? Are there particular elements that must make up such determination? For example, would a belief that authorization will be obtained within 30 days be reasonable only if a manufacturer has filed an equipment authorization application with a TCB? Are achieving or performing other

milestones in the authorization process appropriate measures of reasonableness? Should the manufacturer be required to request permission in the context of the authorization application process to import devices under this proposed rule? Do existing Commission processes, like pre-approval guidance for TCBs or waiver requests, provide manufacturers with a sufficient general indication of timeframe to allow ascertainment of ''reasonable belief'' under this proposed rule? Should the novelty of a device or its features factor into whether an expectation of approval is reasonable? Should the Commission consider the past experience of the manufacturer in obtaining equipment Certifications as relevant to this determination? Would accounting for past experience, or lack thereof, discourage small businesses or new entrants from taking advantage of this new rule? The Commission also asks if it should require the manufacturer to document, and provide such documentation to the Commission upon request, the basis for its determination of reasonableness prior to importing the devices. If so, how long should the manufacturer be required to retain this documentation? To the extent that such documentation may be important for compliance and enforcement purposes, it proposed that manufacturers be required to maintain this information for five years and provide it to the Commission upon request. Would a longer or shorter timeframe be more appropriate for retaining this information? If so, how long should the information be retained and why? Finally, what consequences would be suitable for cases where the manufacturer's basis to believe authorization will be obtained cannot be considered ''reasonable,'' or if authorization is not obtained within 30 days (or another time period, if that would be more appropriate)?

21. The Commission seeks comment on the use of a temporary device label and asks how such a requirement would be implemented and the benefits it could provide. The Commission discusses CTA's suggestion that the temporary labels would provide notice of the Commission's rules—namely, that devices cannot be displayed, operated, or sold prior to FCC authorization. The Commission asks what information should be required on these labels. Should the Commission require use of the specific language CTA identifies? Would such information be appropriate and adequate in this case? Should other information be required here, such as the model numbers or expected FCC IDs associated with the devices? Should the temporary labels indicate the administrative, civil, and criminal penalties that can result from unauthorized operation of radiofrequency devices? Should the manufacturer or importer be required to have a designated point of contact indicated on the temporary labels and, if so, should the contact be required to be United States-based? The Commission seeks comment on whether the temporary label must plainly state all of the required information on its face or if the use of a URL or other ''pointer'' should be allowed (and, if so, whether all of the required information should be allowed to be conveyed in that manner). The Commission also seeks comment on whether a labeling requirement should be used to assist consumers and other parties in determining whether the device has become Certified. Should the label contain a URL or other machine-readable ''pointer'' that enables retailers and end-users to verify the status of a device's authorization? If so, would the label need to be temporary? Are other labels or import documentation necessary to allow third parties to identify whether there is a legitimate attempt to obtain authorization for the otherwise unauthorized devices? Should, for example, manufacturers be required to maintain a database or other public-facing way to confirm that an authorization is being sought for the device? Would a temporary label make it easier for bad actors to sell unauthorized devices by falsely claiming their devices have received or are in the process of receiving authorization? Finally, if temporary labels include a URL or other pointer to an online website or database where the equipment's authorization status can be verified, would that reduce the chances of bad actors using such labels for fraudulent purposes?

22. The Commission seeks comment on requiring manufacturers to maintain legal ownership of devices, even after transferring control of them to retailers. How would such a requirement operate in practice? The Commission asks whether the language contained in the proposed rule would be sufficient to implement this proposal. If manufacturers retain legal ownership of devices after they have left their direct control, would that provide them with adequate incentive and means to ensure that their devices do not cause harm to consumers or other radio operations? Would they be able to help remediate any harm that may occur? What are the primary benefits of codifying such a requirement? Would this make it easier for manufacturers to identify and recall radiofrequency devices from retailers in the event that equipment authorization is not obtained? Would this condition be more burdensome for small manufacturers than large manufacturers? How would this condition impact device retailers? Would it impact small retailers differently than large retailers? Should online retailers and brick-and-mortar retailers be treated differently? Should foreign-based manufacturers be treated differently? Are manufacturers the correct entity here or is there a larger universe of entities to which the ownership provision should apply, such as importers or sellers? Should manufacturers be required to maintain a public-facing database of imports made under this proposed rule? If so, what information should be included in such a database? Should manufacturers otherwise be responsible for unauthorized devices imported under this proposed rule that are operated illegally?

23. The Commission asks about requiring manufacturers to have processes in place to retrieve the equipment from retailers in the event that authorization is denied. How should such processes be structured? For example, should the Commission specify these processes or allow manufacturers to develop their own processes, provided they are effective in retrieving equipment from retailers in the event that authorization is denied? Should the Commission require manufacturers to maintain specific detailed records of which devices are supplied to which locations and/or prepare a formal plan prior to importation? If so, should the Commission require that these records be supplied to the Commission or posted to the manufacturer's website or the website of a relevant industry trade group (such as CTA)? How long should the Commission require these records to be maintained? As with other similar records, should the Commission require that such records be made available to it upon request (such as before devices may be imported for pre-sale activities or in the event that a device recall becomes necessary)? If the manufacturer is unable to obtain authorization for its equipment, should the Commission require the manufacturer to provide the Commission a report detailing its plan for retrieving equipment along with status reports updating the progress of that endeavor? If so, what information should be included in this report? Should the Commission require manufacturers to report the model and

serial numbers of all devices that are retrieved? When should a status report be required? How long should manufacturers have to complete the device retrieval process? Would 14 days be appropriate? Should manufacturers have more or less time to complete the retrieval process?

24. The Commission recognizes that there are additional conditions or approaches beyond those discussed above, which were based on safeguards suggested by CTA, that could be appropriate to meet its objectives of adding a new permissible import condition while minimizing the potential for unauthorized and non-compliant radiofrequency devices to cause harm to consumers or other radio operations. The Commission asks whether there are conditions it should adopt in addition to or instead of those CTA has identified and encouraged commenters to identify the specific requirements that would be the most effective while minimizing potential burdens. For example, in addition to or in lieu of a strict numerical importation limit, should the Commission differentiate based on the nature or type of device? Should it exempt certain classes of equipment or equipment that are intended to operate in certain bands due to greater risk of harmful interference or harm to persons, such as U–NII devices, medical devices, or devices designed to operate exclusively in public safety bands? If so, commenters should be specific as to what equipment or bands should be excluded. Further, the Commission recognizes that certain types of devices are used to ensure the safety of life and property on board ships and aircraft and seeks comment on whether there is any reason to exclude those types of devices from its proposal. The Commission also notes that certain rules in Parts 80, 87, and 95 of its rules may need to be adjusted for purposes of streamlining the proposed framework, proposed to revise Section 95.391, 47 CFR 95.391, to ensure that its rules are consistent with the proposed framework, and seeks comment on whether other rules, such as Sections 80.1061, 87.147, and 95.2991, 47 CFR 80.1061, 87.147, and 95.2991, should also be revised or clarified.

25. The Commission notes that some commenters have suggested that it could require a remote shutdown feature for all radiofrequency devices imported for pre-sale activities and observed that under its experimental licensing rules there are specific situations in which licensees must either recall or disable devices at the end of an experiment. The Commission asks if it should adopt such a requirement in its final rule and, if so, whether it should apply to all types of radiofrequency devices or only radiofrequency devices that operate in accordance with particular Commission rule parts.

26. The Commission notes that the proposed rule restricts devices from being displayed, offered for sale, or marketed to consumers, but places no limitations on where they may be sent after importation. The Commission asks if parties believe that this would present unwarranted risks for adequate control of the devices prior to authorization and, if so, whether the Commission should require that the devices be kept only at specific locations, such as distribution facilities, prior to authorization.

27. Because the proposed rule modification would allow radiofrequency devices that are not yet Certified to be imported, the Commission seeks comment on how manufacturers intend to ensure that these devices comply with the Commission's labeling and disclosure requirements once authorization is obtained. The proposed rule incorporates CTA's suggestion that devices imported pursuant to this Section ''may include the expected FCC ID if obscured by the temporary label.'' The Commission seeks comment on whether this would be an effective way to ensure that a device complies with the Commission's rules once it receives authorization. Would there be situations where manufacturers would have to physically recall devices to ensure that they comply with the labeling and disclosure requirements associated with the Commission's equipment authorization rules? How could the Commission be confident that manufacturers take all necessary steps to ensure that devices imported prior to equipment authorization comply with the Commission's labeling and disclosure rules? What impact would the use of electronic labeling have on this matter?

28. The Commission asks how enforcement of this rule should be structured. What penalties would be appropriate for violating any of the conditions attached to this rule? For example, should a manufacturer be barred from availing itself of this exception for future importations if it fails to obtain authorization for a radiofrequency device imported under this proposed rule? Or if it fails to comply with any of the labeling or reporting requirements the Commission might ultimately adopt? Should a manufacturer be barred from availing itself of this exception for future importations only if it fails to retrieve all devices after failing to obtain authorization for a radiofrequency device imported under this proposed rule? Should the manufacturer be subject to a penalty under Section 503 of the Act, and if so, what should be the base forfeiture for such violations? Are there other ways the Commission should structure enforcement where the manufacturer fails to retrieve equipment in the event an authorization is denied?

29. The Commission seeks comment on this importation proposal and the likely costs and benefits associated with expanding the provisions under which radiofrequency devices may be imported to support pre-sale activities. Can these benefits be quantified in terms of cost savings to device manufacturers? How would this rule affect the time it takes to get new innovative devices to market? Would importing devices for pre-sale activities generate any other benefits or risks for industry or consumers? The Commission encourages commenters to provide data to quantify these benefits and risks. In addition, what would be the costs to firms in following the safeguards discussed above, such as the use of temporary device labels and maintaining processes to retrieve equipment from retailers if authorization is denied? If commenters have alternative proposals to reform the importation rules, what would be the benefits and costs?

30. The Commission notes that its equipment authorization proceeding in ET Docket 15–170, which also asks questions about importation, remains open and active, it tentatively concluded that the marketing and importation changes proposed in this Notice of Proposed Rulemaking are sufficiently discrete that it could act on them independently, and seeks comment on how they might interrelate with any open equipment authorization matters the Commission has under consideration.

31. Finally, the Commission recognizes that other agencies play an important role in importation matters. The Commission asks if there are specific actions the Commission can take in working with Customs and Border Protection, with which the Commission has a longstanding cooperative relationship, to help ensure that radiofrequency devices imported for pre-sale activities prior to authorization comply with all applicable conditions. Are there other agencies the Commission should work with to ensure that its importation rules operate in an effective and efficient manner? Are there other agencies that

have addressed importation issues related to products subject to approval that would provide a model for achieving the Commission's objectives?

Procedural Matters

32. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

33. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this Notice. The Full IRFA is found in Appendix B at *https://www.fcc.gov/document/fcc-proposes-rules-expedite-release-new-devices-and-technologies-0.* Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the NPRM, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

34. The Commission requests written public comment on the IRFA. Comments must be filed in accordance with the same filing deadlines as comments filed in response to the NPRM and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

35. *Ex Parte Presentations.* The proceeding this Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

36. *Filing Requirements.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

37. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Ordering Clauses

38. Accordingly, *it is ordered,* pursuant to Sections 4(i), 201, 302, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 201, 302a, 303, that this *Notice of Proposed Rulemaking* is hereby *adopted.*

39. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Notice of Proposed Rulemaking,* including the Initial and Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

40. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Notice of Proposed Rulemaking,* including the Initial and Final Regulatory Flexibility Analyses, to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 2

Frequency Allocations and Radio Treaty Matters; General Rules and Regulations.

47 CFR Part 95

Personal Radio Services.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons set forth in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 2 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. In § 2.803 revise paragraph (c)(2)(i) to read as follows:

§ 2.803 Marketing of radio frequency devices prior to equipment authorization.

* * * * *

(c) * * *

(2) * * *

(i) Conditional sales contracts (including agreements to produce new devices manufactured in accordance with designated specifications), and advertisements for such sales, are permitted between manufacturers and potential customers provided that the prospective buyer is advised at the time of marketing, through a prominent disclosure, that the equipment is subject to the FCC rules and delivery to the buyer or to centers of distribution is conditional upon a determination that the equipment complies with the applicable equipment authorization and technical requirements. Delivery to customers of equipment subject to FCC rules prior to obtaining the applicable equipment authorization and complying with the applicable technical requirements is prohibited.

* * * * *

■ 3. Amend § 2.1204 by adding paragraph (a)(11) to read as follows:

§ 2.1204 Import Conditions.

(a) * * *

(11) The radio frequency device is subject to Certification and is being imported in quantities of 4,000 or fewer units for pre-sale activity. Pre-sale activity includes packaging and delivering devices to retails locations, as well as loading devices with specific software to demonstrate specific features of the devices when displayed at retail locations. The devices will not be displayed, operated, offered for sale, marketed to consumers, or sold until proper equipment authorization has been obtained.

(i) The Chief, Office of Engineering and Technology, may approve importation of a greater number of units in a manner otherwise consistent with this paragraph (11) in response to a specific request;

(ii) This exception is only available to manufacturers for radiofrequency devices who have a reasonable belief that authorization will be granted within 30 days of importation;

(iii) Each device imported under this exception must contain a temporary removable label stating: ''This device cannot be displayed, operated, offered for sale, marketed to consumers, or sold until FCC equipment authorization has been granted. Under penalty of law, this label may not be removed prior to the grant of FCC authorization.''

(iv) Notwithstanding § 2.926, radiofrequency devices imported pursuant to this paragraph (11) may include the expected FCC ID if obscured by the temporary label described in this section or, in the case of electronic displays, if it cannot be viewed prior to authorization.

(v) The radiofrequency devices remain under legal ownership of the device manufacturer, and only possession of the device is transferred prior to authorization. Manufacturers must have processes in place to retrieve the equipment in the event that authorization is not received.

(vi) Manufacturers must maintain, for a period of sixty (60) months, records identifying the recipient of devices imported for pre-sale activities. Such records must identify the device name and product identifier, the quantity shipped, the date on which the device authorization was sought, the expected FCC ID number, and the identity of the recipient, including address and telephone number. The manufacturer must provide records maintained under this paragraph (vi) upon the request of Commission personnel.

PART 95—PERSONAL RADIO SERVICES

■ 4. The authority citation for part 95 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307.

■ 5. Section 95.391 is revised to read as follows:

§ 95.391 Manufacturing, importation, and sales of non-certified equipment prohibited.

No person shall manufacture, import, sell or offer for sale non-certified equipment for the Personal Radio Services except as provided for in § 2.803(c)(2)(i) of this chapter. *See* § 302(b) of the Communications Act (47 U.S.C. 302a(b)). *See also* part 2, subpart I (§ 2.801 *et seq.*) of this chapter for rules governing marketing of radiofrequency devices.

[FR Doc. 2020–28906 Filed 1–11–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 391

[Docket No. FMCSA–2019–0049]

RIN 2126–AC21

Qualifications of Drivers; Vision Standard

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: FMCSA proposes to amend its regulations to permit individuals who cannot meet either the current distant visual acuity or field of vision standard, or both, in one eye to be physically qualified to operate a commercial motor vehicle (CMV) in interstate commerce. Currently, such individuals are prohibited from driving CMVs in interstate commerce unless they obtain an exemption from FMCSA. The Agency proposes an alternative vision standard for physical qualification that, if adopted, would replace the current vision exemption program as a basis for establishing the physical qualification determination for these individuals.

DATES: You must submit comments on this notice of proposed rulemaking (NPRM) to FMCSA on or before March 15, 2021. Comments on the collection of information must be received on or before March 15, 2021.

ADDRESSES: You may submit comments on this NPRM identified by docket number FMCSA–2019–0049 using any one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.*
- *Fax:* (202) 493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Docket Operations, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' heading under the **SUPPLEMENTARY INFORMATION** section below for instructions regarding submitting comments, including collection of information comments for the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB).

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rule, contact Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, by telephone at (202) 366–4001, or by email at *fmcsamedical@dot.gov.* If you have questions about viewing or submitting material to the docket, call DOT Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: This NPRM is organized as follows.

I. Public Participation and Request for Comments
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F. Unfunded Mandates Reform Act of 1995
G. Paperwork Reduction Act (Collection of Information)
H. E.O. 13132 (Federalism)
I. Privacy
J. E.O. 13175 (Indian Tribal Governments)
K. National Environmental Policy Act of 1969

I. Public Participation and Request for Comments

FMCSA encourages you to participate in this rulemaking by submitting comments and related materials. Where possible, please provide scientific, peer-reviewed articles to support your comments.

A. Submitting Comments

If you submit comments, please include the docket number for this rulemaking (FMCSA–2019–0049), indicate the heading of the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov,* type the docket number (FMCSA–2019–0049) in the ''Keyword'' box and click ''Search.'' When the new screen appears, click the ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party, and click ''Submit.''

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket for this rulemaking. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590. Any comments FMCSA receives that are not specifically designated as CBI will be placed in the public docket for this rulemaking.

FMCSA will consider all comments and material received during the comment period and may make changes based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

B. Viewing Comments and Documents

To view comments and any document mentioned in this preamble as being available in the docket, go to *www.regulations.gov,* insert the docket number (FMCSA–2019–0049) in the ''Keyword'' box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the internet, you may view the docket online by visiting Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice DOT/ALL 14—Federal Docket Management System (FDMS), which can be reviewed at *https://www.transportation.gov/privacy.*

D. Waiver of Advance Notice of Proposed Rulemaking

Under 49 U.S.C. 31136(g)(1), FMCSA is required to publish an advance notice of proposed rulemaking or conduct a negotiated rulemaking if a proposed rule is likely to lead to the promulgation of a major rule.[1] As this proposed rule is not likely to result in the promulgation of a major rule, the Agency is not required to issue an advance notice of proposed rulemaking or to proceed with a negotiated rulemaking.

E. Comments on the Collection of Information

Written comments and recommendations for the proposed information collections discussed in this NPRM should be sent to FMCSA within 60 days of publication using any of the methods described in ''Public Participation and Request for Comments'' above.

II. Abbreviations, Acronyms, and Symbols

ATA American Trucking Associations, Inc.
CBI Confidential Business Information
CDL Commercial Driver's License
CFR Code of Federal Regulations
CMV Commercial Motor Vehicle
DOT U.S. Department of Transportation
E.O. Executive Order
FHWA Federal Highway Administration
FMCSA Federal Motor Carrier Safety Administration
FMCSRs Federal Motor Carrier Safety Regulations
FR Federal Register
GES General Estimates System
ICR Information Collection Request
Id. Idem—the same author or work
MCMIS Motor Carrier Management Information System
ME Medical Examiner
MEC Medical Examiner's Certificate, Form MCSA–7876
MRB Medical Review Board
NAICS North American Industry Classification System
National Registry National Registry of Certified Medical Examiners
NPRM Notice of Proposed Rulemaking
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
RFA Regulatory Flexibility Act
SBA Small Business Administration
Secretary Secretary of Transportation
§ Section
TEA–21 Transportation Equity Act for the 21st Century
U.S.C. United States Code

III. Executive Summary

A. Purpose of the Amendments

FMCSA proposes to amend its regulations to permit an individual who cannot meet either the current distant visual acuity or field of vision standard, or both, in one eye to be physically qualified to operate a CMV in interstate commerce under specified conditions. The individual would need to meet the proposed alternative vision standard and FMCSA's other physical qualification standards. In addition, with limited exceptions, individuals physically qualified under the alternative standard for the first time would complete a road test before operating a CMV in interstate commerce. The proposed action would eliminate the need for the current Federal vision exemption program, as well as the grandfather provision in 49 CFR 391.64 for drivers operating under the previously administered vision waiver study program. Medical professionals would evaluate and make medical qualification determinations instead of FMCSA, as in the current exemption program. Motor carriers would administer the road tests. The proposed alternative vision standard would enhance employment opportunities while remaining consistent with FMCSA's safety mission.

B. Summary of the Major Provisions

The proposed alternative vision standard is based on recommendations from FMCSA's Medical Review Board (MRB). The proposed physical qualification process is analogous to the regulatory framework FMCSA adopted in § 391.46 for individuals with insulin-treated diabetes mellitus (see 83 FR 47486, September 19, 2018). Prior to that rulemaking, such individuals were prohibited from driving CMVs in interstate commerce unless they obtained an exemption from FMCSA. Like the approach in the rule for insulin-treated diabetes mellitus, after the public comment period for this NPRM closes, FMCSA will ask the MRB to review all comments from medical professionals and associations. If after that review the MRB makes material changes to its prior recommendations, FMCSA will publish a **Federal Register** notice announcing the availability of the new MRB recommendations and request public comment specific to those recommendations.

The proposed rule provides an alternative vision standard for individuals who cannot meet either the current FMCSA distant visual acuity or field of vision standard, or both, in one eye and, if adopted, would replace the current vision exemption program as a basis for determining the physical qualification of such individuals to operate a CMV. The proposed action would ensure that these individuals are physically qualified to operate a CMV safely. In addition, the proposed process would create a clear and consistent framework to assist certified medical examiners (ME) with making a physical qualification determination that is equally as effective as a program based entirely on granting exemptions under 49 U.S.C. 31315(b).

Just as in the alternative standard for insulin-treated diabetes mellitus, the alternative vision standard would involve a two-step process for physical qualification. First, an individual seeking physical qualification would obtain a vision evaluation from an ophthalmologist or optometrist who would record the findings and provide specific medical opinions on the proposed Vision Evaluation Report, Form MCSA–5871, which incorporates the recommendations of the MRB. Next, an ME would perform an examination and determine whether the individual meets the proposed vision standard, as well as FMCSA's other physical qualification standards. If the ME determines that the individual meets the physical qualification standards, the ME could issue a Medical Examiner's Certificate (MEC), Form MCSA–5876, for a maximum of 12 months. This approach of MEs making the physical qualification determination, instead of FMCSA as in the current exemption program, is consistent with Congress's directive in 49 U.S.C. 31149(d) to have trained and certified MEs determine the individual's physical qualification to operate a CMV.

In making the physical qualification determination, the ME would consider the information in the Vision Evaluation Report, Form MCSA–5871, and utilize independent medical judgment to apply four standards. The proposal would provide that, to be physically qualified under the alternative vision standard, the individual must: (1) Have in the better eye distant visual acuity of at least 20/40 (Snellen), with or without corrective lenses, and field of vision of at least 70 degrees in the horizontal meridian; (2) be able to recognize the colors of traffic signals and devices showing standard red, green, and amber; (3) have a stable vision deficiency; and (4) have had sufficient time to adapt to and compensate for the change in vision.

[1] A ''major rule'' means any rule that the Administrator of OIRA at OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

It is well recognized in the literature that individuals with vision loss in one eye can and do develop compensatory viewing behavior to mitigate the vision loss. Therefore, if an individual meets the proposed vision standard, the Agency expects there will be no adverse impact on safety due to the individual's vision. That is, once an individual's vision is stable and the individual has adapted to and compensated for the change in vision, the loss in vision is not likely to play a significant role in whether the individual can drive a CMV safely.

Instead of requiring 3 years of intrastate driving experience with the vision deficiency as in the current exemption program, individuals physically qualified under the proposed alternative vision standard for the first time would complete a road test before operating in interstate commerce. Individuals would be excepted from the road test requirement if they have 3 years of intrastate or excepted interstate CMV driving experience with the vision deficiency, hold a valid Federal vision exemption, or are medically certified under § 391.64(b). These individuals have already demonstrated they can operate a CMV safely with the vision deficiency. Motor carriers would conduct the road test in accordance with the road test already required by § 391.31. FMCSA finds that a road test would be an appropriate indicator of an individual's ability to operate a CMV safely with the vision deficiency. Thus, the Agency expects there will be no adverse impact on safety from eliminating the 3-year intrastate driving experience criterion.

The proposed standard takes a performance-based approach. The standard emphasizes that the individual has developed the skills to adapt to and compensate for the vision loss once it has been deemed stable by a medical professional, and that the individual has demonstrated the skills to operate a CMV safely. The ME would ensure the driver is physically qualified to operate a CMV in accordance with the physical qualification standards. With limited exceptions, motor carriers would conduct a road test for individuals to ensure they possess the skills needed to operate a CMV safely with the vision deficiency.

The Federal Highway Administration (FHWA), the predecessor agency to FMCSA, and FMCSA have continuously monitored the impact of the vision waiver study [2] and the exemption programs to ensure they cause no adverse impact on safety. The proposed alternative vision standard would adopt the major vision criteria of the existing Federal vision exemption program, which were also used in the preceding Federal vision waiver study program since the early 1990s, and would modify other criteria from the exemption program. Based on nearly 30 years of experience with these programs, individuals who meet the proposed alternative vision standard will be at least as safe as the general population of CMV drivers. This experience has shown that individuals with vision loss in one eye are not limited by their lack of binocularity with respect to driving once they have adapted to and compensated for the change in vision.

If the proposed action is adopted, the 2,566 vision exemption holders [3] would no longer require an exemption. Accordingly, these drivers would be relieved of the time and paperwork burden associated with applying for or renewing an exemption.[4] The proposed rule could increase employment opportunities because potential applicants who do not have 3 years of intrastate driving experience may meet the alternative vision standard and be able to operate a CMV in interstate commerce. In addition, previously qualified interstate CMV drivers who are no longer able to meet either the distant visual acuity or field of vision standard, or both, in one eye would be able to return to operating in interstate commerce sooner.

FMCSA proposes that the approximately 1,900 individuals physically qualified under the grandfather provisions in § 391.64(b) would have 1 year after the effective date of any final rule to comply with the rule. During that transition year, grandfathered individuals could elect to seek physical qualification through the final rule or § 391.64. This transition year would provide time to learn the new process for individuals whose MEC, Form MCSA–5876, expires near the time any final rule becomes effective. However, 1 year after the effective date of the final rule all MECs, Form MCSA–5876, issued under § 391.64(b) would become void.

Similarly, the 2,566 vision exemption holders would have 1 year after the effective date of any final rule to comply with the rule, at which time all exemptions issued under 49 U.S.C. 31315(b) would become void. Drivers who hold a vision exemption would be notified by letter with details of the transition to the new standard.

C. Benefits and Costs

FMCSA estimates that the proposed rule would reduce barriers to entry for current and future CMV drivers. The 2,566 drivers holding vision exemptions would no longer have to apply for an exemption, and potential driver applicants who do not have 3 years of intrastate driving experience may meet the alternative vision standard and be able to operate a CMV in interstate commerce. A one-time road test would be less burdensome on drivers than obtaining 3 years of intrastate driving experience and addresses the consideration that some drivers live in States that do not issue vision waivers. The proposed rule would result in incremental cost savings of approximately $1.6 million annually by eliminating the need for the Federal vision exemption program. This estimate includes the additional annual impact of approximately $47,000 for the road test. The Agency does not anticipate any negative impacts on safety.

The proposed rulemaking, if finalized, would result in reduced costs and, therefore, would be a deregulatory action under Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs. The present value of the cost savings, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, would be $14.9 million. On an annualized basis, these cost savings would be $1 million.

IV. Legal Basis for the Rulemaking

FMCSA has authority under 49 U.S.C. 31136(a) and 31502(b)—delegated to the Agency by 49 CFR 1.87(f) and (i), respectively—to establish minimum qualifications, including physical qualifications, for individuals operating CMVs in interstate commerce. Section 31136(a)(3) requires specifically that the Agency's safety regulations ensure that the physical condition of CMV drivers is adequate to enable them to operate their vehicles safely and that certified MEs trained in physical and medical examination standards perform the physical examinations required of such drivers.

[2] FHWA conducted the vision waiver study program from July 1992 through March 31, 1996. Drivers who participated in the program and held valid waivers from the vision standard at the program's end could continue to operate in interstate commerce under grandfather provisions in 49 CFR 391.64. The vision waiver study program and grandfather provisions are discussed in section V.B. below.

[3] FMCSA data as of July 2, 2019.

[4] As discussed below in the Paperwork Reduction Act section XI.G. with respect to the information collection titled ''Medical Qualification Requirements,'' FMCSA attributes 2,236 annual burden hours at a cost of $69,136 for drivers to request and maintain a vision exemption. The proposed rule would eliminate this entire burden.

In addition to the statutory requirements specific to the physical qualifications of CMV drivers, section 31136(a) requires the Secretary of Transportation (Secretary) to issue regulations on CMV safety, including regulations to ensure that CMVs ''are maintained, equipped, loaded, and operated safely'' (section 31136(a)(1)). The remaining statutory factors and requirements in section 31136(a), to the extent they are relevant, are also satisfied here. The proposed rule would not impose any ''responsibilities . . . on operators of [CMVs that would] impair their ability to operate the vehicles safely'' (section 31136(a)(2)), or ''have a deleterious effect on the physical condition'' of CMV drivers (section 31136(a)(4)). FMCSA also does not anticipate that drivers would be coerced to operate a vehicle because of this rulemaking (section 31136(a)(5)).

Additionally, in 2005, Congress authorized the creation of the MRB, composed of experts in a variety of medical specialties relevant to the driver fitness requirements, to provide medical advice and recommendations on physical qualification standards (49 U.S.C. 31149(a)). The position of Chief Medical Examiner was authorized at the same time (49 U.S.C. 31149(b)). Under section 31149(c)(1), the Agency, with the advice of the MRB and Chief Medical Examiner, is directed to establish, review, and revise medical standards for CMV drivers that will ensure their physical condition is adequate to enable them to operate the vehicles safely (see also 49 U.S.C. 31149(d)).

Finally, prior to prescribing any regulations, FMCSA must consider their ''costs and benefits'' (49 U.S.C. 31136(c)(2)(A) and 31502(d)). Those factors are discussed in the Regulatory Analyses section of this NPRM.

V. Background

A. Current Vision Standard

FMCSA's mission is to reduce crashes, injuries, and fatalities involving large trucks and buses. As discussed above, FMCSA is authorized by statute to establish minimum physical qualification standards for drivers of CMVs operating in interstate commerce. To ensure the physical qualification of CMV drivers, the Agency has established several standards. As vision plays an important role in the driving task, one of the standards provides vision requirements (see 49 CFR 391.41(b)(10)).

FHWA adopted the current vision standard in 1970 (35 FR 6458, 6463, April 22, 1970). Under this standard, an individual is physically qualified to drive a CMV if the individual has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)). This standard has not changed since it became effective on January 1, 1971.

FMCSA's physical qualification standards cover 13 areas that relate directly to the driving function. With respect to most of the standards, an individual's qualification to drive is determined by an ME who is knowledgeable about the on-the-job functions performed by a commercial driver and whether the driver has a condition that would interfere with the operation of a CMV. In the case of three standards, including vision, the standard is absolute and provides no discretion to the ME. Thus, any individual who does not meet the vision standard in its entirety cannot be physically qualified to drive a CMV in interstate commerce.

B. Vision Waiver Study Program and Grandfathered Drivers

On March 25, 1992, FHWA published notice of its intent to accept applications from CMV drivers for temporary waivers of certain requirements contained in the vision standard, pursuant to the waiver provision of former 49 U.S.C. 31136(e) (57 FR 10295). To avoid any adverse impact on highway safety, FHWA outlined specific criteria that applicants had to meet to receive the vision waiver. The waiver program's goal was to provide objective data to be considered in a future rulemaking that would explore the feasibility of relaxing the absolute vision standard in favor of a more individualized standard. To do so, FHWA invited CMV drivers who met the vision standard to participate in a study comparing a group of experienced drivers who did not meet the vision standard with a control group of drivers who did meet the standard. Subsequently, on June 3, 1992, FHWA modified some of the program's conditions, clarified some of its details, and requested comments on the proposed vision waiver study program (57 FR 23370, June 3, 1992).

In July 1992, FHWA announced its decision to issue waivers of the vision requirements and published the final criteria for the vision waiver study program (57 FR 31458, July 16, 1992). FHWA concluded that the program met the statutory requirements for granting waivers because the program was in the public interest and included conditions that allowed FHWA to find that such waivers were consistent with the safe operation of CMVs.[5] FHWA reiterated that the vision waiver study program would provide the empirical data necessary to evaluate the relationships between specific vision deficiencies and the operation of CMVs.

Under the vision waiver study program, FHWA issued waivers to drivers following an individual determination of each driver's capability to operate a CMV safely. The determination included a review of each individual's vital statistics, experience operating CMVs, anticipated post-waiver operations, and status of driving privilege as recorded on the licensing State's motor vehicle record for the past 3 years. The determination also included a review of an opinion by an ophthalmologist or optometrist attesting to the visual acuity of each driver, that the visual acuity had not worsened since the last vision examination, and that the driver was able to perform the driving tasks required to operate a CMV. The waiver study program required visual acuity of at least 20/40 (Snellen), corrected or uncorrected, in the better eye, as well as satisfaction of the other applicable vision standard requirements (*i.e.,* field of vision of at least 70 degrees in the horizontal meridian in the better eye and the ability to recognize red, green, and amber colors).

Drivers eligible for vision waivers had to have driving records that surpassed those of their peers who met the vision requirements. FHWA aimed to eliminate unsafe drivers by requiring applicants to have 3 years of intrastate CMV driving experience with the vision deficiency and a record that showed:

(1) No suspensions or revocations of his or her driver's license for operating violations in any motor vehicle;

(2) No involvement in a reportable accident in a CMV in which the applicant was cited for a moving traffic violation;

(3) No convictions for a disqualifying offense, as described in 49 CFR 383.51 (*e.g.,* driving a CMV while under the influence of alcohol or a controlled substance, leaving the scene of an accident involving a CMV, or the

[5] Section 206(f) of the Motor Carrier Safety Act of 1984 provides that any Federal Motor Carrier Safety Regulation (FMCSR) can be waived if ''such waiver is not contrary to the public interest and is consistent with the safe operation of [CMVs].'' Public Law 98–554, 98 Stat. 2832, 2835, (October 30, 1984), originally codified at 49 U.S.C. App. 2505 and then at former 49 U.S.C. 31136(e).

commission of a felony involving the use of a CMV), or more than one serious traffic violation, as that term was defined in § 383.5 at the applicable time[6] (*e.g.,* excessive speeding, reckless driving, improper or erratic lane changes, following the vehicle ahead too closely, or a violation arising in connection with a fatality, all while driving a CMV); and

(4) No more than two convictions for any other moving traffic violations while driving a CMV.

FHWA accepted 2,686 drivers into the vision waiver study program.[7] Once granted a waiver, a driver had to report or submit certain information to FHWA during the term of the waiver. Each driver was required to:

(1) Report any citation for a moving violation involving the operation of a CMV;

(2) Report the disposition of such citation;

(3) Report any accident involvement while operating a CMV;

(4) Submit documentation of an annual evaluation by an ophthalmologist or optometrist; and

(5) Submit monthly driving reports that included the number of miles driving a CMV during the preceding month (with daylight and nighttime hours reported separately) and the number of days a CMV was not operated during the preceding month.

FHWA periodically verified the waived drivers' reported accidents and citations through State motor vehicle records and the waived drivers' medical reports.

On August 2, 1994, the United States Court of Appeals for the District of Columbia Circuit found that FHWA's determination that the vision waiver study program would not adversely affect the safe operation of CMVs lacked empirical support in the record (*Advocates for Highway and Auto Safety* v. *FHWA,* 28 F.3d 1288, 1294 (D.C. Cir. 1994)). Accordingly, the court found that FHWA failed to meet the exacting statutory requirements to grant a waiver. Consequently, the court concluded that FHWA's adoption of the waiver program was contrary to law and vacated and remanded the decision to FHWA.

On November 17, 1994, FHWA published notice of its final determination to continue the vision waiver study program through March 31, 1996, and announced a change in the research plan (59 FR 59386). FHWA determined that issuing waivers to the drivers through the conclusion of the program was consistent with the public interest and the safe operation of CMVs. FHWA based its decision, in part, on data collected on the group of waived drivers indicating that they had performed and continued to perform more safely than drivers in the general population of commercial drivers. As discussed above, drivers were required to have a 3-year safe driving history in intrastate commerce to participate in the program. A statistical analysis of the driving performance of individuals participating in the program from July 1992 to July 1994 revealed the total accident rate of drivers in the waived group was 1.636 per million vehicle miles traveled compared to the higher national accident rate of 2.531 per million vehicle miles traveled (59 FR 59389).[8]

On March 26, 1996, FHWA issued a rule to allow those drivers participating in the vision waiver study program and holding valid waivers from the vision standard to continue to operate in interstate commerce after March 31, 1996 (61 FR 13338). FHWA amended 49 CFR part 391 by adding a new provision at § 391.64 to grant grandfather rights to these drivers, subject to certain conditions. FHWA required a physical qualification examination for the grandfathered drivers every year, rather than every 2 years as required of most other drivers, as an extra precaution to ensure the continued safe operation of these drivers. Under § 391.64(b), the grandfathered drivers, like all other interstate drivers, must be otherwise physically qualified under § 391.41(b) (including a field of vision of at least 70 degrees in the horizontal meridian in the better eye and the ability to recognize red, green, and amber colors). In addition, the grandfathered vision drivers must obtain an annual vision examination by an ophthalmologist or optometrist indicating that they have been examined and that the distant visual acuity in the better eye continues to measure at least 20/40 (Snellen). This information must be submitted to the certifying ME at the time of the individual's annual physical qualification examination. Currently, FMCSA checks the driving records of grandfathered drivers to determine if they continue to operate CMVs safely.

C. Federal Vision Exemption Program—1998 to the Present

FHWA established the current Federal vision exemption program on December 8, 1998 (63 FR 67600) following the enactment of amendments to the statutes governing exemptions made by section 4007 of the Transportation Equity Act for the 21st Century (TEA–21).[9] With the enactment of TEA–21, FHWA was authorized to grant an exemption to relieve an individual from compliance in whole or in part with certain regulations if FHWA determined that the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the regulation to which the exemption would apply (49 U.S.C. 31315(b)(1)).

FMCSA processes exemption letters of application in accordance with 49 CFR part 381, subpart C. Qualifying individuals may apply for an exemption from specified provisions of the FMCSRs, including physical qualification standards specified under § 391.41(b) (see 49 CFR 381.300(c)(3)). Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption for up to a 5-year period and may renew an exemption at the end of the 5-year period. However, FMCSA grants vision exemptions for up to a 2-year period to align with the maximum duration of a driver's physical qualification certification. The Agency considers vision exemptions on a case-by-case basis upon application by CMV drivers who do not meet either the distant visual acuity or field of vision standard, or both, of § 391.41(b)(10) in one eye. The Agency does not grant exemptions for color blindness.

The criteria currently considered when reviewing an application for a Federal vision exemption have been in place since the program began in 1998. The vision criteria are consistent with criteria used in the preceding Federal vision waiver study program that began in July 1992.

As part of the current vision exemption program, there is a template that CMV drivers can use to prepare a letter of application for a Federal vision exemption. In addition to the template, there are two instructional letters for applicants residing in Florida or Indiana that provide the unique State processes for requesting a copy of a motor vehicle record.[10]

[6] Section 383.5 was amended to remove the definition of a ''serious traffic violation'' effective July 8, 2011 (76 FR 26854, 26878, May 9, 2011). Section 383.51(c) contains a list of serious traffic violations and the periods for which an individual is disqualified from operating a CMV.

[7] Sheridan J, and DuLaney A., *Qualification of Drivers—Vision, Diabetes, Hearing and Epilepsy. Final Report,* McLean, VA: Conwal, Inc.; May 30, 1997, p. 7, which is available at *https://ntrl.ntis.gov/NTRL/dashboard/searchResults/titleDetail/PB98142649.xhtml* (last accessed August 23, 2019) and in the docket. Note that this report is cited as Conwal, Inc. in this rulemaking.

[8] FHWA stated that during the same period there were 6 fatal accidents in which waived drivers were involved, and one more occurred after June 30, 1994. A review of the police accident reports, however, revealed that none of the waived drivers was found to be at fault by the reporting police officer (59 FR 59389).

[9] Public Law 105–178, 112 Stat. 107, 401, June 9, 1998.

[10] Copies of these documents are in the docket for this rulemaking and available on FMCSA's website at *https://www.fmcsa.dot.gov/medical/driver-*

Continued

The template outlines the information and documents drivers should include to be considered for an exemption. In general, drivers should submit information relating to vital statistics, experience driving a CMV (number of years driving, types of vehicles driven, miles driven per year), and present employment (contact information, types of vehicles, items transported, driving hours). Drivers also should submit documentation to support the application, such as a copy of the driver's license to operate a CMV; an official copy of the driving record issued by a State; copies of any citations, crash reports, or court records; a signed statement on letterhead from present or past employers (or a notarized statement if letterhead is not available); and a signed statement on letterhead by an ophthalmologist or optometrist.

Applicants are not permitted to operate a CMV in interstate commerce during the time in which an application for a new exemption is pending. The Agency encourages drivers to begin the renewal process well in advance of an exemption's expiration. In addition, the Agency provides such drivers with a deadline by which their renewal package must be complete. Drivers who miss the deadline risk having their exemptions expire, resulting in a lapse of their permission to operate a CMV in interstate commerce.

Under the current program, FMCSA considers exemptions from either the distant visual acuity or field of vision standard, or both, in one eye only for those individuals who:

(1) Hold a valid license (an intrastate commercial driver's license (CDL) or a non-CDL license to operate a CMV);

(2) Are at least 21 years old;

(3) Have 3 years of legal CMV driving experience, driving at least 10 hours per week in intrastate commerce with the vision deficiency, immediately preceding the date of the application;

(4) Have had a driving record for the 3-year period immediately preceding the date of application that contains:

(a) No suspensions or revocations of a driver's license for the operation of any motor vehicle (including a personal vehicle);

(b) No involvement in a crash for which the driver contributed or received a citation for a moving traffic violation;

(c) No convictions for a disqualifying offense, as defined in § 383.51(b);

(d) No more than one serious traffic violation, as defined in § 383.51(c), driving a CMV that disqualified or should have disqualified the driver in accordance with the driver disqualification provisions of § 383.51; and

(e) No more than two convictions for any other moving traffic violations in a CMV.

(5) Provide a signed statement that reads, ''I acknowledge that I must be otherwise qualified under 49 CFR 391.41(b)(1)–(13) before I can legally operate a commercial motor vehicle in interstate commerce'';

(6) Have visual acuity of at least 20/40 (Snellen), corrected or uncorrected, in the better eye;

(7) Have field of vision, including central and peripheral fields, of at least 70 degrees in the horizontal meridian in the better eye utilizing a testing modality that tests to at least 120 degrees in the horizontal (Formal perimetry is required. The doctor must submit the formal perimetry for each eye and interpret the results in degrees of field vision.);

(8) Can recognize the colors of traffic control signals and devices showing red, green, and amber; and

(9) Have been examined in the last 3 months by an ophthalmologist or optometrist who:

(a) Identifies the vision deficiency;

(b) Defines the nature of the vision deficiency, including how long the driver has had the deficiency;

(c) States the date of the examination;

(d) Certifies that the vision deficiency is stable; and

(e) Provides an opinion that the driver has sufficient vision to perform the driving tasks required to operate a CMV.

FMCSA is required to publish a notice in the **Federal Register** explaining that a medical exemption request has been submitted to the Agency for consideration. The notice provides the driver's name, age, and class of license with issuing State, as well as the specific cause and duration of the driver's vision deficiency and current distant visual acuity in at least the better eye. The notice identifies the provisions from which the individual seeks exemption and the effective period, and provides an opportunity for public comment. After the 30-day comment period, FMCSA must publish a notice in the **Federal Register** of its decision to approve or deny the request and all the terms and conditions of any exemption granted.

The Agency imposes the following requirements on drivers who are granted an exemption from the vision standards in § 391.41(b)(10):

(1) The exempted driver must be examined every year by:

(a) An ophthalmologist or optometrist who attests that the driver's vision continues to meet the standards of 49 CFR 391.41(b)(10) in the better eye (*i.e.,* that the individual has distant visual acuity of at least 20/40 (Snellen), field of vision of at least 70 degrees in the horizontal meridian, and can recognize red, green, and amber colors); and

(b) An ME who determines that the driver is otherwise qualified under § 391.41 and provides an MEC, Form MCSA–5876, that includes a statement that the driver is medically qualified when accompanied by a Federal vision exemption.

(2) The driver must provide a copy of the ophthalmologist or optometrist report to the ME at the time of the driver's annual physical qualification examination.

(3) The driver must keep a copy of the annual MEC, Form MCSA–5876, in his or her qualification file if the driver is self-employed or provide a copy to the driver's employer for retention in the driver's qualification file.

(4) The driver must possess a copy of the exemption and MEC, Form MCSA–5876, when driving, for presentation to any legally authorized Federal, State, or local enforcement official.

(5) The driver must obtain and display the appropriate driver's license from his or her State of domicile and comply with any restrictions placed thereon regarding use of eyeglasses, mirrors, or other visual aids.

(6) The driver must report any changes in personal information (*i.e.,* address, telephone number, employment status) to FMCSA immediately, as well as changes in the type of vehicle driven.

At any time during the authorized exemption period, the Agency may require the exempted CMV driver to provide information regarding driving experience and performance as it relates to citations, crashes, license suspensions or revocations, and medical status (78 FR 76590, 76591, December 18, 2013).

FMCSA monitors each driver's performance operating a CMV on a quarterly basis. FMCSA may revoke an exemption immediately if (1) the driver fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before the exemption was granted; or (3) continuation of the exemption is determined by FMCSA to be inconsistent with the goals and objectives of the FMCSRs (49 CFR 381.330(b)).

On December 18, 2013, FMCSA proposed changes to the eligibility requirements for the exemption program, including changes to the driving experience, convictions and violations, and driver statement criteria (78 FR 76590). After receiving comments that both supported and opposed the proposed changes, the Agency elected not to revise the exemption program criteria at that time. As suggested by some comments, the development of a fuller record in a rulemaking proceeding will assist the Agency in making an appropriate determination about modifying the vision standard instead of modifying the exemption criteria.

FMCSA's October 2017 annual report to Congress on waivers, exemptions, and pilot programs noted that the vision exemption program received 1,147 applications and granted 479

medical-requirements/driver-exemption-programs (last accessed October 1, 2019).

exemptions in Federal fiscal year 2016.[11] The September 2018 annual report to Congress noted that the vision exemption program received 793 applications and granted 286 exemptions in Federal fiscal year 2017.[12]

As of July 2, 2019, there were 2,566 drivers with active exemptions issued pursuant to the Federal vision exemption program. From January 2016 through July 2019, the most prevalent reasons for denial of exemption requests were insufficient intrastate driving experience (*i.e.,* less than 3 years of experience) and not meeting the vision standard in the better eye.

VI. Assessments of the Vision Standards, Waivers, and Exemptions

FHWA and FMCSA have a long history of examining the relationship between the vision standards in § 391.41(b)(10) and the performance of CMV drivers. Since the early 1990s, FHWA and FMCSA have continuously monitored the impact of the vision waiver study and vision exemption programs to ensure they cause no adverse impact on safety. The basis for this rulemaking is the safety performance of the drivers in these programs, which is at least as good as that of the general population of CMV drivers.

Consistent with statutory requirements, the Agency consults with the MRB and Chief Medical Examiner to establish, review, and revise physical qualification standards for CMV drivers. FMCSA also engages these medical professionals to assist with medical and scientific reports and analyses prepared for the Agency. The reports and analyses undertaken since 1990 to gather information and evaluate the vision standards, the waiver study program, and exemption program, as well as MRB recommendations pertaining to vision, are summarized below and are available in the docket for this rulemaking.

In November 1991, FHWA received a report titled ''Visual Disorders and Commercial Drivers'' prepared by the Ketron Division of the Bionetics Corporation.[13] The primary objective of this project was to reassess the adequacy of the Federal vision standards for CMV drivers. In that regard, the report concluded that a review of the most recent scientific research that investigated the vision performance of passenger and commercial drivers ''revealed no conclusive evidence to support definitive changes to the current standard.'' [14] The report found the studies ''were able to demonstrate only weak relationships between measures of vision and correlates of driver safety.'' [15] Only a few studies examined the relationship between the driving performance record of CMV drivers and their vision performance.[16]

The project considered the need to exclude drivers with substantial vision loss only in one eye. Ketron convened a focused workshop discussion consisting of a panel of doctors, ophthalmologists, optometrists, professors in academic ophthalmology departments, and traffic and safety professionals in private industry. ''Most panelists agreed that the available research results linking driver safety to lowered acuity in one eye were sufficient to change the current standard to allow monocular drivers or drivers with vision that is substantially worse in one eye.'' [17] However, the panelists did not reach a consensus.

The Ketron report noted the difficulties associated with determining minimum vision criteria. It stated that ''[n]umerous studies have shown that visual deficits are rarely the primary cause of major accidents. Typically, many factors are found to contribute.'' [18] It continued that individuals involved in accidents have already been screened for visual deficits, which reduces the number of visually poor drivers on the road. Accordingly, tests of primary visual capability cannot reasonably be expected to correlate highly with measures of driver safety or to provide unambiguous cutoff points for screening out unsafe drivers.

In June 1992, FHWA stated that the Ketron project illuminated the lack of empirical data on the link between vision disorders and CMV safety (57 FR 23370, June 3, 1992). FHWA proposed the vision waiver study program to obtain the empirical data that the Ketron project did not provide. Accordingly, FHWA began the vision waiver study program in July 1992 that concluded in March 1996.

In May 1997, Conwal, Inc. presented FHWA with the final report titled ''Qualification of Drivers—Vision, Diabetes, Hearing and Epilepsy'' [19] that described the findings of the vision waiver study program. The program's goal was to determine the associated risk, based on accident involvement, of allowing CMV drivers who did not meet the vision standard to drive under a granted waiver in interstate commerce. FHWA determined that the findings showed the waiver group did not represent a threat to public safety.

The original design of the vision waiver study program was an observational, nonrandomized study with a prospective cohort structure. However, the *Advocates for Highway and Auto Safety* v. *FHWA* [20] lawsuit prevented the implementation of the study, and the study was converted to a monitoring program to ensure that the public was not exposed to excessive risk.[21]

Monitoring focused on comparing the accident rates of the waivered drivers to rates of a reference group that represented the prevailing safety level for drivers of large trucks (10,000 pounds or larger) in the United States. FHWA selected the General Estimates System (GES) as the best measure of the prevailing national norm relative to large truck accidents.[22] A series of seven monitoring reports was completed during the vision waiver study program to report periodically on the number of accidents occurring in the group of drivers who were issued waivers.[23]

The seventh monitoring report in the series was completed in February 1996

[11] FMCSA. Waivers, Exemptions, and Pilot Programs Annual Report to Congress Fiscal Year 2016, October 2017, p. 3, available at *https://www.fmcsa.dot.gov/mission/policy/reports-congress* (last accessed July 15, 2019) and in the docket.

[12] FMCSA: Waivers, Exemptions, and Pilot Programs Annual Report to Congress Fiscal Year 2017, September 2018, p. 3, available at *https://www.fmcsa.dot.gov/mission/policy/reports-congress* (last accessed July 15, 2019) and in the docket.

[13] Decina L, Breton M, and Staphlin L., *Visual Disorders and Commercial Drivers* (Report No. DTFH61–90–C–00093), Malvern, PA: Ketron Division of the Bionetics Corp., Washington, DC: FHWA, Office of Motor Carriers (FHWA–MC–92–003), November 1991, available at *https://ntrl.ntis.gov/NTRL/dashboard/searchResults/titleDetail/PB92143015.xhtml* (last accessed August 20, 2019). Note that this report is cited as ''Ketron'' in this rulemaking.

[14] Id. at Technical Report Documentation Page (Abstract); see also p. 15.

[15] Id. at iv.

[16] Id. at 15.

[17] Id. at 34.

[18] Id. at iv; see also p. 13.

[19] Sheridan J, and DuLaney A., *Qualifications of Drivers—Vision, Diabetes, Hearing and Epilepsy,* Final Report, McLean, VA: Conwal, Inc., May 30, 1997, available at *https://ntrl.ntis.gov/NTRL/dashboard/searchResults/titleDetail/PB98142649.xhtml* (last accessed August 23, 2019).

[20] 28 F.3d 1288, 1294 (D.C. Cir. 1994) (see section V.B. above for additional information relating to this lawsuit).

[21] FHWA originally conceived a study that would determine the associated level of risk of allowing CMV drivers who did not meet the physical qualification standards relating to vision, diabetes, epilepsy, and hearing to operate interstate. These conditions were chosen because the related standards were absolute at the time, providing no discretion to the ME. Because of the lawsuit, FHWA did not initiate the hearing and epilepsy waiver study programs.

[22] The GES is a national survey of police accident reports in the United States conducted by the National Highway Traffic Safety Administration.

[23] The seven monitoring reports are included in Appendix 12 of the May 1997 final report titled ''Qualification of Drivers—Vision, Diabetes, Hearing and Epilepsy'' by Conwal, Inc.

and reported driving behavior for the drivers who were still in the program as of November 1995. From August 1992 to November 1995, 510 total accidents (*i.e.,* not limited to accidents where fault was assigned to the waivered driver) were reported in this group.[24]

To effectively monitor the waiver program, FHWA established a framework to notify FHWA if the waiver group proved to be unsafe. The framework involved the use of a decision strategy that identified when the waiver group's accident rate was sufficiently larger than the national accident rate that there could be a threat to public safety. More specifically, the 90 percent confidence interval associated with the waiver group's accident rate was compared to the national rate. The national rate was treated as a constant because it was given frequently as an official rate without a confidence interval. The decision was made to notify FHWA when the lower 90 percent confidence bound associated with the accident rate of the waiver group was larger than the national rate. That strategy was seen as conservative in that it limited the waiver group's accident exposure.[25]

Based on analysis of the data collected from August 1992 to November 1995, Table 1 provides a comparison of the accident rate in the waiver group to the national rate. Relative to the 90 percent confidence interval calculated for the waiver group's rate, the data show the lower bound was not larger than the national rate. In fact, the waiver group's overall accident rate was lower than the national rate. Thus, FHWA determined that the waiver group did not represent a threat to public safety.[26]

Table 1 also presents comparisons between the waiver group and national accident rates relative to accident severity. FHWA routinely investigated serious accidents and violations involving members of the waiver group. ''In the case of these accidents, the drivers were not found to be at fault nor were any of the accidents related to a vision deficiency.'' [27] In none of the severity categories did the lower 90 percent confidence bounds of the relevant waiver group rates exceed the respective national rates.

TABLE 1—COMPARISON OF ACCIDENT RATES EXPERIENCED BY COMMERCIAL MOTOR VEHICLE OPERATORS WITH VISION WAIVERS TO NATIONAL ACCIDENT RATES IN RELATION TO TOTAL ACCIDENTS AND ACCIDENT SEVERITY

	Waiver group accident rate [1] (number of accidents)	90% Confidence interval (lower and upper)		National accident rate [2] (number of accidents)
Total Accidents [3]	1.706 (510)	1.582	1.830	2.605 (444,000)
	Accident Severity			
Property Damage Only	1.284 (384)	1.177	1.392	2.048 (349,000)
Injury Involved	.408 (122)	.347	.469	.534 (95,000)
Fatality Involved	.013 (4)	.002	.024	.026 (4,615)

[1] Rate is calculated based on 299 million vehicle miles traveled by the waiver group between July 1992 and November 1995.
[2] National accident estimates are for large trucks given by the GES 1994, National Highway Traffic Safety Administration. Rate calculated based on 170,415 million vehicle miles traveled in 1994.
[3] Total accidents experienced by the waiver group between July 1992 and November 1995.
Source: FHWA. Office of Motor Carriers. The Seventh Monitoring Report on the Drivers of Commercial Motor Vehicles Who Receive Vision Waivers. Washington, DC: U.S. Department of Transportation; February 29, 1996, Table 1.

A September 1999 FHWA Tech Brief titled ''Qualifications of Drivers — Vision and Diabetes'' [28] summarizes the May 1997 report discussed above. The Tech Brief notes that the report's risk analysis was performed to support the grandfathering of drivers to permanent waiver status after the vision waiver study program was closed; therefore, the generalizability of the results was limited.

In October 1998, FHWA received a report titled ''Visual Requirements and Commercial Drivers'' prepared by a panel of medical experts associated with Beth Israel Deaconess Medical Center and Harvard Medical School.[29] The report stated that the data obtained from the vision waiver study program was ''extremely compelling. The waiver group accident rate was consistently below the national accident rate (cumulative comparison) and for drivers still in the program in August 1995, the waiver group accident rate consistently decreased to well below the national accident rate, exceeding the latter only during the first 6 months of the program.'' [30] The report continued that the program resulted in a useful database that clearly supported a new ongoing waiver program, and provided sufficient rationale for a follow-up study that might modify the current vision requirements for commercial drivers.

In October 2006, FMCSA received a report titled ''Medical Exemption Program Study'' prepared by Cambridge Systematics, Inc.[31] This project provided process and outcome information regarding the vision exemption program. The main conclusion of this project was that the vision exemption program did not appear to impact safety negatively on the nation's highways.[32] Additionally, the project found the overall vision exemption program to be effective.

Drivers in the vision exemption program had 20 percent fewer reported

[24] FHWA, Office of Motor Carriers. *The Seventh Monitoring Report on the Drivers of Commercial Motor Vehicles Who Receive Vision Waivers,* Washington, DC: U.S. Department of Transportation, February 29, 1996, p. 1.

[25] Id. at 2.

[26] Id. at 2–3.

[27] Id. at 3, note.

[28] FHWA, Office of Motor Carrier Research and Standards, *Qualifications of Drivers—Vison and Diabetes,* Tech Brief (FHWA–MCRT–99–017), Washington, DC: U.S. Department of Transportation, September 1999, available at *https://rosap.ntl.bts.gov/view/dot/14291* (last accessed July 15, 2019).

[29] Berson F, Kuperwaser M, Aiello L, and Rosenberg J., *Visual Requirements and Commercial Drivers,* Final Report, Boston, MA: Beth Israel Deaconess Medical Center and Harvard Medical School, October 16, 1998, available at *https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/visionfinalreport10-16-98.pdf* (last accessed July 15, 2019).

[30] Id. at 12 (original bolding deleted).

[31] Cambridge Systematics, Inc., *Medical Exemption Program Study: Preliminary Report of Findings,* Final Report, Chevy Chase, MD: Cambridge Systematics, Inc., October 13, 2006, available at *https://rosap.ntl.bts.gov/view/dot/16459* (last accessed July 16, 2019).

[32] Id. at 7–1.

collisions than a control set of drivers. Participation in the exemption program was shown to have a 94.4 percent confidence interval of reducing the number of reported collisions attributable to the driver.[33] While most of the analysis compared the exemption program drivers to the entire set of control drivers, one analysis compared a subset of the control drivers who had no reported collisions during the 3 years ending on the ''control date'' of December 31, 2003, to the exemption program drivers. The analysis showed ''little difference in reported collision rate between the program and control sets.'' [34] Thus, when controlling for previous collision rates over a 3-year period, the collision rates for visually impaired ''safe'' drivers were not found to be higher than the non-impaired ''safe'' drivers.[35]

Cambridge Systematics summarized the findings from the various studies in the scientific literature into a set of key points, and stated that ''[a]lmost all of the studies examined in the area of vision deficiencies illustrate similar challenges in the design, implementation, and patterns of their findings.'' [36] The challenges were summarized as confounding factors, outcome definitions, and impairment definitions. Confounding effect is observed when a factor that is not controlled statistically or by the study design obscures the effect of treatment. Examples of such factors impacting the field of vision and driving were age, driving exposure, and compensating behavior. With respect to compensating behavior, Cambridge Systematics stated that ''[i]t is well recognized that visually impaired drivers develop effective compensatory strategies to accommodate their impairments. Therefore, relying on medical test scores and ignoring actual driving performance can easily obscure the treatment effect under study.'' [37] Traffic safety outcomes may be defined in terms of crashes, violations, crash or violation rates per miles driven, performance in on-road tests and driving simulations, and self-reported incidence involvement rates and other habits. However, because ''the relationship between these outcomes is not clearly established, making comparisons across different studies becomes tenuous.'' [38] Inconsistencies in impairment definitions and measuring can result from incorrect reports of the presence or absence of an eye condition and the different thresholds used to designate subjects as impaired or unimpaired. With respect to monocular drivers being granted commercial licenses, Cambridge Systematics pointed out ''[t]he term 'monocular' is typically used quite broadly in the research literature on this topic and denotes drivers who have a total absence of function in one eye and additionally those who have visual function in one eye below the minimum level for commercial licensing.'' [39]

In June 2008, FMCSA received the final evidence report titled ''Vision and Commercial Motor Vehicle Driver Safety'' prepared by the Manila Consulting Group, Inc. and the ECRI Institute.[40] The evidence report addressed several key questions developed by FMCSA pertaining to vision and CMV driver safety by summarizing the best evidence that was available in the literature. The key question relevant to this proposal was an inquiry to determine whether monocular vision is associated with an increased crash risk. Due to methodological limitations and inconsistency among the findings of different studies, the authors concluded that the evidence was insufficient to determine whether individuals with monocular vision were at increased risk of a crash.[41]

The authors identified three studies that provided crash data for drivers with monocular vision in general driver populations. ''Because of a number of methodological flaws, [the authors'] confidence in the findings of all three of the studies [was] low. While two studies found no evidence to support the contention that individuals with monocular vision are at an increased risk for a motor vehicle crash, the third study did find an association between monocular vision and increased crash risk. Given the low quality of the included studies and the fact that the findings of these studies were inconsistent, [the authors did] not draw an evidence-based conclusion.'' [42] The authors stated, however, that ''the possibility that individuals with monocular vision have an increased crash risk cannot be ruled out.'' [43]

In March 2008, a medical expert panel made recommendations, titled ''Vision and Commercial Motor Vehicle Driver Safety,'' associated with the evidence report for the MRB to consider.[44] With respect to monocular vision, the panel agreed that the current evidence was insufficient to justify a change in the vision standard. The panel noted that the evidence report did not rule out the possibility of increased crash risk for monocular drivers. Nonetheless, the panel stated ''that the Exemption Program should be continued and a protocol established to obtain the data necessary for a future recommendation.'' [45]

During an April 2008 meeting, the MRB made recommendations to the Agency pertaining to driver vision requirements based on presentations and discussions of the 2008 draft evidence report, the related medical expert panel recommendations, and public comment. With respect to monocular vision, the MRB recommended that ''[t]he current standard which precludes individuals with monocular vision from driving a CMV for the purposes of interstate commerce should not be changed at this time.'' [46]

In September 2015, the MRB provided recommendations to the Agency in response to MRB Task 15–2, which requested that the MRB recommend criteria and identify factors the Agency should consider in deciding about a future rulemaking regarding vision criteria. The MRB provided the following recommendations: [47]

I. If FMCSA considers removing the current Visual Exemption program, the MRB recommends the following changes to the vision standard regulations:

[33] Id. at 7–1.

[34] Id. at 6–14.

[35] Id. 7–2.

[36] Id. at 4–22.

[37] Id. at 4–22.

[38] Id. at 4–22.

[39] Id. at 4–12.

[40] Tregear S, Reed M, Tiller M, and Reston J., *Vision and Commercial Motor Vehicle Driver Safety,* Volume 1: Evidence Report, McLean, VA: Manila Consulting Group, Inc. and Plymouth Meeting, PA: The ECRI Institute, June 6, 2008, available at *https://rosap.ntl.bts.gov/view/dot/16502* (last accessed July 16, 2019).

[41] Id. at 2–3.

[42] Id. at 3.

[43] Id. at 3.

[44] Berson F, Owsley C, and Peli E., *Vision and Commercial Motor Vehicle Driver Safety,* Expert Panel Recommendations, March 14, 2008, available at *https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/MEP-Recommendations-Vision-v2-prot.pdf* (last accessed July 16, 2019). The expert panel reviewed a draft of the ''Vision and Commercial Motor Vehicle Driver Safety'' evidence report. While the expert panel agreed with the findings of the draft evidence report, the panel disagreed with the reasoning for including and excluding several studies. The research team considered the panel's criticism and agreed to amend the report before it was finalized. The revised executive summary for the 2008 evidence report is Appendix A of the expert panel recommendations report and is included in the final June 2008 evidence report discussed above.

[45] Id. at 4.

[46] FMCSA Medical Review Board, Meeting Summary, April 7, 2008, p. 15, available at *https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/April_7_MRB_Meeting_Minutes_71708_Final_Updated10108.pdf* (last accessed July 16, 2019).

[47] FMCSA Medical Review Board, MRB Task 15–02 Report, September 1, 2015, available at *https://www.fmcsa.dot.gov/final-mrb-task-15-02-report* (last accessed July 16, 2019).

A. Provide a form/questionnaire to the eye specialist (ophthalmologist or optometrist) that includes all information required by the current Visual Exemption program. Form should be given to the Certified Medical Examiner (CME).

B. Length of certification with vision exemption: MRB recommends 1 year but FMCSA should seek comment from eye specialist (ophthalmologist or optometrist) associations on recommended frequency of examination.

II. FMCSA should seek comment from the eye specialist (ophthalmologist or optometrist) associations regarding:

A. Whether there is additional information that would be useful to collect.

B. What is the minimum amount of time they would feel comfortable allowing someone to drive who has sudden change from binocular vision? (Current Visual Exemption Program requires a safe driving record with such an eye condition for 3 years.)

C. Co-condition/disease process.

D. Recommendations on field of vision criteria (*e.g.,* not supposed to be 70° as stated in the current vision standard).

The proposed alternative vision standard incorporates the MRB's 2015 recommendations.

In November 2016, FMCSA published an Analysis Brief [48] that reviewed the safety performance of drivers in the vision exemption program. The study's purpose was to compare the crash rates of CMV drivers enrolled in the vision exemption program with drivers not enrolled in the program. The Agency assessed drivers in terms of their crash rates and inspection violation rates. FMCSA assessed the safety performance of drivers in the program for 5 years from 2011 through 2015.

Table 2 compares the crash rate for drivers in the vision exemption program to the national crash rate. The data show that the crash rate for drivers in the vision exemption program is lower than the national crash rate.[49]

TABLE 2—CRASH RATES FOR VISION EXEMPTION PROGRAM DRIVERS COMPARED TO NATIONAL CRASH RATES, CRASHES PER DRIVER PER YEAR, 2011–2015

Number of exemption drivers	Number of exemption driver crashes	Vision exemption crash rate (crashes per driver per year)	National average annual number of drivers	National average annual number of crashes	National crash rate (crashes per driver per year)
1,117	144	0.02578	4,599,623	143,289	0.03115

The Agency also compared drivers enrolled in the exemption program to a control group that was established using the Driver Information Resource, which captures drivers' driving histories. Drivers were chosen at random and added to the control group in proportion to the age and carrier size of the corresponding exemption program group until the control group contained three times as many drivers as the respective exemption program group. To determine whether any differences in crash rates were statistically significant, FMCSA conducted statistical testing at the 95 percent confidence level. Table 3 shows the results.[50]

TABLE 3—COMPARISON OF VISION EXEMPTION PROGRAM GROUP AND CONTROL GROUP CRASH AND VIOLATION RATES

Crash or violation rates	Number of exemption program group drivers	Exemption program group crash or violation rate	Control group crash or violation rate	Statistically significant difference
Crash Rates	680	0.03853	0.02819	Yes.
Violation Rates	680	1.9721	2.4911	Yes.
Out-of-Service Violation Rates	680	0.22353	0.29870	Yes.

The crash rate for the vision exemption program group was statistically different from its control group, being slightly higher at 0.03853 crashes per driver per year than the control group rate of 0.02819. ''This equates to about one more crash per year for every 100 drivers in the vision exemption program than for similar drivers not in the vision exemption program.'' [51] The driver violation rate and driver out-of-service violation rate were lower than the control group, with the difference being statistically significant. FMCSA concluded in 2016 that further studies should be done using larger sample sizes to confirm or challenge the results from this study.

There are several limitations regarding the Analysis Brief's findings. For example, the crash information did not consider whether the CMV driver was at fault in any given crash. It is not possible to know whether visual function caused or contributed to the crash. It also is not possible to determine whether including only those drivers who were in the vision exemption program for the full 5-year period impacted the results, if at all. The control group was selected based on age of the driver and the size of the employing motor carrier, rather than individual visual function criteria.

The Agency finds that the increased crash rate for the vision exemption program group as compared to its control group demonstrated in the Analysis Brief is not cause for concern. The findings of the Analysis Brief represent a limited period and are subject to the additional limitations discussed previously. FMCSA monitors the performance of individual drivers in the vision exemption program continuously. FMCSA does not have evidence to suggest drivers in the exemption program are less safe than the general population of CMV drivers.

Every year the Agency reports to Congress regarding the vision exemptions granted and any impact on safety. The Agency has consistently informed Congress that FMCSA has

[48] FMCSA, *Safety Performance of Drivers with Medical Exemptions: How safe are drivers in a medical exemption program compared to those who are not?,* Analysis Brief (FMCSA RRA–16–019b), Washington, DC: U.S. Department of Transportation, November 2016, available at *https://rosap.ntl.bts.gov/view/dot/31521* (last accessed July 16, 2019).

[49] Id. at 5, Table 5.

[50] See id. at 5–6, Tables 6–8.

[51] Id. at 5.

observed no adverse impacts on CMV safety due to the vision exemption program.[52]

During its June 2018 meeting, the MRB discussed the MRB Task 15–2 report and was presented draft findings of a study performed by the University of Alabama at Birmingham examining the FMCSA vision standard for CMV drivers. The MRB made no changes to its previous recommendations in MRB Task 15–2.

During its July 2019 meeting, FMCSA updated the MRB on the University of Alabama study. The MRB discussed the draft findings of the study and the vision exemption program. The MRB did not change its MRB Task 15–2 recommendations. The MRB continued the status quo by recommending that FMCSA maintain the current vision standard and continue the vision exemption program. In addition, the MRB recommended that FMCSA investigate shortening the 3-year intrastate driving experience criterion. The MRB also voted to review the vision exemption program at a future meeting when more information is available.[53]

In November 2019, FMCSA published the University of Alabama at Birmingham report titled ''Examining the FMCSA Vision Standard for Commercial Motor Vehicle Drivers'' (Ball et al., 2019).[54] One of the study's overall objectives was to determine the safety efficacy of FMCSA's current vision standards. The research team procured a dataset from a third-party provider that included all vision-related data obtained during an FMCSA physical qualification examination on nearly 190,000 CMV drivers. The research team merged the data with crash records obtained from the Motor Carrier Management Information System (MCMIS). From the examination dataset, the results of vision function testing, including visual acuity, horizontal field of vision,[55] color recognition, and monocular vision, were compared for drivers who met the vision standard versus drivers who did not meet the vision standard. Evidence from the literature review, consultation with experts, and analysis of CMV driver vision and crash data supported the measurement of visual acuity and horizontal field of vision using the current cut-points.[56]

As relevant to this proposal, Ball, *et al.* (2019) found that the literature regarding how monocularity impacts driving performance is mixed.[57] Some studies suggest that monocularity is not related to CMV performance decrements in specific skills such as visual search, lane placement, clearance judgment, gap judgment, hazard detection, and information recognition.[58] The literature also is mixed with respect to how monocularity impacts motor vehicle collision rates, with several studies finding elevated collision rates or more severe collisions for monocular drivers,[59] [60] [61] and another study showing that commercial monocular drivers did not have a higher collision rate than drivers with normal vision in both eyes. In that study (discussed above), FHWA evaluated commercial vehicle drivers who received waivers of the CMV driver vision requirements.[62] Results indicated that the waiver group's crash rates were not higher than the national reference group, nor were their crashes more severe. Ball, *et al.* (2019) noted, however, that ''one limitation of this analysis is that it is unknown whether the reference group was similar to the waiver group on other factors (*e.g.,* age, other visual function measures) that may be related to crash risk.'' [63]

The report continues that findings across studies in the literature are inconsistent with respect to the safety of monocular drivers, which is not surprising given that the definition of monocularity across the studies is not consistent. The definition of ''monocular'' is variable and can range from the total absence of vision in one eye, to vision in one eye that involves a lack of binocular visual function, such as depth perception, or is below some standard.

FMCSA Conclusions

The foregoing reports and analyses do not call into question the existence of the vision exemption program. As early as 1991, most of the panelists convened by Ketron agreed there was sufficient evidence relating to lowered acuity to change the vision standard to allow monocular drivers or drivers with vision substantially worse in one eye. The 1997 Conwal report showed the vision waiver study program group's overall accident rate was lower than the national rate and FHWA determined the waiver group did not represent an increased risk to public safety. In 1998, a panel of medical experts stated the data from the vision waiver study program was ''extremely compelling'' and clearly supported a new waiver program.

In 2006, Cambridge Systematics' review of the vision exemption program concluded the program did not appear to impact safety negatively. The 2008 evidence report found the three studies that provided crash data for drivers with monocular vision in general driver populations were insufficient to determine whether individuals with monocular vision were at increased risk of a crash. Because the report did not provide any conclusions, neither the medical expert panel nor the MRB recommended changing the vision standard. The 2008 medical expert panel recommended that the exemption program continue. The MRB has never recommended that the exemption program end and has continued its 2015

[52] FMCSA, *Waivers, Exemptions, and Pilot Programs Annual Reports to Congress Fiscal Years 1999–2013,* February 2016, p. 25; Fiscal Year 2014, April 2017, p. 9; Fiscal Year 2015, May 2017, p. 15; Fiscal Year 2016, October 2017, p. 11; and Fiscal Year 2017, September 2018, p. 10. These reports are available at *https://www.fmcsa.dot.gov/mission/policy/reports-congress* (last accessed July 15, 2019).

[53] FMCSA Medical Review Board, Meeting Minutes, July 15–16, 2019, p. 3, available at *https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2020-08/MRB-meeting-minutes-july-2019-508c.pdf* (last accessed September 2, 2020).

[54] Ball K, Heaton K, McGwin G, Owsley C, and Stavrinos D., *Examining the FMCSA Vision Standard for Commercial Motor Vehicle Drivers* (Report No. FMCSA–RRR–19–011).), Washington, DC: FMCSA, 2019, available at *https://rosap.ntl.bts.gov/view/dot/42735* (last accessed December 09, 2019).

[55] The study uses the term ''field of view,'' which is synonymous with the FMCSR term ''field of vision.'' To avoid confusion, the term is replaced in this discussion of the study with ''field of vision.''

[56] FMCSA notes that the study found no evidence that CMV drivers with monocular vision were at increased risk of collision. The Agency is not relying on that finding to support this rulemaking due to limitations set forth in the study relating to the study's design and dataset.

[57] Id. at 5.

[58] McKnight AJ, Shinar D, and Hilburn B., ''The visual and driving performance of monocular and binocular heavy-duty truck drivers,'' *Accident Analysis & Prevention* 23(4), pp. 225–237 (1991). This study was performed under contract to FHWA.

[59] Dionne G, Desjardins D, Laberge-Nadeau C, and Maag U., ''Medical conditions, risk exposure, and truck drivers' accidents: an analysis with count data regression models,'' *Accident Analysis & Prevention* 27(3), pp. 295–305 (1995).

[60] Laberge-Nadeau C, Dionne G, Maag U, Desjardins D, Vanasse C, and Ékoé J–M., ''Medical conditions and the severity of commercial motor vehicle drivers' road accidents,'' *Accident Analysis & Prevention* 28(1), pp. 43–51 (1996).

[61] Maag U, Vanasse C, Dionne G, and Laberge-Nadeau C., ''Taxi drivers' accidents: how binocular vision problems are related to their rate and severity in terms of the number of victims,'' *Accident Analysis & Prevention* 29(2), pp. 217–224 (1997).

[62] FHWA, Office of Motor Carriers, *The Seventh Monitoring Report on the Drivers of Commercial Motor Vehicles Who Receive Vision Waivers,* Washington, DC: U.S. Department of Transportation, February 29, 1996.

[63] Ball K, Heaton K, McGwin G, Owsley C, and Stavrinos D., *Examining the FMCSA Vision Standard for Commercial Motor Vehicle Drivers* (Report No. FMCSA–RRR–19–011), Washington, DC: FMCSA 2019, p. 5, available at *https://rosap.ntl.bts.gov/view/dot/42735* (last accessed December 09, 2019).

recommendations for FMCSA to consider if it changes the vision standard.

The reports and analyses discussed above do not establish strong relationships between specific measures of vision and correlates of driver safety. They do, however, point out the numerous difficulties associated with obtaining empirical data to determine minimum vision criteria and the methodological flaws associated with many studies evaluating vision criteria and crash risk. Most of the available data come from drivers in general and not CMV drivers specifically. Usually, crash information does not indicate whether the driver was at fault in any given crash. In addition, it is rarely possible to determine whether visual function was the cause of a crash.

Data on the relationship between monocular vision and crash involvement is sparse, conflicting with respect to crash risk, and not definitive. Moreover, the Agency must exercise caution when interpreting the data because of the different definitions of ''monocular vision'' in the literature.

After full consideration of the foregoing reports and analyses, FMCSA finds the experience with the vision waiver study and exemption programs is most relevant in establishing an alternative vision standard. These programs have allowed FMCSA to evaluate the vision criteria used in the programs since 1992 in the context of actual CMV driving experience. Considering the long period over which the programs have operated, FMCSA has sufficient information to reach generalized conclusions.

FHWA and FMCSA monitored the safety performance of drivers in the vision waiver study and the current exemption programs continuously. Based on the experience with the vision waiver study and exemption programs, FMCSA has determined that the safety performance of individuals in these programs is at least as good as that of the general population of CMV drivers. Indeed, the Agency has continued to grant vision exemptions because experience has shown that individuals with vision loss in one eye are not limited by their lack of binocularity with respect to driving once they have adapted to and compensated for the change in vision.

The Agency's ability to draw on its experience from the vision waiver study and exemption programs to develop modifications of the existing standard is consistent with one of the purposes of the authority provided by the enactment of TEA–21 that established a new process for granting regulatory exemptions in 49 U.S.C. 31315. TEA–21 gave the Agency ''broader discretion to grant waivers and exemptions from motor carrier and driver safety regulations which are necessary to develop performance based regulations and evaluate the effectiveness of existing regulations.'' H. Report 105–550 at 489 (1998).

Accordingly, the Agency proposes to adopt most of the existing vision exemption program criteria and modify other of the criteria as a vision standard to be applied in lieu of the vision exemption program. Therefore, the alternative vision standard would require individuals, to be physically qualified, to have in the better eye distant visual acuity of at least 20/40 (Snellen) (with or without corrective lenses) and field of vision of at least 70 degrees in the horizontal meridian; the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber; stability of the vision deficiency; and sufficient time to adapt to and compensate for the change in vision. Instead of requiring 3 years of intrastate driving experience with the vision deficiency, with limited exceptions, individuals physically qualified under the proposed alternative vision standard for the first time would complete a road test before operating in interstate commerce. FMCSA expects that individuals who satisfy these criteria would not create an increased risk of injury to themselves or others due to their vision.

VII. Rationale for Proposed Qualification Standard

The Agency proposes to adopt most of the existing vision exemption program criteria and to modify other program criteria as an alternative vision standard. The proposed standard takes a performance-based approach. The standard emphasizes that the individual has developed the skills to adapt to and compensate for the vision loss once it has been deemed stable by a medical professional, and that the individual has demonstrated the skills to operate a CMV safely. The ME would ensure the individual is physically qualified to operate a CMV in accordance with the physical qualification standards. Motor carriers would maintain the responsibility for reviewing the individual's safety performance and, with limited exceptions, would conduct a road test for individuals.

A. Individuals Adapt to and Compensate for Vision Loss

As stated above, it is well recognized that individuals with vision loss in one eye can and do develop compensatory viewing behavior to mitigate the vision loss. Therefore, if an individual meets the proposed vision standard, the Agency expects there will be no adverse impact on safety due to the individual's vision. That is, once an individual's vision is stable and the individual has adapted to and compensated for the change in vision, the loss in vision is not likely to play a significant role in whether the individual can drive a CMV safely.

Instead of requiring 3 years of intrastate driving experience with the vision deficiency as in the current exemption program, FMCSA proposes that individuals physically qualified under the proposed alternative vision standard for the first time satisfactorily complete a road test before operating in interstate commerce. Individuals would be excepted from the road test requirement if they have 3 years of intrastate or excepted interstate CMV driving experience with the vision deficiency, hold a valid Federal vision exemption, or are medically certified under § 391.64(b). These individuals have already demonstrated they can operate a CMV safely with the vision deficiency.

The requirement for 3 years of intrastate driving experience with the vision deficiency has been equated to sufficient time for the driver to adapt to and compensate for the change in vision. FHWA stated the 3-year safe driving history with the vision deficiency requirement was based on studies ''indicating that past experience can be used to predict future performance, especially when combined with other predictive factors such as geographic location, mileage driven, and conviction history'' (59 FR 50887, 50888, October 6, 1994). FHWA continued that it relied on opinions from the medical community that individuals with a vision deficiency are often able to compensate for their impairment over time. ''Because of the discrepancy as to how much time is necessary to allow an individual to compensate for an impairment (which generally ranged from several months to a full year), [FHWA's] choice of three years provided added assurance that drivers would have had sufficient time to develop compensatory behavior. It was also the longest period for which driver histories were uniformly available from State motor vehicle departments'' (59 FR 50888–89).

Although it was considered appropriate for FHWA to proceed conservatively and to ensure adequate time for individuals to adapt to and compensate for vision changes when beginning the waiver study program, it

appears that the primary factor in selecting the 3 years of intrastate driving experience criterion was that it coincided with the typical period of motor vehicle driving histories. Three years of experience driving with the vision deficiency exceeded by several months to a full year, according to opinions of the medical community, the period necessary to compensate for the vision loss. Eliminating the driving experience criterion would not allow potentially hazardous drivers to participate in interstate commerce because medical professionals would ensure drivers have had the time to adapt to and compensate for the vision change. The driving experience criterion has the limitation that many drivers are not able to obtain intrastate driving experience because not all States issue vision waivers. For these reasons, FMCSA is not proposing to continue the exemption program's requirement for 3 years of intrastate driving experience with the vision deficiency in the alternative vision standard. Nonetheless, it is reasonable to ensure an individual possesses the skills needed to operate a CMV safely with the vision deficiency.

As an alternative to the 3 years of intrastate driving experience criterion, FMCSA proposes, with limited exceptions, that individuals physically qualified under the alternative vision standard for the first time satisfactorily complete a road test before operating in interstate commerce. The road test would be conducted in accordance with the road test already required by § 391.31. When FHWA adopted the road test in § 391.31, it stated that the interests of CMV safety would be promoted by ensuring drivers have demonstrated their skill by completing the road test (35 FR 6458, 6450 (April 22, 1970)). FMCSA finds that a road test would be an appropriate indicator of an individual's ability to operate a CMV safely with the vision deficiency. Thus, the Agency expects there will be no adverse impact on safety from eliminating the intrastate driving experience criterion.

The proposed alternative vision standard also would not continue the 3-year safe driving history criterion. Selecting only drivers with a history of safe driving to participate in the vision waiver study program allowed FHWA to focus on the impact of vision on driving. After nearly 30 years with the vision waiver study and exemption programs, experience has shown that individuals with vision loss in one eye are not limited by their lack of binocularity with respect to driving once they have adapted to and compensated for the change in vision. Accordingly, the 3-year safe driving history criterion has served its purpose and is no longer necessary.

FMCSA declines to propose specific periods for which an individual's vision deficiency must be stable and for what constitutes sufficient time to adapt to and compensate for the change in vision. The causes of vision loss are many and varied. Vision loss may be present at birth, the result of trauma, due to medical treatment intervention, or the result of a progressive eye condition or disease. The cause of the vision loss is a primary factor in how long it takes for an individual to adapt to and compensate for the change in vision. In general, those who experience sudden loss of vision in one eye require more time to adapt to and compensate for the change than those who lose their vision gradually. For example, Coday, *et al.* (2002) found the time for patients to adapt to sudden vision loss was 8.8 months and to adapt to gradual vision loss was 3.6 months.[64]

Therefore, the Agency proposes that medical decisions regarding whether an individual's vision deficiency is stable and whether the individual has adapted to and compensated for the change in vision be made by medical professionals. These medical decisions should be based on an individualized assessment by a medical professional rather than a regulation.[65]

B. MEs Would Make the Qualification Determination

The proposed alternative vision standard would place the case-by-case physical qualification determination with the ME who examines the individual, which is consistent with FMCSA's rule to adopt an alternative physical qualification standard for individuals with insulin-treated diabetes mellitus (see 83 FR 47486, September 19, 2018). Thus, licensed healthcare professionals listed on the Agency's National Registry of Certified Medical Examiners (National Registry) would consider the information in the Vision Evaluation Report, Form MCSA–5871, and determine whether an individual meets the proposed vision standard. This approach of MEs making the physical qualification determination, instead of FMCSA, is consistent with Congress's directive in 49 U.S.C. 31149(d) to have trained and certified MEs assess the individual's health status. In addition, the proposed process would create a clear and consistent framework to assist MEs with making a physical qualification determination that is equally as effective as a program based entirely on granting exemptions under 49 U.S.C. 31315(b).

C. Review of an Individual's Safety Performance Would Continue

FMCSA is not proposing to change the current regulations that require motor carriers to review an individual's safety performance. FMCSA has regulatory requirements in place to ensure that motor carriers review the safety performance of all their drivers. For example, motor carriers are required to review both the motor vehicle records and the safety performance history, which must include accident information, from previous employers for the prior 3 years when hiring a driver (49 CFR 391.23(a) and (d)). Also, motor carriers are required to review the motor vehicle records for all drivers annually (49 CFR 391.25). In addition, the road test would demonstrate whether individuals are able to operate a CMV safely with the vision deficiency.

As previously stated, the 3-year safe driving history criterion has served its purpose and is no longer necessary. Accordingly, the safety performance of individuals who can satisfy the proposed alternative vision standard should be evaluated in the same manner as other drivers.

VIII. Discussion of Proposed Rule

FMCSA elects to respond to the MRB's request to investigate shortening the 3-year intrastate driving experience criterion and to provide more information about the vision exemption program by publishing this NPRM and proposing a rule that includes the MRB's 2015 recommendations. This approach provides the MRB with background on the exemption program, summaries of prior reports and analyses, a specific proposal and its rationale to consider, and public comment on the

[64] Coday MP, Warner MA, Jahrlin KV, and Rubin PA, ''Acquired Monocular Vision: Functional Consequences from the Patient's Perspective,'' *Ophthalmic Plastic and Reconstructive Surgery,* 18(1), pp. 56–63 (2002), available at *https://www.ncbi.nlm.nih.gov/pubmed/11910326* (last accessed March 24, 2020).

[65] On December 18, 2013, FMCSA proposed changes to the eligibility requirements for the exemption program. As relevant here, FMCSA proposed to reduce the length of driving experience to 1 year of intrastate driving experience with the stable visual deficiency or to remove the driving experience criterion altogether (78 FR 76590, 76592). The American Optometric Association supported removing the requirement for a specific amount of driving experience, in part, because an examination by an ophthalmologist or optometrist within the prior 3 months from the date of application would help to assess whether the driver had experienced recent vision deterioration. This comment is available in docket number FMCSA–2013–0097 at *https://www.regulations.gov/document?D=FMCSA-2013-0097-0004* (last accessed March 13, 2020).

proposal.[66] As noted above, the Agency will follow a rulemaking process like the one used when FMCSA adopted the alternative physical qualification standard for insulin-treated diabetes mellitus. After the public comment period closes, FMCSA will ask the MRB to review all comments to the NPRM from medical professionals and associations. If after that review the MRB makes material changes to its prior recommendations in MRB Task 15–2, FMCSA will publish a **Federal Register** notice announcing the availability of the new MRB recommendations and request public comment specific to those recommendations.

FMCSA proposes to establish an alternative physical qualification standard for individuals who cannot satisfy either the distant visual acuity or field of vision standard, or both, in § 391.41(b)(10) in one eye. If adopted, the alternative vision standard would replace the current vision exemption program as a basis for determining the physical qualification of these individuals to operate a CMV. It also would eliminate the need for the grandfather provisions under § 391.64(b). The proposed alternative vision standard would enhance employment opportunities and reduce the paperwork burden for drivers, while remaining consistent with FMCSA's safety mission.

Specifically, the Agency proposes to adopt most of the existing vision exemption program criteria and modify other of the criteria as a vision standard to be applied in lieu of the vision exemption program. The alternative vision standard would require individuals, to be physically qualified, to have in the better eye distant visual acuity of at least 20/40 (Snellen) (with or without corrective lenses) and field of vision of at least 70 degrees in the horizontal meridian; the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber; stability of the vision deficiency; and sufficient time to adapt to and compensate for the change in vision. With limited exceptions, FMCSA also would require individuals physically qualified under the proposed alternative vision standard for the first time to complete a road test administered by the motor carrier satisfactorily before operating in interstate commerce.

A. Proposed Physical Qualification Process

FMCSA proposes a two-step process for physical qualification. The process would be analogous to what the Agency adopted in § 391.46 for individuals with insulin-treated diabetes mellitus (see 83 FR 47486, September 19, 2018). First, an individual seeking physical qualification would obtain a vision evaluation from an ophthalmologist or optometrist who would record the findings and provide specific medical opinions on the proposed Vision Evaluation Report, Form MCSA–5871, which incorporates the recommendations of the MRB. Next, at a physical qualification examination, an ME would consider the information provided on the vision report and exercise independent medical judgment to determine whether the individual meets the proposed vision standard, as well as FMCSA's other physical qualification standards. If the ME determines that the individual meets the physical qualification standards to operate a CMV safely, the ME could issue an MEC, Form MCSA–5876, for a maximum of 12 months.

FMCSA is not proposing changes to the current vision standard found in § 391.41(b)(10). The current standard would be redesignated as paragraph (b)(10)(i). An alternative vision standard would be added in paragraph (b)(10)(ii) to allow an individual who cannot satisfy either the distant visual acuity or field of vision standard, or both, in one eye to be physically qualified if the individual satisfies the requirements of proposed § 391.44.

Proposed § 391.44 would set forth the provisions of the alternative vision standard. It would provide that an individual who cannot satisfy either the current distant visual acuity or field of vision standard, or both, in one eye is physically qualified to operate a CMV in interstate commerce if the individual (1) meets FMCSA's other physical qualification standards in § 391.41 (or has an exemption or skill performance evaluation certificate, if required), and (2) has the vision evaluation and medical examination required by § 391.44.

Individuals would be evaluated by a licensed ophthalmologist or optometrist no more than 45 days before each annual or more frequent examination by an ME. Even individuals who have a non-functional eye or have lost an eye would be required to undergo vision evaluations at least annually. Because of the potential for vision changes in the remaining eye, it is important to monitor that eye's compliance with the vision standard.

During the vision evaluation, the ophthalmologist or optometrist would complete the proposed Vision Evaluation Report, Form MCSA–5871. The report's instructions to the ophthalmologist or optometrist state that completion of the report does not imply that the ophthalmologist or optometrist is making a decision to qualify the individual to drive a CMV. The instructions state further that any determination as to whether the individual is physically qualified to drive a CMV will be made by an ME.

The Agency is aware that the definition of ''monocular vision'' varies; therefore, the proposed Vision Evaluation Report, Form MCSA–5871, includes FMCSA's definition of the term. The report defines monocular vision as (1) in the better eye, distant visual acuity of at least 20/40 (with or without corrective lenses) and field of vision of at least 70 degrees in the horizontal meridian, and (2) in the worse eye, either a distant visual acuity of less than 20/40 (with or without corrective lenses) or field of vision of less than 70 degrees in the horizontal meridian, or both. FMCSA's monocular vision definition has been applied consistently for nearly 30 years.

The proposed Vision Evaluation Report, Form MCSA–5871, includes instructions to the individual regarding the timeframe for providing the report to the ME. The individual would be required to begin the physical qualification examination no later than 45 calendar days after the ophthalmologist or optometrist signs and dates the report, after which time the Vision Evaluation Report is no longer valid. This timeframe would ensure the ME is receiving the results of a recent vision evaluation.

The Vision Evaluation Report, Form MCSA–5871, collects the individual's name, date of birth, driver's license number, and State of issuance. In addition, the report collects the following information:

(1) Whether the individual completing the report is an ophthalmologist or an optometrist;

(2) The date of the vision evaluation;

[66] FMCSA notes that proceeding with an NPRM is also responsive to stakeholder comment. For example, in the rulemaking to change the physical qualification standard relating to insulin-treated diabetes mellitus, the American Trucking Associations, Inc. (''ATA'') commented that it was pleased that FMCSA was using the rulemaking process to adjust that standard. Additionally, ATA ''implore[d] FMCSA to also conduct rulemaking on its other 'absolute' medical standards for which it is currently issuing exemptions en masse including the vision and hearing standards.'' ATA continued that ''[e]xemptions from these medical standards only create confusion in the industry as to what constitutes a medically safe driver and what does not. It also creates an unnecessary, but easily solvable, predicament for motor carriers.'' This comment is available in docket number FMCSA–2005–23151 at *https://www.regulations.gov/document?D=FMCSA-2005-23151-0960* (last access March 13, 2020).

(3) The distant visual acuity in each eye (corrected and uncorrected), and, if corrected, the type of correction;

(4) The field of vision, including central and peripheral fields in each eye, utilizing a testing modality that tests to at least 120 degrees in the horizontal. A formal perimetry test interpreted in degrees is required and must be attached to the report;

(5) Whether the individual can recognize red, green, and amber colors;

(6) The date of the last comprehensive eye examination;

(7) Whether the individual has monocular vision as defined by FMCSA;

(8) The cause of the monocular vision;

(9) When the monocular vision began;

(10) The current treatment for the monocular vision;

(11) A medical opinion regarding whether the vision deficiency is stable;

(12) A medical opinion regarding whether sufficient time has passed to allow the individual to adapt to and compensate for the change in vision; and

(13) Information regarding progressive eye conditions and diseases, including the date of diagnosis, severity, current treatment, whether the condition is stable, and a medical opinion regarding whether a vision evaluation is required more often than annually, and if so, how often.

The report requires the individual completing the report to attest that the individual is an ophthalmologist or optometrist and that the information provided is true and correct to the best of the individual's knowledge. The report includes the date, printed name and medical credential of the ophthalmologist or optometrist, signature, professional license number and issuing State, phone number, and email and street addresses. The report would be available on FMCSA's website.

The draft Vision Evaluation Report, Form MCSA–5871, is available in the docket for this rulemaking. The Agency seeks public comment on the substance and form of the report, as well as the four questions posed in section XI.G. below, relating to the information collection titled ''Medical Qualification Requirements,'' regarding FMCSA's request for OMB approval of the report and related information collection under the Paperwork Reduction Act.

Under the proposed regulation, the individual examined, ophthalmologist, or optometrist could provide the signed report to an ME. An ME would have to receive a completed report for each examination of an individual needing evaluation under § 391.44. A report would be considered complete when a response is provided to all data fields and the ophthalmologist or optometrist signs, dates, and provides his or her full name, office address, and telephone number on the report. The report would be treated as part of the Medical Examination Report Form, MCSA–5875, and would be retained by the ME for at least 3 years from the date of the examination as required by 49 CFR 391.43(i).

Under the alternative vision standard, an individual would be medically examined and certified by an ME at least annually as physically qualified to operate a CMV. The ME would determine whether the individual meets the physical qualification standards in § 391.41. In making that determination, the ME would consider the information in the Vision Evaluation Report, Form MCSA–5871, and utilize independent medical judgment to apply the following four standards proposed in § 391.44:

(1) The individual would not be physically qualified to operate a CMV if in the better eye the distant visual acuity is not at least 20/40 (Snellen), with or without corrective lenses, and the field of vision is not at least 70 degrees in the horizontal meridian.

(2) The individual would not be physically qualified to operate a CMV if the individual is not able to recognize the colors of traffic signals and devices showing standard red, green, and amber.

(3) The individual would not be physically qualified to operate a CMV if the individual's vision deficiency is not stable.

(4) The individual would not be physically qualified to operate a CMV if there has not been sufficient time to allow the individual to adapt to and compensate for the change in vision.

The ME would consider the data and medical opinions provided by the ophthalmologist or optometrist to assist in making a qualification determination. The Vision Evaluation Report, Form MCSA–5871, should include sufficient information for the ME to determine whether the opinions expressed by the ophthalmologist or optometrist appear informed and appropriate.

Consistent with current practice for any medical condition, if the ME determines that additional information is necessary to make the qualification determination, the ME could confer with the ophthalmologist or optometrist for additional information concerning the individual's related vision medical history and status, make requests for other appropriate referrals, or request medical records from the individual's treating provider, all with appropriate consent. Because the ME is knowledgeable about the physical requirements to operate a CMV and the physical qualification regulations, the ME would continue to determine whether an individual meets FMCSA's physical qualification standards.

In addition to adding the alternative vision standard in § 391.44, the proposed rule would add a paragraph in § 391.45 that would require individuals physically qualified under proposed § 391.44 to be medically examined and certified at least annually. As with any individual, an ME would have discretion to certify an individual for less than the maximum year if medical conditions warrant.

B. Road Test in Accordance With 49 CFR 391.31

With limited exceptions, FMCSA proposes that individuals physically qualified under the alternative vision standard for the first time must successfully complete a road test before operating a CMV in interstate commerce. The road test would demonstrate individuals are able to operate a CMV safely with the vision deficiency. Once an individual is physically qualified under § 391.44 for the first time and receives an MEC, Form MCSA–5876, the individual would consult § 391.44(d) to determine whether a road test may be required. The ME issuing the MEC, Form MCSA–5876, would have no role with respect to the road test.

Paragraph (d)(1) would provide the general rule that, subject to limited exceptions, an individual physically qualified under § 391.44 for the first time could not drive a CMV until the individual has successfully completed a subsequent road test and has been issued a certificate of driver's road test in accordance with § 391.31. Such an individual would be required to inform the motor carrier responsible for completing the road test under § 391.31(b) when the individual is required by § 391.44(d) to have a road test. Motor carriers would conduct the road test and issue a certificate of driver's road test in accordance with § 391.31(b) thorough (g). Motor carriers are currently required to conduct a road test under § 391.31 when they hire a new driver, subject primarily to exceptions in § 391.33. Therefore, many motor carriers and drivers are already familiar with the road test and related documentation requirements.

Section 391.31(b) provides the road test must be given by the motor carrier employing the individual or a person designated by the motor carrier. If the individual is also a motor carrier (*e.g.,* an owner-operator), the road test must be given by a person other than the individual. The road test must be given by a person competent to evaluate and determine whether the individual taking the test demonstrated that the individual is capable of operating the CMV, and associated equipment, the

motor carrier intends to assign to the individual for operation.

The road test also must be of sufficient duration to enable the person giving it to evaluate the skill of the individual taking it at handling the CMV, and associated equipment, the motor carrier intends to assign to the individual (49 CFR 391.31(c)). At a minimum, the road test must include:

(1) The pre-trip inspection required by § 392.7;
(2) Coupling and uncoupling of combination units (if the equipment the individual may drive includes combination units);
(3) Placing the CMV in operation;
(4) Use of the CMV's controls and emergency equipment;
(5) Operating the CMV in traffic and while passing other motor vehicles;
(6) Turning the CMV;
(7) Braking and slowing the CMV by means other than braking; and
(8) Backing and parking the CMV.

The motor carrier provides a road test form on which the person giving the road test rates the individual taking it at each operation that is a part of the test. The person giving the test signs the form once it is complete (49 CFR 391.31(d)). If the road test is successfully completed, the person giving it completes a certificate of driver's road test in substantially the form prescribed in § 391.31(f) (49 CFR 391.31(e)). A copy of the certificate of driver's road test is given to the individual tested (49 CFR 391.31(g)). The motor carrier retains in the individual's driver qualification file the original of the signed road test form and the original, or a copy, of the certificate of driver's road test (49 CFR 391.31(g)(1) and (2)).

The Agency seeks public comment on the information collection associated with the § 391.31 road test, particularly as required by proposed § 391.44 and the exception to the road test for intrastate and excepted interstate drivers discussed below. The information collection titled ''391.31 Road Test Requirement'' is described in section XI.G. below regarding FMCSA's request for OMB approval of the information collection under the Paperwork Reduction Act. Also, the draft supporting statement for the information collection is available in the docket for this rulemaking.

Paragraph (d)(2) would provide that the alternatives to a § 391.31 road test in § 391.33 do not apply to individuals required to have a road test by § 391.44(d). Accordingly, a motor carrier could not accept certain CDLs or a copy of a certificate of driver's road test issued within the preceding 3 years as an alternative to the required road test. However, after an individual required to have a road test by § 391.44(d) successfully completes a road test and is issued a certificate of driver's road test in accordance with § 391.31 once, the provisions of § 391.33 would apply to the individual as they would normally operate. FMCSA notes that motor carriers always have the option to require any individual to take a road test as a condition of employment (see 49 CFR 391.33(c)).

Paragraphs (3), (4), and (5) of § 391.44(d) would provide exceptions to the general requirement for a road test. These individuals would be excepted because they have already demonstrated they can operate a CMV safely with the vision deficiency. Accordingly, a road test would not be necessary.

Paragraph (3) would except an individual from the road test requirement if the motor carrier determines the individual possessed a valid CDL or non-CDL to operate, and did operate, a CMV in either intrastate commerce or in interstate commerce excepted by § 390.3T(f) or § 391.2 from the requirements of 49 CFR part 391, subpart E, with the vision deficiency for the 3-year period immediately preceding the date of physical qualification under § 391.44 for the first time. To qualify for the exception, the individual would certify in writing to the motor carrier the date the vision deficiency began. The motor carrier would review employment information to determine whether the individual operated a CMV for the required 3 years with the vision deficiency. Many motor carriers would use employment information obtained when investigating the individual's safety performance history from previous employers for the prior 3 years when hiring a driver, as required by § 391.23(a)(2) and (d).

If the motor carrier determines the individual operated a CMV in intrastate or excepted interstate commerce with the vision deficiency for the required 3 years, the motor carrier would prepare a written statement to that effect with the finding that the individual is not required by § 391.44(d) to complete a road test. A copy of the written statement would be provided to the individual. The motor carrier would retain the original of the written statement and the original, or a copy, of the individual's certification regarding the date the vision deficiency began in the driver qualification file. Section 391.51, which provides what documents must be included in a driver qualification file, would be amended to include the written statement and certification.

Paragraphs (4) and (5) of § 391.44(d), respectively, would except individuals holding a valid Federal vision exemption or medically certified under § 391.64(b) on the effective date of any final rule from the requirement to have a road test. Such individuals would not be required to inform the motor carrier that they are excepted from the requirement in § 391.44(d)(1) to have a road test.

The development of this proposed rule provided FMCSA with the opportunity to review § 391.31 in the context of current privacy considerations. Section 391.31(e) provides that, if the road test is successfully completed, the motor carrier must complete a certificate of driver's road test ''substantially'' in the form prescribed in paragraph (f). Paragraph (f) provides a Certification of Road Test that lists, in part, the driver's social security number, the driver's license number, and the State of issuance of the driver's license. Because the road test is completed when hiring a driver, the motor carrier already would have collected this information on other employment documents. The motor carrier also would have verified the identity of the driver and that the driver has a driver's license. Accordingly, FMCSA proposes to remove this information from the list in paragraph (f) because it is unnecessary and duplicative.

C. Elimination of Vision Exemption Program and Grandfather Provisions

The proposed rule would eliminate the need for the current vision exemption program and the grandfather provisions of § 391.64(b). As discussed above in the background section of this NPRM, drivers who participated in the Agency's vision waiver study program and were holding valid waivers from the vision standard on March 31, 1996 could continue to operate in interstate commerce under the grandfather provisions of § 391.64(b). If the proposed rule is adopted, the Agency believes the grandfathering provisions would be redundant. Therefore, FMCSA proposes that the approximately 1,900 individuals physically qualified under § 391.64(b) would have 1 year after the effective date of any final rule to comply with the rule. During that transition year, grandfathered individuals could elect to seek physical qualification through the final rule or § 391.64. This transition year would provide time to learn the new process for individuals whose MEC, Form MCSA–5876, expires near the time any final rule becomes effective. However, 1 year after the effective date of the final rule all MECs,

Form MCSA–5876, issued under § 391.64(b) would become void.

FMCSA anticipates that individuals physically qualified under § 391.64(b) would not be adversely affected by the proposed action. Grandfathered drivers are already required to obtain annual vision evaluations performed by an ophthalmologist or optometrist before their physical qualification examinations and the proposed rule includes similar qualification criteria. However, FMCSA seeks public comment regarding whether the proposed alternative vision standard would adversely affect any driver who is operating currently under § 391.64(b).

Similarly, the 2,566 vision exemption holders would have 1 year after the effective date of any final rule to comply with the rule, at which time all exemptions issued under 49 U.S.C. 31315(b) would become void. Drivers who hold a vision exemption would be notified by letter with details of the transition to the new standard.

D. Change to the Medical Examination Process in 49 CFR 391.43(b)(1)

The Agency proposes to amend § 391.43(b)(1) by adding an ophthalmologist as a category of eye care professional who may perform the part of the physical qualification examination that involves visual acuity, field of vision, and the ability to recognize colors. Currently, the provision is limited to licensed optometrists. When § 391.43(a) was adopted in 1970, it provided that the medical examination must be performed by a doctor of medicine or osteopathy, which allowed an ophthalmologist to perform any part of the examination (35 FR 6458, 6463, April 22, 1970). An exception was provided in paragraph (b) to allow optometrists to perform the part of the medical examination that involves visual acuity, field of vision, and the ability to recognize colors. Section 391.43 has been amended several times since 1970 and now provides that the medical examination must be performed by an ME listed on the National Registry. The Agency did not amend § 391.43 at the time of the prior amendments to continue to allow ophthalmologists to perform the vision portion of the medical examination. Accordingly, the proposed rule would correct that oversight.

E. Benefits of the Proposal to Drivers

The physical qualification process proposed in § 391.44 would eliminate the need for individuals to obtain and renew an exemption. Drivers would no longer be required to create and assemble the substantial amount of information and documentation necessary to apply for or renew an exemption, or to respond to subsequent requests for information.[67] Publishing personal and medical information in the **Federal Register** and seeking public comment about drivers would be discontinued. Also, individuals would no longer be required to carry a copy of the vision exemption when on duty as required by § 391.41(a)(1)(ii) and (2)(iii) or provide a copy to their employers.

Eliminating the prohibition on certifying individuals who cannot meet either the current visual acuity or field of vision standard, or both, in one eye (without an exemption) would enable more qualified individuals to operate as interstate CMV drivers without compromising safety. The criterion that an individual should have 3 years of experience driving a CMV with the vision deficiency precludes many individuals from being eligible to obtain a Federal exemption. The only way for an individual to get the CMV driving experience is to obtain intrastate driving experience. To do that, the individual must obtain a State vision waiver to operate in intrastate commerce, but not all States issue vision waivers.[68] The road test alternative addresses this limitation and is much less burdensome than obtaining 3 years of intrastate driving experience. Thus, the proposed rule would provide an opportunity to operate as an interstate CMV driver regardless of the driver's State of domicile. Individuals who live in a State that issues vision waivers also would be able to begin a career as an interstate CMV driver more quickly and may have more employment opportunities.

Previously qualified interstate CMV drivers who are no longer able to meet either the distant visual acuity or field of vision standard, or both, in one eye would be able to return to operating interstate sooner. Currently, such individuals would have to obtain 3 years of intrastate CMV driving experience, assuming they lived in a State that offers vision waivers, once their vision is stable and they have had time to adapt to and accommodated for the change in their vision before they would be eligible to obtain a Federal exemption and return to interstate driving.

IX. Section-by-Section Analysis

This section includes a summary of the proposed changes to 49 CFR part 391. The regulatory changes proposed will be discussed first in numerical order, followed by a discussion of proposed changes to Agency guidance.

A. Regulatory Provisions

Section 391.31 Road Test

In § 391.31, paragraph (f) would be amended by removing the entries for the driver's social security number, the driver's license number, and the State of issuance of the driver's license from the Certification of Road Test. A new paragraph (h) would be added that provides OMB reviewed the information collection requirements in § 391.31 and assigned an OMB control number.

Section 391.41 Physical Qualifications for Drivers

In § 391.41(b)(10), the current vision standard would be renumbered as paragraph (b)(10)(i) without any textual changes. An alternative standard would be added in paragraph (b)(10)(ii) that would allow an individual who cannot satisfy either the current distant visual acuity or field of vision standard, or both, in one eye to be physically qualified under proposed § 391.44.

Section 391.43 Medical Examination; Certificate of Physical Examination

In § 391.43(b)(1), an ophthalmologist would be added as a category of eye care professional who may perform the part of the physical qualification examination that involves visual acuity, field of vision, and the ability to recognize colors. Textual changes also would be made to improve readability.

Section 391.44 Physical Qualification Standards for an Individual Who Cannot Satisfy Either the Distant Visual Acuity or Field of Vision Standard, or Both, in One Eye

A new § 391.44 would be added.

Paragraph (a) would apply so an individual who cannot satisfy either the current distant visual acuity or field of vision standard, or both, in one eye can be physically qualified to operate a CMV in interstate commerce. Such an individual would be physically qualified if the individual meets the

[67] As discussed below in the Paperwork Reduction Act section XI.G. regarding the Medical Qualification Requirements information collection, FMCSA attributes 2,236 annual burden hours at a cost of $69,136 for drivers to obtain and maintain a vision exemption. The proposed rule would eliminate this entire burden.

[68] The fact that some States have vision waiver programs for intrastate CMV drivers provides additional evidence that individuals who cannot meet either FMCSA's distant visual acuity or field of vision standard, or both, in one eye are driving safely in intrastate commerce. When FMCSA proposed changes to the eligibility requirements for the exemption program in December 2013, an individual commented that he did not understand why FMCSA requires driving experience when his State issues a waiver without driving experience. The comment is available in docket number FMCSA–2013–0097 at *https://www.regulations.gov/document?D=FMCSA-2013-0097-0003*.

other physical qualification standards in § 391.41(b) (or has an exemption or skill performance evaluation certificate, if required), and has the vision evaluation and medical examination required by paragraphs (b) and (c), respectively.

Paragraph (b) would require the individual to have a vision evaluation completed by a licensed ophthalmologist or optometrist before each physical qualification examination. The ophthalmologist or optometrist would complete the proposed Vision Evaluation Report, Form MCSA–5871, during the individual's evaluation, including signing and dating the report and providing business contact information.

Paragraph (c) would set forth the requirements for the ME's examination, including that the examination must begin no later than 45 days after the ophthalmologist or optometrist signs and dates the Vision Evaluation Report, Form MCSA–5871. The ME would have to receive a completed report for each examination of an individual needing evaluation under § 391.44. The report would be treated and retained as part of the Medical Examination Report Form, MCSA–5875. The ME would make a physical qualification determination by considering the information in the Vision Evaluation Report, Form MCSA–5871, and using independent medical judgment in applying four standards. The standards would provide that the individual must (1) have in the better eye distant visual acuity of at least 20/40 (Snellen), with or without corrective lenses, and field of vision of at least 70 degrees in the horizontal meridian; (2) be able to recognize the colors of traffic signals and devices showing standard red, green, and amber; (3) have a stable vision deficiency; and (4) have had sufficient time to adapt to and compensate for changes in vision.

Paragraph (d) would provide an individual physically qualified under § 391.44(d) for the first time could not drive a CMV until the individual has successfully completed a road test subsequent to physical qualification and has been issued a certificate of driver's road test in accordance with § 391.31. A motor carrier could not accept in place of a road test required by § 391.44(d) the alternatives provided in § 391.33. Individuals would be excepted from the road test requirement if they had a valid license and operated in intrastate or excepted interstate commerce with the vision deficiency for the 3-year period immediately preceding the date of physical qualification under § 391.44 for the first time, or held a valid Federal vision exemption or were medically certified under § 391.64(b) on the effective date of any final rule.

Section 391.45 Persons Who Must Be Medically Examined and Certified

Section 391.45 would be amended by renumbering existing paragraphs (f) and (g) as paragraphs (g) and (h), respectively. A new paragraph (f) would be added to require any driver certified under proposed § 391.44 to be recertified at least every 12 months. Conforming changes would be made in paragraph (b) to reflect the addition of a new paragraph to this section.

Section 391.51 General Requirements for Driver Qualification Files

Conforming changes would be made to § 391.51. Paragraph (b)(3) would be amended to include in the driver qualification file the original of the written statement from the motor carrier required by § 391.44(d)(3)(ii)(A), as well as the original, or a copy, of the certification from the driver required by § 391.44(d)(3)(i).

Section 391.64 Grandfathering for Certain Drivers Who Participated in the Vision Waiver Study Program

FMCSA would revise the title of § 391.64 to reflect that the regulation is now applicable only to drivers who participated in the vision waiver study program. Language would be inserted at the beginning of existing paragraph (b) to provide that any final rule resulting from this NPRM would not apply to individuals certified pursuant to § 391.64(b) until 1 year after the effective date of the rule. During that year, individuals certified under the grandfather provisions could choose to be certified under § 391.64(b) or the final rule. A new paragraph (b)(4) would be added to remove and void all of paragraph (b) 1 year after the effective date of the final rule; thus, eliminating certification under § 391.64(b). Paragraph (b)(4) would provide that any MEC, Form MCSA–5876, issued under the provisions of § 391.64(b) would become void 1 year after the effective date of the final rule. In addition, instructions would be provided to remove and reserve § 391.64 1 year after the effective date of the final rule. Cross references to § 391.64 in existing regulations would be eliminated in future rulemakings.

B. Guidance Statements and Interpretations

This rulemaking proposes to amend a regulation that has associated guidance statements or interpretations. Such guidance statements do not have the force and effect of law and are not meant to bind the public in any way. They are intended only to provide clarity to the public regarding existing requirements under the law or FMCSA policies. Guidance statements will not be relied on by FMCSA as a separate basis for affirmative enforcement action or other administrative penalty. Conformity with guidance statements is voluntary, and nonconformity will not affect rights and obligations under existing statutes or regulations. Rather, guidance is strictly advisory and intended to provide information that helps to support the application of the standards in the regulations or to serve as a reference. A guidance statement does not alter the meaning of a regulation.

Appendix A to Part 391—Medical Advisory Criteria

Appendix A to Part 391 is published at the end of part 391 in the CFR. The appendix contains guidelines in the form of Medical Advisory Criteria to help MEs assess a driver's physical qualification to operate a CMV under the standards set forth in § 391.41(b). FMCSA proposes to remove section II. J., *Vision:* § 391.41(b)(10), of Appendix A to Part 391 in its entirety.

Interpretations for § 391.41

Interpretations for specific regulations are available through the Guidance Portal on FMCSA's website. FMCSA proposes to revise the guidance to Question 3 of the interpretations for § 391.41.[69] FMCSA would conform the language to the number of medical conditions that would not be subject to an ME's judgment (*i.e.,* two), and remove ''vision'' from the list of conditions for which an ME has no discretion. The interpretative guidance for Question 3 would thus read as follows:

Question 3: What are the physical qualification requirements for operating a CMV in interstate commerce?

Guidance: The physical qualification regulations for drivers in interstate commerce are found at § 391.41. Instructions to medical examiners performing physical examinations of these drivers are found at § 391.43.

The qualification standards cover 13 areas, which directly relate to the driving function. All but two of the standards require a judgment by the medical examiner. A person's qualification to drive is determined by a medical examiner who is knowledgeable about the driver's

[69] See *https://www.fmcsa.dot.gov/medical/driver-medical-requirements/what-are-physical-qualification-requirements-operating-cmv* (last accessed August 20, 2020).

functions and whether a particular condition would interfere with the driver's ability to operate a CMV safely. In the case of hearing and epilepsy, the current standards are absolute, providing no discretion to the medical examiner. However, drivers who do not meet the current requirements may apply for an exemption as provided by 49 CFR part 381.

X. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations. Pursuant to the terms of the 1998 medical reciprocity agreement with Canada, the United States would notify Canada if an alternative vision standard is adopted and propose the countries review their applicable vision standards to determine whether they remain equivalent.

XI. Regulatory Analyses

A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulations

FMCSA performed an analysis of the impacts of the proposed rule and determined it is not a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, October 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), Improving Regulation and Regulatory Review. Accordingly, OMB has not reviewed it under that Order. It is also not significant within the meaning of DOT regulations (49 CFR 5.13(a)). The Agency has determined that the proposed rule would result in cost savings.

A preliminary Regulatory Impact Assessment follows:

Baseline for the Analysis

The current physical qualification standard to drive a CMV requires distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses; distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses; field of vision of at least 70 degrees in the horizontal meridian of each eye; and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)). This standard has been in effect since 1971.

Drivers who do not meet either the distant visual acuity or field of vision standard, or both, in one eye may apply to FMCSA for an exemption from the standard to operate CMVs in interstate commerce (49 CFR part 381, subpart C). To do so, the driver must submit a letter of application and supporting documents to enable FMCSA to evaluate the safety impact of the exemption.[70] Among the documentation is a signed statement by an ophthalmologist or optometrist showing evaluation of the driver within the last 3 months and which:

- Identifies and defines the nature of the vision deficiency, including how long the individual has had the deficiency;
- States the date of examination;
- Certifies that the vision deficiency is stable;
- Identifies the visual acuity of each eye, corrected and uncorrected;
- Identifies the field of vision of each eye, including central and peripheral fields, utilizing a testing modality that tests to at least 120 degrees in the horizontal;
- Identifies whether the individual can recognize the colors of traffic control signals and devices showing red, green, and amber; and
- Certifies that in his or her medical opinion, the individual has sufficient vision to perform the driving tasks required to operate a commercial vehicle.

FMCSA must publish notice of the request for an exemption and provide the public opportunity to comment. The notice granting the exemption must identify the individual who will receive the exemption, the provisions from which the individual will be exempt, the effective period, and all terms and conditions of the exemption. The Agency's terms and conditions must ensure that the exemption will likely achieve a level of safety that is equivalent to or greater than the level that would be achieved by complying with the regulations.

Currently, FMCSA grants exemptions to applicants who meet specific criteria, including stable vision and experience safely operating a CMV with the vision deficiency.[71] If granted, the driver must meet certain conditions to maintain the exemption. The driver must receive an annual vision evaluation by an ophthalmologist or optometrist and an annual physical qualification examination by an ME. In addition, the Agency must monitor the implementation of each exemption and immediately revoke an exemption if the driver fails to comply with the terms and conditions; the exemption has resulted in a lower level of safety than was maintained before the exemption; or continuation of the exemption would not be consistent with the goals and objectives of the FMCSRs (49 CFR 381.330).

FMCSA monitors vision-exempted drivers on a quarterly basis. If any potentially disqualifying information is identified, FMCSA will request a copy of the violation or crash report from the driver. Should the violation be disqualifying, FMCSA will revoke the exemption immediately.

Currently, 2,566 drivers hold a vision exemption.[72] Compared to all interstate CMV drivers operating in the United States in 2017 (3.7 million, including 3.2 million who hold CDLs),[73] these drivers represent less than 0.1 percent of the population.[74]

There are approximately 1,900 active grandfathered drivers.[75] FMCSA checks the driving records of grandfathered drivers to determine if they continue to operate CMVs safely.

Since the inception of the vision exemption program, the predominant reason for denial of an exemption is less than 3 years of experience operating with the vision deficiency.

[70] A copy of the application template is available in the docket and at *https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/regulations/medical/driver-medical-requirements/10451/vision-exemption-package-0918.pdf* (last accessed July 16, 2019).

[71] Applicants should have 3 years of intrastate driving experience in a CMV; no suspensions or revocations of the applicant's license for operating violations in any motor vehicle; no involvement in a crash in which the applicant contributed or was cited for a moving traffic violation; no convictions for a disqualifying offense, as described in 49 CFR 383.51(b) (*e.g.,* driving while under the influence of alcohol or a controlled substance, leaving the scene of an accident, or the commission of a felony involving the use of a vehicle); more than one serious traffic violation, as described in § 383.51(c) (*e.g.,* excessive speeding, reckless driving, improper or erratic lane changes, following the vehicle ahead too closely, or a violation arising in connection with a fatality) while driving a CMV; and no more than two convictions for any other moving traffic violations while driving a CMV.

[72] FMCSA data as of July 2, 2019.

[73] FMCSA 2018 Pocket Guide to Large Truck and Bus Statistics, available at *https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/safety/data-and-statistics/413361/fmcsa-pocket-guide-2018-final-508-compliant-1.pdf* (last accessed July 16, 2019).

[74] Compared to all (interstate and intrastate) CMV drivers, 6.1 million, or CDL drivers, 4.2 million, the percentage is even lower.

[75] The provisions of 49 CFR 391.41(b)(10) do not apply to drivers who were in good standing on March 31, 1996, in a vision waiver study program; provided, they meet certain conditions (49 CFR 391.64(b)). This figure may not represent active drivers.

Impact of the Proposed Rule: Physical Qualification and Road Test

Physical Qualification

Should this proposal become a final rule, an individual who cannot meet either the distant visual acuity or field of vision standard, or both, in one eye could be physically qualified without applying for or receiving an exemption. The individual would still have to receive a vision evaluation by an ophthalmologist or optometrist. The ophthalmologist or optometrist would complete the Vision Evaluation Report, Form MCSA–5871, which in part:

- States the date of the vision evaluation;
- Identifies the distant visual acuity in both eyes, uncorrected and corrected;
- Identifies the field of vision, including central and peripheral fields, utilizing a testing modality that tests to at least 120 degrees in the horizontal;
- Identifies whether the individual can recognize the standard red, green, and amber traffic control signal colors;
- Identifies whether the individual has monocular vision as it is defined by FMCSA and if so, the cause and when it began;
- Identifies current treatment;
- Provides a medical opinion regarding whether the vision deficiency is stable;
- Provides a medical opinion regarding whether sufficient time has passed to allow the individual to adapt to and compensate for monocular vision;
- Identifies whether the individual has any progressive eye condition or disease and if so, the date of diagnosis, severity (mild, moderate, or severe), current treatment, and whether the condition is stable; and
- Provides a medical opinion regarding whether a vision evaluation is required more often than annually and if so, how often.

The individual examined, ophthalmologist, or optometrist would provide the signed report to an ME who would determine whether the individual is physically qualified to operate a CMV. Upon receipt of a completed and signed MEC, Form MCSA–5876, the individual would not incur any further delay in qualification.

Under the vision exemption program, the Agency determines whether to provide the exemption that enables the driver to obtain physical qualification. Under the proposed rule, the ME would make the physical qualification determination. The Agency lacks data to determine how the proposed change might affect qualification determinations. However, the outcomes of the ME qualification determinations may differ from those that would be made under the exemption program.

For those who obtain an MEC, Form MCSA–5876, the proposed action may represent a streamlined process compared to the requirements of the vision exemption program in that the driver would not need to compile and submit the letter of application and supporting documentation to FMCSA, or respond to any subsequent requests for information. However, it is possible that the ME could issue a certificate that is valid for a shorter time to monitor the condition. In such circumstances, under the vision exemption program, the applicant would likely not receive an exemption. For those who do not obtain an MEC, Form MCSA–5876, the result may or may not have been the same under the vision exemption program.

If the proposed rule becomes a final rule, it would result in the discontinuation of the Federal vision exemption program. Instead, the physical qualification determination of these individuals would be made by the ME, who is trained and qualified to make such determinations, considering the information received in the vision report from the ophthalmologist or optometrist.

Road Test

Instead of requiring 3 years of intrastate driving experience with the vision deficiency as in the current exemption program, FMCSA proposes that individuals physically qualified under the proposed alternative vision standard for the first time must complete a road test before operating in interstate commerce. As described in Section VII. Rationale for Proposed Qualification Standard, individuals would be excepted from the road test requirement if they have 3 years of intrastate or excepted interstate CMV driving experience with the vision deficiency, hold a valid Federal vision exemption, or are medically certified under § 391.64(b). These individuals have already demonstrated they can operate a CMV safely with the vision deficiency. The road test would be conducted by motor carriers in accordance with the road test already required by § 391.31.

FMCSA finds that a road test would be an appropriate indicator of an individual's ability to operate a CMV safely with the vision deficiency. Thus, the Agency expects there will be no adverse impact on safety from eliminating the intrastate driving experience criterion. When FHWA adopted the road test in § 391.31, it stated that the interests of CMV safety would be promoted by ensuring drivers have demonstrated their skill by completing the road test (35 FR 6458, 6450 (April 22, 1970)).

The intrastate driving experience criterion has the limitation that some States do not have waiver programs through which drivers can obtain the driving experience necessary to comply with the criteria of the Federal vision exemption program. The removal of the 3-year experience criterion under the proposed rule could more readily allow these individuals to operate in interstate commerce. However, the current number of exemption holders, grandfathered drivers, and applicants denied exemptions represents less than 1 percent of all interstate CMV drivers.

The Agency anticipates the proposed action would be safety neutral. FMCSA notes that, although it would no longer directly monitor the safety performance of drivers, motor carriers would continue to monitor individuals' safety performance when hiring drivers and during the annual inquiry and review of the driving record required by §§ 391.23 and 391.25, respectively.

Costs

FMCSA estimates that the proposed rule would result in incremental cost savings of approximately $1.6 million annually from the elimination of the Federal vision exemption program and contract expenditures (Table 4). As described in detail below, FMCSA also accounts for the annual cost of a road test at approximately $47,000.

TABLE 4—COST SAVINGS: FEDERAL VISION EXEMPTION PROGRAM CONTRACT AND ROAD TEST

Fiscal year	Contract cost	Road test	Total
2020–2021	($1,531,633)	$47,137	($1,484,496)
2021–2022	(1,577,268)	47,137	(1,530,131)
2022–2023	(1,624,586)	47,137	(1,577,449)

TABLE 4—COST SAVINGS: FEDERAL VISION EXEMPTION PROGRAM CONTRACT AND ROAD TEST—Continued

Fiscal year	Contract cost	Road test	Total
2023–2024	(1,673,324)	47,137	(1,626,187)

Note: For years 2022–2023 and 2023–2024, FMCSA estimated an average contract cost increase of 3 percent and extrapolated based on the percent increase of previous years.

The 2,566 current vision exemption holders would no longer have to apply for an exemption, and potential applicants who do not have 3 years of intrastate driving experience may meet the alternative vision standard and be able to operate a CMV in interstate commerce. As described in Section VIII. Discussion of Proposed Rule, this may lead to a reduction in burden, as drivers would no longer be required to create and assemble the substantial amount of information and documentation necessary to apply for or renew an exemption, or to respond to subsequent requests for information. However, the affected population is small (less than 1 percent of CMV drivers), and the relative advantages for these individuals are unlikely to affect market conditions in the truck and bus industries.

FMCSA estimates that the road test would result in a total annual cost impact of $47,000 (Table 5). There would be approximately 1,085 drivers [76] requiring a road test under § 391.44 each year. This number is the average of new applications for the vision exemption program FMCSA received over years 2017 through 2019.[77] As described above, motor carriers would be responsible for administering the test to the drivers, which is estimated to take 0.55 hours (33 minutes). For the hourly wage rates, FMCSA used $28 for the drivers (Table 6) and $51 for the motor carrier's compliance officer.[78]

TABLE 5—ROAD TEST COST CALCULATIONS

[2019$]

Drivers/Motor Carriers	1,085
Test Hours	0.55
Driver Wage	$27.88
Subtotal	$16,634
Compliance Officer Wage	$51.13
Subtotal	$30,502
Sum	$47,137

TABLE 6—WAGE RATES FOR CMV TRUCK DRIVERS

Occupational title	BLS SOC code	North American Industry Classification System (NAICS) occupational designation	Total employees	Median hourly base wage	Fringe benefits rate (%)	Median hourly base wage + fringe benefits
Heavy and Tractor-Trailer Truck Drivers	53–3032	All Industry	1,856,130	$21.76	45	$31.55
Light Truck or Delivery Service Driver	53–3033	All Industry	923,050	16.70	45	24.22
Weighted Driver Wage						27.88

Source: BLS. May 2019 OES Database, National, All Industries, available at *http://www.bls.gov/oes/* (last accessed September 10, 2020).

Although the Agency acknowledges there may be motor carriers employing multiple drivers, FMCSA lacks data to estimate the exact number of motor carriers. Therefore, to ensure the inclusion of all affected motor carriers, FMCSA opted for a conservative approach of assuming a 1:1 ratio of drivers per motor carrier, making $47,000 a likely overestimate. Additionally, there may be some drivers who are motor carriers, in which case the test must be given by a person other than themselves (49 CFR 391.31(b)). FMCSA treats the impacts on these drivers as equivalent to those of all affected drivers, and the Agency invites public comment from owner-operators to further inform this assumption. Using this approach, the Agency estimates a per entity impact of $43.46.[79]

Benefits

As described in Section VIII. Discussion of Proposed Rule, eliminating the prohibition on certifying individuals who cannot meet either the current visual acuity or field of vision standard, or both, in one eye (without an exemption) would enable more qualified individuals to operate as an interstate CMV driver without compromising safety. The proposed alternative vision standard would allow previously qualified interstate CMV drivers who are no longer able to meet either the distant visual acuity or field of vision standard, or both, in one eye to return to operating interstate sooner. Additional employment opportunities may also result from the removal of the 3-years of intrastate driving experience requirement, which is a criterion of the current exemption program. Drivers who do not have 3 years of intrastate driving experience may meet the alternative vision standard and be able to operate a CMV interstate. A one-time road test would also be less burdensome on drivers than obtaining 3 years of intrastate driving experience. It also addresses the consideration that many drivers live in States that do not issue vision waivers. The road test would provide more drivers the opportunity to operate a CMV.

Regarding risk, the Agency anticipates no changes in risk resulting from the very small number of additional individuals affected by this proposed rule relative to those of the baseline. Therefore, FMCSA considers the proposed rule to be safety neutral.

[76] FMCSA recognizes that using 1,085 as the driver population is a high estimation and overstates the burden associated with the proposed requirement in § 391.44 for a road test. Some of the individuals would already be required to obtain a road test under § 391.31, in the absence of the requirement in § 391.44(d). However, FMCSA lacks internal data to estimate how many individuals would already be required to obtain a § 391.31 road test. Therefore, FMCSA opted for a conservative approach of assuming all 1,085 individuals would require a road test.

[77] In 2017 there were 1,151 applicants, in 2018 there were 1,073, and in 2019 there were 1,030 ((1,151 + 1,073 + 1,030)/3 = 1,085).

[78] Bureau of Labor Statistics (2020). ''Occupational Employment and Wages, May 2019, 13–1041 Compliance Officers,'' available at *https://www.bls.gov/oes/current/oes131041.htm* (last accessed August 16, 2020).

[79] ($51.13 × 0.55) + ($27.88 × 0.55) = $43.46.

B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)

The Agency expects this proposed rule to have total costs less than zero, and, if finalized, to qualify as an E.O. 13771 deregulatory action. The present value of the cost savings of this proposed rule, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, and discounted to 2021 (the year the proposed rule would go into effect and cost savings would first be realized), would be $20.9 million. On an annualized basis, these cost savings would be $1.5 million.

For E.O. 13771 accounting, the April 5, 2017, OMB guidance requires that agencies also calculate the costs and cost savings discounted to year 2016. In accordance with this requirement, the present value of the cost savings of this rule, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, and discounted to 2016, would be $14.9 million. On an annualized basis, the cost savings would be $1 million.

C. Congressional Review Act

This proposed rule is not a major rule as defined under the Congressional Review Act (5 U.S.C. 801–808).

D. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,[80] requires Federal agencies to consider the impact of their regulatory actions on small entities, analyze effective alternatives that minimize small entity impacts, and make their analyses available for public comment. The term ''small entities'' means small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these entities. Section 605 of the RFA allows an Agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This rule would affect drivers and motor carriers. Drivers are not considered small entities because they do not meet the definition of a small entity in section 601 of the RFA. Specifically, drivers are considered neither a small business under section 601(3) of the RFA, nor are they considered a small organization under section 601(4) of the RFA.

The Small Business Administration (SBA) defines the size standards used to classify entities as small. SBA establishes separate standards for each industry, as defined by the North American Industry Classification System (NAICS).[81] This rule could affect many different industry sectors in addition to the Transportation and Warehousing sector (NAICS sectors 48 and 49); for example, the Construction sector (NAICS sector 23), the Manufacturing sector (NAICS sectors 31, 32, and 33), and the Retail Trade sector (NAICS sectors 44 and 45). Industry groups within these sectors have size standards for qualifying as small based on the number of employees (*e.g.,* 500 employees), or on the amount of annual revenue (*e.g.,* $27.5 million in revenue). To determine the NAICS industries potentially affected by this rule, FMCSA cross-referenced occupational employment statistics from the Bureau of Labor Statistics with NAICS industry codes.

The RFA does not define a threshold for determining whether a specific regulation results in a significant impact. However, the SBA, in guidance to government agencies, provides some objective measures of significance that the agencies can consider using.[82] One measure that could be used to illustrate a significant impact is labor costs, specifically, if the cost of the regulation exceeds 1 percent of the average annual revenues of small entities in the sector. Given the proposed rule's average annual per-entity impact of $43.46, a small entity would need to have average annual revenues of less than $4,346 to experience an impact greater than 1 percent of average annual revenue, which is an average annual revenue that is smaller than would be required for a firm to support one employee. Therefore, I certify this rule would not have a significant impact on the entities affected.

E. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the FMCSA point of contact, Ms. Christine Hydock, listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. To comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $168 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2019 levels) or more in any 1 year. Though this proposed rule would not result in such an expenditure, the Agency discusses the effects of this rule elsewhere in this preamble.

G. Paperwork Reduction Act (Collection of Information)

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) requires that an agency consider the impact of paperwork and other information collection burdens imposed on the public. An agency is prohibited from collecting or sponsoring an information collection, as well as imposing an information collection requirement,

[80] Public Law 104–121, 110 Stat. 857, March 29, 1996.

[81] ''North American Industry Classification System'' (2017), available at *https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf* (last accessed January 15, 2020).

[82] SBA, Office of Advocacy, ''A Guide for Government Agencies. How to Comply with the Regulatory Flexibility Act'' (2017), available at *https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf* (last accessed January 16, 2020).

unless it displays a valid OMB control number (5 CFR 1320.8(b)(3)(vi)).

The proposed rule would impact an existing information collection request (ICR) titled ''Medical Qualification Requirements,'' OMB control number 2126–0006, and a new ICR titled ''391.31 Road Test Requirement,'' OMB control number 2126–TBD.[83] The ICRs will be discussed separately below, followed by a discussion of the net information collection and reporting burdens of the proposed rule.

1. Related Information Collection Requests

a. Medical Qualification Requirements ICR

This proposed rule would amend the existing approved Medical Qualification Requirements ICR, OMB control number 2126–0006, which expires on November 30, 2021. Specifically, FMCSA seeks approval for the revision of the ICR due to the Agency's development of this proposed rule, which includes the use of the proposed Vision Evaluation Report, Form MCSA–5871. In accordance with 44 U.S.C. 3507(d), FMCSA will submit the proposed information collection amendments to OIRA at OMB for its approval.

Title: Medical Qualification Requirements.

OMB Control Number: 2126–0006.

Type of Review: Revision of a currently-approved information collection.

Summary: FMCSA proposes to establish an alternative vision standard for individuals who cannot satisfy either the current distant visual acuity or field of vision standard, or both, in one eye. FMCSA proposes a two-step process for physical qualification of these individuals that, if adopted, would replace the current vision exemption program as a basis for determining the physical qualification of these individuals to operate a CMV. First, an individual seeking physical qualification would obtain a vision evaluation from an ophthalmologist or optometrist who would record the findings and provide specific medical opinions on the proposed Vision Evaluation Report, Form MCSA–5871. Next, at a physical qualification examination, an ME would consider the information provided on the Vision Evaluation Report, Form MCSA–5871, and determine whether the individual meets the proposed alternative vision standard and FMCSA's other physical qualification standards. If so, the ME could issue an MEC, Form MCSA–5876, for up to a maximum of 12 months. The proposed Vision Evaluation Report, Form MCSA–5871, supports safety by ensuring that CMV drivers are physically qualified to operate trucks and buses on our nation's highways.

Because of the proposed action, a new information collection, IC–8 Qualifications of Drivers; Vision Standard, would be added to the existing ICR. FMCSA estimates that ophthalmologists and optometrists would complete 3,614 Vision Evaluation Reports, Form MCSA–5871, annually and that it would take them 8 minutes to complete a report. Thus, the estimated annual burden hours associated with the proposed information collection is 482 hours (3,614 forms × 8 minutes per form ÷ 60 minutes = 482 hours, rounded to the nearest whole hour). At an average hourly labor cost of $82.40 for optometrists, the estimated salary cost associated with this information collection is $39,717 ($82.40 hourly labor costs × 482 hours = $39,717, rounded to the nearest dollar). Additional information is provided in the draft supporting statement for the Medical Qualification Requirements ICR, which is available in the docket.

Estimated number of respondents: 3,614 ophthalmologists and optometrists.

Estimated responses: 3,614.

Frequency: At least annually.

Estimated burden hours: 482.

Estimated cost: $39,717.

The proposed alternative vision standard would eliminate the need for the Federal vision exemption program and the related information collection (IC–3a). The current vision exemption program requires individuals to submit personal, health, and driving information during the application process. In addition, motor carriers must copy and file the vision exemption in the driver qualification file. FMCSA attributes 2,236 annual burden hours to obtain and maintain a vision exemption, and this proposed rule would eliminate this entire burden. However, it would add 482 burden hours for the information collection associated with completion of the Vision Evaluation Report, Form MCSA–5871. Thus, the net effect of the proposed rule would be a reduction in burden hours of 1,754 (482 hours related to the vision report − 2,236 hours related to the current vision exemption program = −1,754). The net effect of the proposed rule with respect to cost would be a reduction of $29,419 ($39,717 related to the vision report −$69,136 related to the current vision exemption program = −$29,419).

The revised total annual estimated burden associated with the Medical Qualification Requirements ICR that reflects the addition of this proposed information collection and the completion of the Vision Evaluation Report, Form MCSA–5871; the elimination of the Federal vision exemption program; updated driver population, program statistics, National Registry statistics, and wage data; and regulatory changes is as follows.

Total estimated number of respondents: 5,586,232 CMV drivers, motor carriers, MEs, treating clinicians, ophthalmologists, and optometrists.

Total estimated responses: 27,202,863.

Total estimated burden hours: 2,251,571.

Total estimated cost: $171,044,474.

b. Section 391.31 Road Test Requirement ICR

FMCSA proposes a new § 391.31 Road Test Requirement ICR. The ICR estimates the paperwork burden motor carriers incur to comply with the reporting and recordkeeping tasks required for the road test associated with 49 CFR 391.31. FMCSA has not previously accounted for the burden associated with § 391.31 road tests; accordingly, the ICR accounts for the burden. The ICR also would include the incremental burden for motor carriers associated with § 391.31 road tests due to FMCSA's development of this proposed rule. In accordance with 44 U.S.C. 3507(d), FMCSA will submit the new ICR to OIRA at OMB for its approval.

Title: 391.31 Road Test Requirement.

OMB Control Number: 2126–TBD.

Type of Review: Approval of a new information collection.

Summary: The road test provision in § 391.31 provides an individual must not drive a CMV until the individual has successfully completed a road test and has been issued a certificate of driver's road test. It was adopted by FHWA in 1970 (35 FR 6458, 6462, April 22, 1970). At that time, FHWA stated that the interests of CMV safety would be promoted by ensuring drivers have demonstrated their skill by completing a road test (35 FR 6459). The related requirement in § 391.51 that the motor carrier include information relating to the road test in the driver qualification file was also adopted in 1970 (35 FR 6465). The information documents the driver's ability to operate a CMV safely.

Sections 391.31 and 391.51 are based on the authority of the Motor Carrier Act

[83] The OMB control number will be determined and assigned by OMB upon approval of the ICR.

of 1935 [84] (1935 Act) and the Motor Carrier Safety Act of 1984 [85] (1984 Act), both as amended. The 1935 Act, as codified at 49 U.S.C. 31502(b), authorizes the Secretary to prescribe requirements for the qualifications of employees of a motor carrier and the safety of operation and equipment of a motor carrier. The 1984 Act, as codified at 49 U.S.C. 31136, provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. Section 31136(a) requires the Secretary to issue regulations on CMV safety, including regulations to ensure that CMVs are operated safely. The Secretary has discretionary authority under 49 U.S.C. 31133(a)(8) to prescribe recordkeeping and reporting requirements. The Administrator of FMCSA is delegated authority under 49 CFR 1.87 to carry out the functions vested in the Secretary by 49 U.S.C. Chapters 311 and 315 as they relate to CMV operators, programs, and safety.

Motor carriers must ensure each driver has the skill to operate a CMV safely. The information collected and maintained by motor carriers in each driver qualification file related to the road test substantiates the driver can operate a CMV safely and the motor carrier has fulfilled its regulatory requirements. It also aids Federal and State safety investigators in assessing the qualifications of drivers.

Public interest in highway safety dictates that employers hire drivers who can safely operate CMVs amidst the various physical and mental demands of truck driving. Section 391.31 requires a motor carrier to conduct a road test when the motor carrier hires a new driver. The motor carrier is required to rate the performance of the driver during the test on a road test form. If the road test is successfully completed, the motor carrier completes a certificate of driver's road test and provides a copy to the driver. Motor carriers may maintain the required road test form and certificate electronically or via paper copy. The motor carrier must retain the signed road test form and the signed certificate in the driver qualification file. Generally, driver qualification files must be maintained at the motor carrier's principal place of business. Neither the road test form nor the certificate is routinely submitted to FMCSA. A motor carrier would only make the information available when requested by an FMCSA or State safety investigator for an investigation or audit.

There are three reporting and recordkeeping tasks motor carriers perform regarding the road test required by § 391.31 when they hire a new driver. The three tasks are:

1. The motor carrier completes and signs the road test form while the driver performs a pre-trip inspection and the driving portion of the road test (49 CFR 391.31(d)).
2. If the driver successfully passes the road test, the motor carrier completes a certificate of driver's road test in substantially the form prescribed in § 391.31(f) (49 CFR 391.31(e)) and gives the driver a copy (49 CFR 391.31(g)).
3. The motor carrier retains in the driver qualification file the original signed road test form and the original, or a copy, of the signed certificate of driver's road test (49 CFR 391.31(g)(1) and (2)).

To estimate the total burden hours, FMCSA multiplies the number of respondents by the hourly burden per response. FMCSA estimates a burden of 30 minutes for the motor carrier to complete the road test form while conducting the road test. Should the driver successfully pass the road test, FMCSA assumes it will take the motor carrier 2 minutes to complete the certification of driver's road test and an additional 1 minute to store documents in the driver qualification file.

To estimate burden costs, FMCSA assumes a compliance officer will be the person who will complete the road test form and associated certificate, and a file clerk will be the person who will store the documents. The median salary for a compliance officer is $51.13 per hour. The median salary for a file clerk is $25.63 per hour.

The ICR estimates the information-collection burden incurred by motor carriers associated with the § 391.31 road test in two circumstances. The first is when the road test is required by § 391.31 (IC–1); the second is when the road test is required as part of the alternative vision standard in proposed § 391.44 (IC–2).

IC–1 consists of the three reporting and recordkeeping tasks motor carriers perform regarding the road test required by § 391.31 when they hire a new driver. The respondent universe is the number of motor carriers required to complete a road test for drivers hired. To determine the number of drivers who will be hired and require a road test, FMCSA first determines the driver population subject to the road test requirement. Because § 391.33 allows motors carriers to accept a valid CDL instead of the § 391.31 road test, the driver population is non-CDL interstate and intrastate drivers. To find the driver populations in 2022, 2023, and 2024 (the 3 years projected to be reflected in the ICR), FMCSA adjusts the driver population by multiplying it by the growth rate for driver occupations typical in the light vehicle industry (*i.e.,* 5 percent). Next, FMCSA estimates the total number of job openings per year by multiplying the adjusted total driver population by the industry turnover rate (*i.e.,* 79.2 percent). Because drivers may present a certificate of driver's road test for up 3 years from when it is completed under § 391.33, FMCSA estimates one-third of drivers will be required to have a road test each year of the ICR. The resulting number is the respondent universe, *i.e.,* the number of motor carriers required to complete a road test for drivers hired.

For each of the three § 391.31 road test reporting and recordkeeping tasks motor carriers perform when they hire a new driver, FMSCA estimates the motor carrier burden hours by multiplying the number of respondents by the hourly burden for each task. Then FMCSA estimates the motor carrier cost by multiplying the burden hours by the median salary for the person performing the task. The total motor carrier burden hours and cost for the three tasks is reflected below in the total burden and cost amounts for the ICR.

IC–2 consists of the incremental burden associated with the requirement in this proposed rule that individuals physically qualified under the alternative vision standard in § 391.44 for the first time would be required to complete a road test in accordance with § 391.31. FMCSA uses the same three reporting and recordkeeping tasks, time estimates, labor costs, and overall methodology discussed above to calculate the annual burden hours and cost associated with the proposed rule. However, FMCSA estimates the respondent universe of 1,085 motor carriers by averaging the number of new requests for a Federal vision exemption in 2017, 2018, and 2019 ((1,151 + 1,073 + 1,030)/3 = 1,085).

FMCSA recognizes that using 1,085 as the driver population is a high estimation and overstates the burden associated with the proposed requirement in § 391.44 for a road test. Some of the individuals would already be required to obtain a road test under § 391.31, in the absence of the requirement in § 391.44(d). However, FMCSA lacks internal data to estimate how many individuals would already be required to obtain a § 391.31 road test. Therefore, FMCSA opted for a conservative approach of assuming all

[84] Public Law 74–255, 49 Stat. 543, August 9, 1935.

[85] Public Law 98–554, 98 Stat. 2829, 2832, October 30, 1984.

1,085 individuals would require a road test.

In addition, § 391.44(d)(3) would provide an exception to the road test requirement for some individuals. If the motor carrier determines an individual possessed a valid CDL or non-CDL license to operate, and did operate, a CMV in either intrastate commerce or in exempt interstate commerce with the vision deficiency for the 3-year period immediately preceding the date of physical qualification under § 391.44 for the first time, the individual would not be required to complete a § 391.31 road test. FMCSA lacks internal data to estimate how many individuals would be excepted from a road test by this provision, but expects only a small number of individuals would qualify for the exception. In addition, the paperwork burden to except an individual from the road test requirement would be less than the burden for the individual to take the road test. Therefore, FMCSA opted for a conservative approach of assuming all 1,085 individuals would require a road test.

The estimated incremental annual burden associated with the requirement in the proposed rule that individuals physically qualified under § 391.44 for the first time would be required to complete a road test in accordance with § 391.31 (IC–2), is as follows.

Estimated number of respondents: 1,085 motor carriers.

Estimated responses: 3,255.

Estimated burden hours: 609.

Estimated cost: $30,578.

The total estimated annual burden associated with the 391.31 Road Test Requirement ICR for IC–1 and IC–2 is as follows:

Total estimated number of respondents: 560,809 motor carriers.

Total estimated responses: 2,306,709.

Total estimated burden hours: 430,588.

Total estimated cost: $21,623,811.

Additional information for the assumptions, calculations, and methodology summarized above is provided in the draft supporting statement for the 391.31 Road Test Requirement ICR. The supporting statement is available in the docket for this rulemaking.

2. Net Information Collection Reporting Burdens

As shown above, the net effect of the proposed rule on the Medical Qualification Requirements ICR would be a reduction in burden hours of 1,754 and in cost of $29,419. The effect of the proposed rule on the 391.31 Road Test Requirement ICR would be an addition in burden hours of 609 and in cost of $30,578. Thus, the net effect of the proposed rule would be a reduction in burden hours of 1145 (−1,754 hours related to the Medical Qualification Requirements ICR + 609 hours related to the 391.31 Road Test Requirement ICR = −1,145). The net effect of the proposed rule with respect to cost would be an addition of $1,159 (−$29,419 related to the Medical Qualification Requirements ICR + $30,578 related to the 391.31 Road Test Requirement ICR = $1,159).

3. Request for Comments

FMCSA asks for comment on the information collection requirements of this proposed rule, as well as the revised total estimated burden associated with the Medical Qualification Requirements ICR and the total estimated burden associated with the new 391.31 Road Test Requirement ICR. Specifically, the Agency asks for comment on: (1) Whether the proposed information collections are necessary for FMCSA to perform its functions; (2) how the Agency can improve the quality, usefulness, and clarity of the information to be collected; (3) the accuracy of FMCSA's estimate of the burden of this information collection; and (4) how the Agency can minimize the burden of the information collection.

If you have comments on the collection of information, you must submit those comments as outlined under section I.E. at the beginning of this NPRM.

H. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''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.'' FMCSA determined that this proposal would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

I. Privacy

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005,[86] requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. In accordance with this Act, a privacy impact assessment is warranted to address any privacy implications contemplated in the proposed rulemaking.

With respect to the proposed Vision Evaluation Report, Form MCSA–5871, the DOT Chief Privacy Officer has evaluated the risks and effects that this rulemaking might have on collecting, storing, and sharing personally identifiable information and has examined protections and alternative information handling processes in developing the proposal to mitigate potential privacy risks. The privacy risks and effects associated with this proposed rule are not unique and have been addressed previously by the DOT/FMCSA 009—National Registry of Certified Medical Examiners system of records notice published on October 4, 2019 (84 FR 53211), available at *https://www.transportation.gov/privacy.* The DOT Chief Privacy Officer has determined that a new system of records notice for this rulemaking is not required.

In this rulemaking, FMCSA proposes a two-step process for the physical qualification of individuals who cannot satisfy either the current distant visual acuity or field of vision standard, or both, in one eye. First, an individual seeking physical qualification would obtain a vision evaluation from an ophthalmologist or optometrist who would record the requested information on the proposed Vision Evaluation Report, Form MCSA–5871. Next, at a physical qualification examination, an ME would consider the information provided on the Vision Evaluation Report, Form MCSA–5871, and determine whether the individual is physically qualified to operate a CMV safely. The Vision Evaluation Report, Form MCSA–5871, would be used exclusively as part of the physical qualification process and would collect only information that is necessary to assist the ME in making a physical qualification determination.

The information collected on the Vision Evaluation Report, Form MCSA–5871, would provide a means for healthcare professionals to exchange information about an individual who cannot satisfy either the current distant visual acuity or field of vision standard, or both, in one eye. This is the same type of communication that occurs when the ME needs to follow up with an individual's primary care provider regarding the individual's health and exchanges information. Therefore, no new category of medical or privacy

[86] Public Law 108–447, 118 Stat. 2809, 3268, December 8, 2004 (5 U.S.C. 552a note).

information would be generated because of this proposed rule.

The Agency expects that this information would be safeguarded along with all the other medical information that these healthcare providers maintain. In other words, the ophthalmologist or optometrist would maintain certain medical records about the individual based on his or her vision evaluation, and the ME would maintain certain medical records to support the physical qualification determination. The Vision Evaluation Report, Form MCSA–5871, would be attached to the Medical Examination Report Form, MCSA–5875, that must be maintained by the ME for at least 3 years from the date of the examination. The Vision Evaluation Report, Form MCSA–5871, would be provided only to FMCSA upon request if there were an investigation or audit. Therefore, this proposed rule would provide a privacy-positive outcome because it results in less sensitive data being held by the Agency. There is privacy risk not controlled by the Agency because the Vision Evaluation Report, Form MCSA–5871, would be maintained by the ME at his or her office. However, as healthcare providers, MEs are required to maintain and disclose medical information and personally identifiable information in accordance with applicable Federal and State privacy laws.

With respect to the proposed requirement for a road test as part of the alternative vision standard, the Agency has completed a Privacy Threshold Assessment to evaluate the risks and effects the proposed requirement might have on collecting, storing, and sharing personally identifiable information. The Privacy Threshold Assessment has been submitted to FMCSA's Privacy Officer for review and preliminary adjudication and will be submitted to DOT's Privacy Officer for review and final adjudication.

J. E.O. 13175 (Indian Tribal Governments)

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

K. National Environmental Policy Act of 1969

FMCSA analyzed this proposed rule for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph 6.z. The content in this rule is covered by the Categorical Exclusions in paragraph 6.z.(1) regarding the minimum qualifications for individuals who drive CMVs, and in paragraph 6.z.(2) regarding the minimum duties of motor carriers with respect to the qualifications of their drivers.

List of Subjects in 49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble, FMCSA proposes to amend 49 CFR part 391 as follows:

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

■ 1. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31133, 31136, 31149, 31502; sec. 4007(b), Pub. L. 102–240, 105 Stat. 1914, 2152; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215, Pub. L. 106–159, 113 Stat. 1748, 1767; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; secs. 5403 and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.87.

■ 2. Amend § 391.31 by:

■ a. Revising paragraph (f) by deleting the entry lines for ''Social Security No'', ''Operator's or Chauffeur's License No'', and ''State'' in the Certification of Road Test form; and

■ b. Adding paragraph (h).

The addition reads as follows:

§ 391.31 Road test.

* * * * *

(h) The information collection requirements of this section have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and have been assigned OMB control number 2126–TBD.

■ 3. Revise § 391.41 paragraph (b)(10) to read as follows:

§ 391.41 Physical qualifications for drivers.

* * * * *

(b) * * *

(10)(i) Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber; or

(ii) Meets the requirements in § 391.44;

* * * * *

■ 4. Revise § 391.43 paragraph (b)(1) to read as follows:

§ 391.43 Medical examination; certificate of physical examination.

* * * * *

(b) * * *

(1) A licensed ophthalmologist or optometrist may perform the part of the medical examination that involves visual acuity, field of vision, and the ability to recognize colors as specified in § 391.41(b)(10).

* * * * *

■ 5. Add § 391.44 to read as follows:

§ 391.44 Physical qualification standards for an individual who cannot satisfy either the distant visual acuity or field of vision standard, or both, in one eye.

(a) *General.* An individual who cannot satisfy either the distant visual acuity or field of vision standard, or both, in § 391.41(b)(10)(i) in one eye is physically qualified to operate a commercial motor vehicle in interstate commerce provided:

(1) The individual meets the other physical qualification standards in § 391.41 or has an exemption or skill performance evaluation certificate, if required; and

(2) The individual has the vision evaluation required by paragraph (b) of this section and the medical examination required by paragraph (c) of this section.

(b) *Evaluation by an ophthalmologist or optometrist.* Prior to the examination required by § 391.45 or the expiration of a medical examiner's certificate, the individual must be evaluated by a licensed ophthalmologist or optometrist.

(1) During the evaluation of the individual, the ophthalmologist or optometrist must complete the Vision Evaluation Report, Form MCSA–5871.

(2) Upon completion of the Vision Evaluation Report, Form MCSA–5871,

the ophthalmologist or optometrist must sign and date the Report and provide his or her full name, office address, and telephone number on the Report.

(c) *Examination by a medical examiner.* At least annually, but no later than 45 days after an ophthalmologist or optometrist signs and dates the Vision Evaluation Report, Form MCSA–5871, an individual who cannot satisfy either the distant visual acuity or field of vision standard, or both, in § 391.41(b)(10)(i) in one eye must be medically examined and certified by a medical examiner as physically qualified to operate a commercial motor vehicle in accordance with § 391.43.

(1) The medical examiner must receive a completed Vision Evaluation Report, Form MCSA–5871, signed and dated by an ophthalmologist or optometrist for each required examination. This Report shall be treated and retained as part of the Medical Examination Report Form, MCSA–5875.

(2) The medical examiner must determine whether the individual meets the physical qualification standards in § 391.41 to operate a commercial motor vehicle. In making that determination, the medical examiner must consider the information in the Vision Evaluation Report, Form MCSA–5871, signed by an ophthalmologist or optometrist and, utilizing independent medical judgment, apply the following standards in determining whether the individual may be certified as physically qualified to operate a commercial motor vehicle.

(i) The individual is not physically qualified to operate a commercial motor vehicle if in the better eye the distant visual acuity is not at least 20/40 (Snellen), with or without corrective lenses, and the field of vision is not at least 70° in the horizontal meridian.

(ii) The individual is not physically qualified to operate a commercial motor vehicle if the individual is not able to recognize the colors of traffic signals and devices showing standard red, green, and amber.

(iii) The individual is not physically qualified to operate a commercial motor vehicle if the individual's vision deficiency is not stable.

(iv) The individual is not physically qualified to operate a commercial motor vehicle if there has not been sufficient time to allow the individual to adapt to and compensate for the change in vision.

(d) *Road test.* (1) Except as provided in paragraphs (d)(3), (4), and (5) of this section, an individual physically qualified under this section for the first time shall not drive a commercial motor vehicle until the individual has successfully completed a road test subsequent to physical qualification and has been issued a certificate of driver's road test in accordance with § 391.31 of this part. An individual physically qualified under this section for the first time must inform the motor carrier responsible for completing the road test under § 391.31(b) that the individual is required by § 391.44(d) to have a road test. The motor carrier must conduct the road test in accordance with § 391.31(b) thorough (g).

(2) For road tests required by paragraph (d)(1) of this section, the provisions of § 391.33 of this part for the equivalent of a road test do not apply. If an individual required to have a road test by paragraph (d)(1) of this section successfully completes the road test and is issued a certificate of driver's road test in accordance with § 391.31, then any otherwise applicable provisions of § 391.33 will apply thereafter to such individual.

(3) An individual physically qualified under this section for the first time is not required to complete a road test in accordance with § 391.31 if the motor carrier responsible for completing the road test under § 391.31(b) determines the individual possessed a valid commercial driver's license or non-commercial driver's license to operate, and did operate, a commercial motor vehicle in either intrastate commerce or in interstate commerce excepted by § 390.3T(f) of this subchapter or § 391.2 of this part from the requirements of subpart E of this part with the vision deficiency for the 3-year period immediately preceding the date of physical qualification under this section for the first time.

(i) The individual must certify in writing to the motor carrier the date the vision deficiency began.

(ii) If the motor carrier determines the individual possessed a valid commercial driver's license or non-commercial driver's license to operate, and did operate, a commercial motor vehicle in either intrastate commerce or in interstate commerce excepted by either § 390.3T(f) or § 391.2 from the requirements of subpart E of this part with the vision deficiency for the 3-year period immediately preceding the date of physical qualification in accordance with § 391.44 for the first time, the motor carrier must—

(A) Prepare a written statement to the effect that the motor carrier determined the individual possessed a valid license and operated a commercial motor vehicle in intrastate or excepted interstate commerce (as applicable) with the vision deficiency for the 3-year period immediately preceding the date of physical qualification in accordance with § 391.44 for the first time and, therefore, is not required by § 391.44(d) to complete a road test;

(B) Give the individual a copy of the written statement; and

(C) Retain in the individual's driver qualification file the original of the written statement and the original, or a copy, of the individual's certification regarding the date the vision deficiency began.

(4) An individual physically qualified under this section for the first time is not required to complete a road test in accordance with § 391.31 if the individual holds on [DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] a valid exemption from the vision standard in § 391.41(b)(10) issued by FMCSA under 49 CFR part 381. Such an individual is not required to inform the motor carrier that the individual is excepted from the requirement in § 391.44(d)(1) to have a road test.

(5) An individual physically qualified under this section for the first time is not required to complete a road test in accordance with § 391.31 if the individual is medically certified on [DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] under the provisions of § 391.64(b) for drivers who participated in a previous vision waiver study program. Such an individual is not required to inform the motor carrier that the individual is excepted from the requirement in § 391.44(d)(1) to have a road test.

■ 6. Amend § 391.45 by:

■ a. Redesignating existing paragraphs (f) and (g) as paragraphs (g) and (h), respectively;

■ b. Adding a new paragraph (f); and

■ c. Revising paragraph (b).

The addition and revision read as follows:

§ 391.45 Persons who must be medically examined and certified.

* * * * *

(b) Any driver who has not been medically examined and certified as qualified to operate a commercial motor vehicle during the preceding 24 months, unless the driver is required to be examined and certified in accordance with paragraph (c), (d), (e), (f), (g), or (h) of this section;

* * * * *

(f) Any driver who cannot satisfy either the distant visual acuity or field of vision standard, or both, in § 391.41(b)(10)(i) in one eye and who has obtained a medical examiner's certificate under the standards in § 391.44, if such driver's most recent

medical examination and certification as qualified to drive did not occur during the preceding 12 months;

* * * * *

■ 7. Amend § 391.51 by revising paragraph (b)(3) to read as follows:

§ 391.51 General requirements for driver qualification files.

* * * * *

(b) * * *

(3) The certificate of driver's road test issued to the driver pursuant to § 391.31(e), a copy of the license or certificate which the motor carrier accepted as equivalent to the driver's road test pursuant to § 391.33, or the original of the written statement providing that the motor carrier determined the driver is not required by § 391.44(d) to complete a road test pursuant to § 391.44(d)(3)(ii)(A) and the original, or a copy, of the driver's certification required by § 391.44(d)(3)(i);

* * * * *

■ 8. Amend § 391.64 by revising the section title and paragraph (b) introductory text, and adding paragraph (b)(4) to read as follows.

§ 391.64 Grandfathering for certain drivers who participated in the vision waiver study program.

* * * * *

(b) Until [DATE 60 DAYS AND 1 YEAR AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], the provisions of § 391.41(b)(10) do not apply to a driver who was a participant in good standing on March 31, 1996, in a waiver study program concerning the operation of commercial motor vehicles by drivers with visual impairment in one eye; *provided:*

* * * * *

(4) On [DATE 60 DAYS AND 1 YEAR AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], the provisions of paragraph (b) of this section are removed, and any medical examiner's certificate issued under § 391.43 of this part on the basis that the driver is qualified by operation of the provisions of 49 CFR 391.64(b), related to drivers with visual impairment in one eye, is void.

Appendix A to Part 391—Medical Advisory Criteria [Amended]

■ 9. Remove and reserve paragraph II. J., Vision: § 391.41(b)(10), of Appendix A to Part 391.

Issued under the authority of delegation in 49 CFR 1.87.

James W. Deck,

Deputy Administrator.

[FR Doc. 2020–28848 Filed 1–11–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223

[Docket No. 201125–0320]

RIN 0648–BK00

Endangered and Threatened Species: Designation of Nonessential Experimental Population of Central Valley Spring-Run Chinook Salmon in the Upper Yuba River Upstream of Englebright Dam, CA; Extension of Public Comment Period

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

ACTION: Proposed rule; extension of public comment period.

SUMMARY: We, NMFS, announce the extension of the public comment period on our December 11, 2020, 30-day proposal of a rule to designate and authorize the release of a nonessential experimental population (NEP) of Central Valley (CV) spring-run Chinook salmon (*Oncorhynchus tshawytscha*) under the Endangered Species Act (ESA) in the upper Yuba River and its tributaries upstream of Englebright Dam, California, and establish take exceptions for the NEP for particular activities. A draft environmental assessment (EA) has been prepared on this proposed action and is available for comment. As part of that proposed action, we solicited comment on the proposed rule and EA over a 30-day period to end on January 11, 2021. Today, we update contact information, website addresses and extend the public comment period by 60 days to March 12, 2021. Comments previously submitted need not be resubmitted, as they will be fully considered in the agency's proposed action.

DATES: The deadline for receipt of comments is extended from January 11, 2021 until March 12, 2021.

ADDRESSES: You may submit comments on this proposed rule, identified by ''NOAA–NMFS–2020–0139'' by any one of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *https://beta.regulations.gov/docket/NOAA-NMFS-2020-0139/document* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Phone:* (916) 930–3717; *Fax:* (916) 930–3629.

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 part of the public record and will generally be posted to *http://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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

You may access a copy of the draft EA and other supporting documents by visiting the NMFS website at: *https://www.fisheries.noaa.gov/action/proposed-rule-authorize-reintroduction-central-valley-spring-run-chinook-salmon-upper-yuba.*

FOR FURTHER INFORMATION CONTACT: Jonathan Ambrose, by phone at (916) 930–3717, or by mail at National Marine Fisheries Service, 650 Capitol Mall, Suite 5–100, Sacramento, CA 95814.

SUPPLEMENTARY INFORMATION:

Background

On December 11, 2020, we published a proposed rule to designate and authorize the release of a NEP of CV spring-run Chinook salmon under the ESA in the upper Yuba River and its tributaries upstream of Englebright Dam, California, and establish take exceptions for the NEP for particular activities. In that notice we also announced a 30-day public comment period and the availability of a draft EA.

We received a request to extend the public comment period by 90 days in order to provide the public with additional time to adequately comment on the proposed rule. We considered the request and concluded that a 60-day extension should allow sufficient time for responders to submit comments without significantly delaying finalization of the proposed rule. We are therefore extending the close of the public comment period from January 11, 2021, to March 12, 2021. In addition to extending the public comment period,

we have also updated contact information and our website address to review the proposed rule and supporting materials.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 5, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2021–00178 Filed 1–8–21; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 402

[Docket No. FWS–HQ–ES–2020–0102; FXES1114090FEDR–201–FF09E30000; Docket No. 201231–0363]

RIN 1018–BF17; 0648–BJ77

Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation

AGENCY: U.S. Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively referred to as the ''Services'' or ''we'') propose to amend the Services' consultation regulations under the Endangered Species Act of 1973, as amended, pertaining to the U.S. Forest Service and Bureau of Land Management. The proposed revisions would clarify that reinitiation of consultation would not be required for these agencies' previously approved land management plans when new information reveals that effects of a plan may affect listed species or critical habitat in a manner or to an extent not previously considered, provided that any authorized actions for which the new information is relevant will be addressed through a separate action-specific consultation. The proposed revisions would also replace the existing regulation's temporary instructions concerning National Forest System lands with permanent instructions. The Services are proposing this change to improve and clarify the interagency cooperation procedures by making them more efficient and consistent.

DATES: We will accept comments from all interested parties until February 11, 2021. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Standard Time on this date.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the *Federal eRulemaking Portal: http://www.regulations.gov.* In the Search box, enter FWS–HQ–ES–2012;2020–0102, which is the docket number for this rulemaking. Then in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By Hard Copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–HQ–ES–2020–0102, U.S. Fish and Wildlife Service, MS:JAO/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803 or National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments below for more information).

FOR FURTHER INFORMATION CONTACT: Gary Frazer, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, telephone 202/208–4646; or Samuel D. Rauch, III, National Marine Fisheries Service, Department of Commerce, 1315 East-West Highway, Silver Spring, MD 20910, telephone 301/427–8000. If you use a telecommunications device for the Deaf (TDD), call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The purposes of the Endangered Species Act of 1973, as amended (''ESA'' or ''Act''; 16 U.S.C. 1531 *et seq.*), are to provide a means to conserve the ecosystems upon which listed species depend, to develop a program for the conservation of listed species, and to achieve the purposes of certain treaties and conventions. Moreover, the Act states that it is the policy of Congress that the Federal Government shall seek to conserve threatened and endangered species and use its authorities in furtherance of the purposes of the Act. The Lists of Endangered and Threatened Wildlife and Endangered and Threatened Plants (hereafter, ''the Lists'') are in title 50 of the Code of Federal Regulations in part 17 (§ 17.11(h) and § 17.12(h)).

Part 402 of title 50 of the Code of Federal Regulations establishes the procedural regulations governing interagency cooperation under section 7 of the Act, which requires Federal agencies, in consultation with and with the assistance of the Secretaries of the Interior and Commerce, to insure that any action authorized, funded, or carried out by such agencies is not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species. The Secretary of the Interior and the Secretary of Agriculture, through the Bureau of Land Management (BLM) and the U.S. Forest Service (FS), respectively, are responsible for the administration, management, and protection of approximately 438 million surface acres of Federal lands. Congress has directed that both Departments develop land management plans that provide for management of these Federal lands in accordance with the concepts of multiple use and sustained yield.

More specifically, the Federal Land Policy and Management Act of 1976 (FLPMA) and the National Forest Management Act (NFMA) require the Secretaries of the Interior and Agriculture, respectively, to ''develop, maintain, and, as appropriate, revise'' land management plans and to coordinate such planning with other Federal agencies. *See* 43 U.S.C. 1712(a), (c)(1)–(c)(9); 16 U.S.C. 1604(a); *see also Norton* v. *Southern Utah Wilderness Alliance,* 542 U.S. 55 (2004) (*SUWA*); *Ohio Forestry Ass'n* v. *Sierra Club,* 523 U.S. 726, 728 (1998) (*Ohio Forestry*). The BLM and FS develop plans that provide standards and guidelines for land and resource management that reflect both economic and environmental considerations. Once a plan is adopted, the agencies' individual project decisions and associated permits, contracts, and other instruments regulating use and occupancy within a unit covered by the plan must be consistent with the plan. *See* 43 U.S.C. 1732(a); 16 U.S.C. 1604(i); 43 CFR 1601.0–5, 1610.5–3(a); 36 CFR 219.15.

Land management plans are broad planning documents that guide long-term natural resource management. Unless it expressly states otherwise, a plan generally does not authorize any on-the-ground action such as road building or timber cutting. *Ohio Forestry,* 523 U.S. at 729–730; *SUWA,* 542 U.S. at 59, 69–70. Before authorizing a project in an area governed by an approved land management plan, the BLM and FS must ensure that the proposed project is consistent with the applicable plan, while also complying with other applicable laws, including section 7 of the ESA.

In 2019, the Services revised 50 CFR 402.16 to address issues arising under the Ninth Circuit's decision in *Cottonwood Environmental Law Center* v. *U.S. Forest Service,* 789 F.3d 1075 (9th Cir. 2015), *cert. denied,* 137 S. Ct. 293 (2016), which held that the FS must reinitiate consultation on its existing programmatic forest plan when the FWS designated critical habitat for the Canada lynx. *See* 84 FR 44976–45018 (August 27, 2019). We added a new paragraph (b) to 50 CFR 402.16 to clarify that the duty to reinitiate consultation does not apply to an approved land management plan prepared pursuant to FLPMA or NFMA when a species is added to the Lists or new critical habitat is designated, in certain specific circumstances, provided that any authorized actions that may affect the newly listed species or designated critical habitat will be addressed through a separate action-specific consultation. Consistent with the Wildfire Suppression Funding and Forest Management Activities Act, H.R. 1625, Division O, section 208, which was included in the Omnibus Appropriations bill for fiscal year 2018 (codified at 16 U.S.C. 1604(d)(2)(B)), we noted that this statutory exception to reinitiation of consultation does not apply to those land management plans prepared pursuant to 16 U.S.C. 1604 if (1) 15 years have passed since the date the agency adopted the land management plan and (2) 5 years have passed since the enactment of Public Law 115–141 [March 23, 2018] or the date of the listing of a species or the designation of critical habitat, whichever is later. These statutory timing provisions are discussed in greater detail below.

We aligned the application of § 402.16(a)(4) to exclude from reinitiation of consultation approved land management plans (including approved amendments and revisions) prepared pursuant to the FLPMA or the NFMA that have no immediate on-the-ground effects, but rather are frameworks for future actions. Those excluded approved plans contrast with specific on-the-ground actions that are subject to their own section 7 consultations if those on-the-ground actions may affect listed species or critical habitat. Thus, the 2019 revised regulation also noted that a previously approved land management plan prepared pursuant to FLPMA or NFMA does not require reinitiation of consultation upon the new listing of species or new designation of critical habitat, if any effects on newly listed species or newly designated critical habitat (to the extent there are any) will be analyzed in a separate section 7 consultation on a subsequent authorized action taken under the plan.

Proposed Regulatory Revisions Concerning New Information

We now propose to further amend our regulations to address a closely related issue that also arose in *Cottonwood* by revising § 402.16 (b) to clarify that the duty to reinitiate does not apply to an approved land management plan prepared pursuant to FLPMA, 43 U.S.C. 1701, or NFMA, 16 U.S.C. 1604, if new information reveals effects of the plan on listed species or critical habitat in a manner or to an extent not previously considered, provided that any subsequent actions taken pursuant to the plan will be subject to a separate section 7 consultation if those actions may affect listed species or critical habitat. Generally, ground-disturbing actions would be authorized subsequent to approval of the plan and addressed through a subsequent action-specific consultation. However, there are actions in some BLM land management plans that allow ground-disturbing action upon approval. For example, BLM plans may include off-highway vehicle (OHV) ''open areas'' that do not require subsequent approval. If the plan directly authorizes the action (*e.g.,* OHV open areas), then this proposed exemption from reinitiation does not apply if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered with respect to those activities under the plan (*e.g.,* OHV use in an open area) that would not be subject to future action-specific consultation.

This proposed regulatory revision would improve the efficiency of the consultation process while ensuring consideration of new information prior to the implementation of actions that may affect listed species or critical habitat. Unless they expressly state otherwise, completed land management plans do not result in any immediate on-the-ground effects, and relevant new information would be considered during a separate section 7 consultation on a subsequent action taken in conformance with the approved land management plan if those actions may affect listed species or critical habitat. As discussed in greater detail below, this is consistent with the government's longstanding legal position that the duty to consult under section 7 is limited to affirmative agency actions, which include prospective or ongoing actions authorized, funded, or carried out by Federal agencies—but not to completed actions or agency inaction.

Land management plans prepared pursuant to NFMA or FLPMA do not differ significantly in overall structure and generally contain a framework for desired conditions, objectives, and guidance for project and activity decision-making in the plan area. Plans do not generally grant, withhold, or modify any contract, permit, or other legal instrument or create any legal rights. As courts have noted, ''a statement in a plan that BLM ''will'' take this, that, or the other action'' is not a legally binding commitment enforceable under the [Administrative Procedure Act.]' '' *Forest Guardians* v. *Forsgren,* 478 F.3d 1149, 1156 n. 9 (10th Cir. 2007) (*quoting SUWA,* 542 U.S. at 72).

The proposed revision appropriately relies on the proposition that a land management plan prepared pursuant to NFMA or FLPMA establishes a framework for the development of specific future action(s) but does not normally authorize future action(s). Land management plans do not generally fund, authorize, or carry out ground-disturbing actions. However, as described above, there are actions in some BLM land management plans that are directly authorized by the plan itself and will not be reviewed in a separate ESA section 7 consultation. Thus, to the extent that new information reveals effects to listed species or critical habitat from these actions directly authorized by the plan and that were not previously considered, this proposed exemption from reinitiation of consultation would not apply.

The proposed revisions to the regulations are consistent with the statutory purposes of section 7 of the ESA. New information regarding effects not previously considered in the programmatic biological opinion would be evaluated in a separate consultation in which more site-specific details would be available to better assess any impacts on listed species or critical habitat. In addition, to the maximum

extent that doing so is consistent with the agencies' responsibilities under the ESA, the process of updating or revisiting programmatic consultations on land management plans is usually best conducted in conjunction with the amendment and revision process set forth in the planning statutes rather than on an *ad hoc* basis. Thus, the proposed revision to the regulations would make the consultation process more efficient and consistent, while ensuring that species and the habitats upon which they depend are conserved. Specifically, we propose to revise paragraph (b) of § 402.16 by moving some of the existing language to new paragraph (b)(1) and adding a new paragraph (b)(2), which includes language pertaining to land management plans for which new information reveals that effects of the action may affect listed species or critical habitat in a manner or to an extent not previously considered.

Congress did not address land management plans prepared pursuant to FLPMA in the 2018 Omnibus Act, except for grant lands under the Oregon and California Revested Lands Act, 39 Stat. 218, and the Coos Bay Wagon Road Reconveyed Lands Act, 40 Stat. 1179. No expiration date was attached to these provisions. Accordingly, like the 2019 regulatory exemption from reinitiation on the basis of newly listed species or designated critical habitat, this proposal would exclude from the reinitiation requirement any completed land management plan prepared pursuant to FLPMA from reinitiation of consultation on the basis of new information on effects of the plan, as long as any action taken pursuant to the plan will be subject to an action-specific section 7 consultation if that action may affect a listed species or critical habitat. For the same reasons set forth below as to National Forest System lands, the Services conclude that these instructions may be established on a permanent basis.

After decades of experience cooperating with action agencies across the Federal Government, we have gained expertise with respect to when reinitiation of consultation is most effective in meeting the overall goals of the Act. As a legal matter, as the Department of Justice correctly argued in *Cottonwood,* the duty to reinitiate consultation does not apply to completed land and resource management plans. See, *e.g., Forest Guardians* v. *Forsgren,* 478 F.3d at 1158–59 (disagreeing with *Pacific Rivers Council* v. *Thomas,* 30 F.3d 1050 (9th Cir. 1994)). Independently of any such legal considerations, as a policy matter, similar to reinitiating consultation on a land management plan when new species are listed or critical habitat designated, reinitiation of consultation on those plans based on new information on effects of the plan does little to further the goals of the Act. Both the BLM and the FS periodically update their land management plans, at which time they would consider any new information during consultation on effects of the plan. The BLM periodically evaluates and revises resource management plans (see 43 CFR subpart 1610), and the interval between reevaluations should not exceed 5 years (see BLM Handbook H–1601–1 at p. 34). FS is required to revise their land management plans at least every 15 years (see 36 CFR 219.7). In addition to periodically revising their land management plans, both BLM and FS are required to consult on any specific actions if those actions may affect listed species or critical habitat.

We propose, therefore, to expand § 402.16(b) to apply likewise to the receipt of new information revealing effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered. Requiring reinitiation on these completed plans based on new information of effects of the existing plans often results in impractical and disruptive burdens while resulting in little benefit to listed species or critical habitat. Generally, specific on-the-ground actions taken in conformance with the approved land management plan are subject to their own action-specific section 7 consultations if those actions may affect listed species or critical habitat, and relevant new information would be analyzed at that time. In these cases, focusing on these action-specific consultations would allow the affected agencies to direct their limited resources to those actions that cause on-the-ground effects to listed species or designated critical habitats and ensure that the FS and the BLM fulfill their obligations under section 7, while avoiding unnecessary reinitiation at the plan level.

For example, if new information revealed a higher density of a listed species in a plan area than was known during the consultation on the land management plan, that new information would be considered and incorporated in future consultations on specific authorized actions that may affect that species and/or its critical habitat. As another example, if, after completion of consultation on a land management plan, it was learned that a technique or practice that was anticipated to be used during subsequent projects is reasonably certain to have a greater impact on the environment than that analyzed in the consultation on the land management plan, that new information would also be considered and incorporated in future consultations on specific authorized actions that may affect listed species and/or critical habitat. Each consultation builds on past consultations no matter whether the action being consulted on relates to a plan or to a specific action.

At the early stage and broad scale of plan consultation, the agencies lack specific information on whether and how actual projects and activities will occur. As discussed, plans are programmatic documents that set broad goals and guidelines for land management, but typically do not authorize ground-disturbing activities. *See Ohio Forestry,* 523 U.S. at 733–34. The number, type, timing, location, and other details for any activities that may occur in the plan area mostly are unknown to the action and consulting agencies at the time of consultation on a plan.

By contrast, in the context of project consultations, the consulting agency knows specifically where and when the actions are to occur and the details about the types of activities proposed that were unknown at the time of the consultation on the plan. Moreover, as part of the environmental baseline, the consulting agency knows how other Federal, State, and private actions have affected the species and its critical habitat and analyzes those impacts during the project consultations. *See* 50 CFR 402.02. Significantly, the project consultations are not narrowly limited to the effects of the individual action on the species or its critical habitat but include ''all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action [that] . . . would not occur but for the proposed action and it is reasonably certain to occur.'' *Id.* § 402.02. These include effects that may occur later in time or outside the immediate area involved in the action. *Id.; see also* § 402.17. Thus, each section 7 consultation builds on the consultations for previous actions.

This proposed revision to the regulations would not change the approach for subsequent consultations on specific authorized actions. During consultation, the Services and the action agency are required to use the best scientific and commercial data available, and this requirement necessarily encompasses considering new relevant information.

Proposed Regulatory Revisions Concerning Permanent Rulemaking as to National Forest System Lands

The proposed revisions would remove the existing regulation's timing limitations concerning National Forest System lands. To be sure, the 2018 Act's instructions will remain in force for the time specified by the statute itself. But while Congress' legislative solution has proven to be protective of species' interests and workable for all of the agencies involved, it is only a temporary fix. Therefore, we have decided to invoke our general authority under section 7 concerning inter-agency consultation and issue permanent consultation instructions for FS planning efforts, just as we did for the BLM in 2019.

As previously noted, in 2018 Congress statutorily intervened to temporarily resolve the effects of the *Cottonwood* ruling regarding ESA reinitiation requirements following critical habitat designations. The Omnibus Act created a temporary, safe harbor exempting the FS from reinitiating consultation for approved land management plans when a new species is listed or new critical habitat designation occurs. The Omnibus Act also established a permanent exemption from reinitiation for certain lands managed by the BLM. To recognize these instructions, the Services amended the reinitiation regulations at 50 CFR 402.16 to incorporate the Omnibus Act's instructions that reinitiation of consultation shall not be required for land management plans upon listing of a new species or designation of new critical habitat, subject to the time limitations on this safe-harbor relief that were specified in the Omnibus Act (84 FR 45017, August 27, 2019). The regulatory provisions applicable to National Forest System lands reflected the Omnibus Act's rolling sunset of the safe-harbor exemptions from reinitiation of consultation. For a National Forest System plan that is outside the time limitations that apply to the relief afforded by the Omnibus Act, reinitiation of consultation is governed by standard ESA statutory and regulatory requirements and is not subject to the safe harbor afforded by the Act.

While the Omnibus Act set specific temporal timeframes for its temporary safe-harbor exemption of NFS lands, the Services retain their general ESA section 7 authority to establish procedures governing inter-agency cooperation. Congress' negotiated outcome of a temporary safe-harbor solution to the problems created by *Cottonwood* leaves intact the Services' authority to establish a permanent administrative remedy to such problems.

First, the ESA sets forth a general duty to consult on agency action and broadly authorizes the Services to determine the manner in which that duty is carried out. *See Babbitt* v. *Sweet Home Chapter of Communities for a Greater Oregon,* 515 U.S. 687, 708 (1995) (''When it enacted the ESA, Congress delegated broad administrative and interpretive power to the Secretary.''); 16 U.S.C. 1533(b)(8) (authorizing ''publication in the **Federal Register** of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act''). We also note that while section 7 was enacted in 1973 and initial ESA regulations were issued in 1978, no reinitiation regulation was issued until 1986. Agencies routinely revisit their regulations seeking improvement and resolving ambiguities. *See Nat'l Cable & Telecomm. Ass'n* v. *Brand X internet Servs.,* 545 U.S. 967, 982–83 (2005). The Services' authority to clarify and adjust the consultation procedures is well-supported in the ESA's text and case law and is necessary to ensure the ESA's proper administration. A permanent solution to resolve conflicting judicial interpretations of administrative regulations is entirely appropriate and within the Service's authority.

Second, the fact that Congress already has enacted a narrow, temporary fix does not preclude a permanent administrative solution. Nothing in the Omnibus Act's text suggests a broad preemptive effect as to the Services' general rulemaking authority. More specifically, while 16 U.S.C. 1604(d)(2)(B) provides that the protection afforded by subparagraph (A) ''shall not apply'' if certain temporal limits have been exceeded, subparagraph (A) provides that ''notwithstanding any other provision of law, the Secretary shall not be required to engage in consultation under this section or any other provision of law (including section 7 of Public Law 93–205 (16 U.S.C. 1536) and § 402.16 of title 50, Code of Federal Regulations (or a successor regulation)) with respect to'' species listings and critical habitat designations. That ''notwithstanding any other provision of law'' provision does not change the meaning of the underlying law, and therefore does not disturb the preexisting ESA authorities outside its specific instructions. The Omnibus Act's ''notwithstanding'' language disavows other provisions of law to create an independent, self-executing limitation that is self-contained and not preemptive of the Service's general authority under the ESA. The Act's ''notwithstanding'' language signifies that no matter how a court may read the ESA or section 7 requirements in general, no consultation is required on forest plans in the circumstances specifically addressed by the legislation. The Act therefore does not preclude the broader administrative adjustment of the underlying regulations proposed here, particularly given the sweeping delegation of rulemaking authority that the ESA affords to the Services as a general matter. *See Sweet Home Chapter of Communities for a Greater Oregon,* 515 U.S. at 708 (''When Congress has entrusted the Secretary with broad discretion, we are especially reluctant to substitute our views of wise policy for his.'').

Viewing the Omnibus Act through the familiar rules of statutory construction, it is clear that nothing is to be added to what the Omnibus Act's text states or reasonably implies (*casus omissus pro omisso habendus est*). That is, a matter not covered is to be treated as not covered. As the Fifth Circuit said with respect to similar safe-harbor amendments to the Migratory Bird Treaty Act, ''[w]hether Congress deliberately avoided more broadly changing the [statute] or simply chose to address a discrete problem, the most that can be said is that Congress did no more than the plain text of the amendment means.'' *United States* v. *Citgo,* 801 F.3d 477, 491 (5th Cir. 2015); *see id.* (''A single carve-out from the law cannot mean that the entire coverage of the MBTA was implicitly and hugely expanded.'').

Third, a permanent resolution also aligns with the government's longstanding position that the duty to consult under section 7 is limited to affirmative agency actions and is not applicable to completed actions or agency inaction. The United States' 2016 Petition for Certiorari in *Cottonwood* clearly and unequivocally stated that ''the Ninth Circuit's holding that federal agencies must reinitiate consultation pursuant to section 7 of the ESA on a completed agency action at the programmatic level because the agency retains discretion to authorize site-specific projects governed by the programmatic action has no basis in the ESA or its implementing regulations.'' Petition for Writ of Certiorari, *United States Forest Service* v. *Cottonwood Environmental Law Center,* No. 15–1387 (June 2016). As previously noted, unless expressly stated otherwise, completed land management plans do not result in any immediate on-the-ground effects, and all relevant information is

considered during the separate section 7 consultations that occur for subsequent project activities if those actions may affect listed species or critical habitat. The Forest Service's current planning regulations confirm that ''[a] plan does not authorize projects or activities or commit the Forest Service to take action.'' 36 CFR 219.2(b)(2).

Further, plan level consultation will of course continue to occur when the FS proposes to amend or revise a plan. Cyclical or periodic consultation aligns with other Ninth Circuit caselaw such as *California Sportfishing Protection Alliance* v. *FERC,* 472 F.3d 593, 595, 598 (9th Cir. 2006), where the Circuit reviewed a challenge to the Federal Energy Regulatory Commission's decision not to initiate consultation over the ongoing operation of a private hydroelectric plant operated under a 30-year license. In that case, FERC had the discretion to institute proceedings to amend an existing license, but the court emphasized, that ''[t]he ESA and the applicable regulations . . . mandate consultation with [the consulting agency] only before an agency takes some affirmative agency action, such as issuing a license.'' The court concluded that ''the agency action of granting a permit is complete,'' and that the mere unexercised discretion to modify the license for the benefit of listed species did not constitute ''action'' triggering a duty to initiate consultation.

A permanent rule addressing programmatic plan consultation will promote predictability for agencies and the public and allow the FS and BLM to efficiently accomplish their species conservation objectives and land management missions.

Public Comments

The proposed amendments would adjust reinitiation practices addressing new information supplementing the Services' rulemaking governing reinitiation for critical habitat designations and species listings which was the subject of both legislation and administrative rulemaking. These proposed procedural adjustments provide clarity and transparency about how the Secretaries intend to exercise their discretion regarding evaluation of new information concerning land management plans under section 7(a)(2) of the ESA. As the ESA does not provide a specific public comment period for issuance of inter-agency consultation regulations, generally speaking, any otherwise applicable notice requirement will be satisfied if it affords interested persons a reasonable and meaningful opportunity to participate in the rulemaking process. The 30-day comment period provides such an opportunity given the proposed rule's limited scope and the other recent rulemaking pertaining to reinitiation practices.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. Comments must be submitted to *http://www.regulations.gov* before 11:59 p.m. (Eastern Time) on the date specified in **DATES**. We will not consider mailed comments that are not postmarked by the date specified in **DATES**.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov.*

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this proposed rule is significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements. This proposed rule is consistent with Executive Order 13563, and in particular with the requirement of retrospective analysis of existing rules, designed ''to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.''

Executive Order 13771

This proposed rule is an Executive Order 13771 ''other'' action.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency, or his designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We certify that, if adopted as proposed, this proposed rule would not have a significant economic effect on a substantial number of small entities. Because this rulemaking action specifically affects only Federal agencies, no external entities, including any small businesses, small organizations, or small governments, will experience any economic impacts from this rule.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) On the basis of information contained in the Regulatory Flexibility Act section above, this proposed rule would not ''significantly or uniquely'' affect small governments. This proposed rule applies exclusively to Federal agencies. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, that this rule would not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the proposed rule would not place additional requirements on any city, county, or other local municipalities.

(b) This proposed rule would not produce a Federal mandate on State, local, or Tribal governments or the private sector of $100 million or greater in any year; that is, this proposed rule is not a ''significant regulatory action''' under the Unfunded Mandates Reform Act. This proposed rule would impose no obligations on State, local, or Tribal governments.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this proposed rule would not have significant takings implications. This proposed rule would not pertain to ''taking'' of private property interests, nor would it directly affect private property. A takings implication assessment is not required because this proposed rule (1) would not effectively compel a property owner to suffer a physical invasion of property and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This proposed rule would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule would have significant federalism effects and have determined that a federalism summary impact statement is not required. This proposed rule pertains only to factors concerning reinitiation of consultation for Federal agencies under the Endangered Species Act and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform (E.O. 12988)

This proposed rule would clarify responsibilities for reinitiation of consultation under the Endangered Species Act. This proposed rule would not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' the Department of the Interior's manual at 512 DM 2, and the Department of Commerce (DOC) Tribal Consultation and Coordination Policy (May 21, 2013), DOC Departmental Administrative Order (DAO) 218–8 (April 2012), and NOAA Administrative Order (NAO) 218–8 (April 2012), we are considering possible effects of this proposed rule on federally recognized Indian Tribes. The Services have reached a preliminary conclusion that the proposed changes to these implementing regulations are general in nature and do not directly affect specific species or Tribal lands. These proposed regulations clarify the processes for reinitiation of consultation and directly affect only the Services and Federal land-managing agencies. Therefore, we conclude that these regulations do not have ''Tribal implications'' under section 1(a) of E.O. 13175, and, formal government-to-government consultation is not required by the Executive Order and related policies of the Departments of the Interior and Commerce. We will continue to collaborate with Tribes on issues related to federally listed species and their habitats and work with them as we implement the provisions of the Act. *See* Joint Secretarial Order 3206 (''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'', June 5, 1997).

Paperwork Reduction Act

This proposed rule does not contain any new collections of information that require approval by the OMB under the Paperwork Reduction Act. This proposed rule will not impose recordkeeping or reporting requirements on State, local, or Tribal governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We are analyzing this proposed regulation in accordance with the criteria of the National Environmental Policy Act (NEPA), the Department of the Interior regulations on Implementation of the National Environmental Policy Act (43 CFR 46.10–46.450), the Department of the Interior Manual (516 DM 8), the NOAA Administrative Order 216–6A, and the NOAA Companion Manual (CM), ''Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities'' (effective January 13, 2017).

As a result, we anticipate that the categorical exclusion found at 43 CFR 46.210(i) applies to the proposed regulation changes. At 43 CFR 46.210(i), the Department of the Interior has found that the following categories of actions would not individually or cumulatively have a significant effect on the human environment and are, therefore, categorically excluded from the requirement for completion of an environmental assessment or environmental impact statement: ''Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature.'' NOAA's NEPA procedures include a similar categorical exclusion for ''preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature.'' (Categorical Exclusion G7, at CM Appendix E).

We are continuing to consider the extent to which this proposed regulation may have a significant impact on the human environment or fall within one of the categorical exclusions. We invite the public to comment on these or any other aspects of NEPA compliance that may be needed for these revisions. We will comply with NEPA before finalizing this regulation.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The proposed revised regulations are not expected to affect energy supplies, distribution, and use, and the Administrator of OIRA has not otherwise designated it as a significant energy action. Accordingly, no Statement of Energy Effects is required.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you believe that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs of the rule that are not clearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

Authority

We issue this proposed rule under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.).*

List of Subjects in 50 CFR Part 402

Endangered and threatened species.

Proposed Regulation Promulgation

For the reasons set out in the preamble, we propose to amend subpart B of part 402, subchapter A of chapter IV, title 50 of the Code of Federal Regulations, as set forth below:

PART 402—INTERAGENCY COOPERATION—ENDANGERED SPECIES ACT OF 1973, AS AMENDED

■ 1. The authority citation for part 402 continues to read as follows:

Authority: 16 U.S.C. 1531 et seq.

■ 2. Amend § 402.16 by revising paragraph (b) to read as follows:

§ 402.16 Reinitiation of consultation.

* * * * *

(b) After an agency approves a land management plan prepared pursuant to 43 U.S.C. 1712 or 16 U.S.C. 1604, the agency need not reinitiate consultation on that plan upon:

(1) The listing of a new species or designation of new critical habitat, provided that any authorized actions that may affect the newly listed species or designated critical habitat will be addressed through a separate action-specific consultation; or

(2) The receipt of new information revealing effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered, provided that any authorized actions for which the new information is relevant will be addressed through a separate action-specific consultation.

George Wallace,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

Christopher Wayne Oliver,

Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2021–00366 Filed 1–11–21; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 86, No. 7

Tuesday, January 12, 2021

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

Forest Service

Second Notice of Intent To Issue Forest Order Closing Areas Near Beattie Gulch Trailhead and McConnell Fishing Access North and West of Gardiner, Montana to the Discharge of Firearms

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service provides this Second Notice of Intent to issue an order closing the Beattie Gulch Trailhead and McConnell Fishing Access areas north and west of Gardiner, Montana to the discharge of firearms. The purpose of the Second Notice is to provide a correct mailing address for comments submitted by mail and reopen the public comment period for this proposed forest order for an additional 60 days. All comments submitted electronically during the previous comment 60-day period beginning on June 24, 2020, remain valid and need not be resubmitted. All comments submitted by mail during the previous comment period should be resubmitted to ensure consideration.

DATES: The 60-day public comment period will begin January 13, 2021. The notice of the opportunity for public comment, including directions on how to submit comments, is posted at *www.fs.usda.gov/main/custergallatin* and *www.fs.usda.gov/about-agency/regulations-policies.*

ADDRESSES: The proposed forest order and the justification for the forest order are available on the Forest Service's website at *www.fs.usda.gov/main/custergallatin* and *www.fs.usda.gov/about-agency/regulations-policies.*

FOR FURTHER INFORMATION CONTACT: Mike Thom, District Ranger, 406–848–7375, extension 22, *michael.thom@usda.gov.*

Individuals who use TDD may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

I. Advance Notice and Public Comment Procedures

Section 4103 of the John D. Dingell, Jr., Conservation, Management, and Recreation Act (Pub. L. 116–9) requires that the Secretary of Agriculture, acting through the Chief of the Forest Service, provide public notice and comment before permanently or temporarily closing any National Forest System lands to hunting, fishing, or recreational shooting. Section 4103 applies to the proposed forest order closing areas near Beattie Gulch and McConnell Fishing Access north and west of Gardiner, Montana to the discharge of firearms. On June 17, 2020, the Forest Service published advanced notice in the **Federal Register** of the 60-day public comment period beginning on June 24, 2020, for this proposed forest order. The Forest Service now provides this second advance notice that it is reopening the public comment period for this proposed forest order for 60 additional days. The purpose of reopening this public comment period is to provide the correct mailing address for comments submitted by mail. The public notice and comment process in section 4103(b)(2) requires the Secretary to publish a notice of intent, in the **Federal Register**, of the proposed closure in advance of the public comment period for the closure. This notice meets the requirement to publish a notice of intent in the **Federal Register** in advance of the public comment period.

Following the notice of intent, section 4103(b)(2) requires an opportunity for public comment. Because the proposed forest order would permanently close areas near Beattie Gulch and McConnell Fishing Access, north and west of Gardiner, Montana to the discharge of firearms, the public comment period must be not less than 60 days. The solicitation for public comment will be posted on *www.fs.usda.gov/main/custergallatin* and *www.fs.usda.gov/about-agency/regulations-policies.*

Section 4103(b)(2) requires the Secretary to respond to public comments received on the proposed forest order, explain how the Secretary resolved any significant issues raised by the comments, and show how the resolution led to the closure. The response to comments on the proposed order, justification for the final order, and the issuance of the final forest order will all be posted on the following website: *www.fs.usda.gov/main/custergallatin* and *www.fs.usda.gov/about-agency/regulations-policies.*

II. Background and Need for Forest Order

This permanent shooting closure is needed to address potentially imminent harm to human health and safety resulting from the discharge of firearms in these small areas. Bow hunting/shooting would still be allowed. These areas total 23 acres in size collectively, Beattie Gulch is 18 acres and McConnell Fishing access totals 5 acres. The size of both areas has been limited to the minimum necessary to protect public health and safety. The Beattie Gulch area and McConnell Fishing Access permanent closures are needed to address concerns resulting from the discharge of firearms toward developed facilities including the Old Yellowstone Trail South, private property and residences, the Yellowstone River, a powerline, and Montana State Highway 89.

The proposed forest order and the justification for the forest order are available on the Forest Service's websites at *www.fs.usda.gov/main/custergallatin* and *www.fs.usda.gov/about-agency/regulations-policies.*

Tina Johna Terrell,

Associate Deputy Chief, National Forest System.

[FR Doc. 2021–00394 Filed 1–11–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service (RHS), Rural Business Service (RBS), and Rural Utilities Service (RUS)

intention to request a revision for a currently approved information collection in support of compliance with Civil Rights laws.

DATES: Comments on this notice must be received by March 15, 2021 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Sharese C. Paylor, Ed.D, Director, Rural Development, Civil Rights Staff, U.S. Department of Agriculture, STOP 0703, 1400 Independence Ave. SW, Washington, DC 20250–0703, Telephone (202) 692–0097 (voice) or 800.877.8339 (Federal Relay).

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1901–E, Civil Rights Compliance Requirements.

OMB Number: 0575–0018.

Expiration Date of Approval: May 30, 2021.

Type of Request: Revision of a Currently Approved Information Collection.

Abstract: The information collection under OMB Number 0575–0018 enables the RHS, RBS, and RUS, to effectively monitor a recipient's compliance with the civil rights laws, and to determine whether or not service and benefits are being provided to beneficiaries on an equal opportunity basis. The RBS, RHS, and RUS are required to provide Federal financial assistance through its housing and community and business programs on an equal opportunity basis. The laws implemented in 7 CFR part 1901, subpart E, require the recipients of RBS, RHS, and RUS Federal financial assistance to collect various types of information, including information on participants in certain of these agencies' programs, by race, color, and national origin.

The information collected and maintained by the recipients of certain programs from RBS, RHS, and RUS is used internally by these agencies for monitoring compliance with the civil rights laws and regulations. This information is made available to USDA officials, officials of other Federal agencies, and to Congress for reporting purposes. Without the required information, RBS, RHS, RUS and its recipients will lack the necessary documentation to demonstrate that their programs are being administered in a nondiscriminatory manner, and in full compliance with the civil rights laws.

In addition, the RBS, RHS, RUS and their recipients would be vulnerable in lawsuits alleging discrimination in the affected programs of these agencies, and would be without appropriate data and documentation to defend themselves by demonstrating that services and benefits are being provided to beneficiaries on an equal opportunity basis.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 7.5 hours per response.

Respondents: Recipients of RBS, RHS, and RUS Federal financial assistance, loan, and loan guarantee programs.

Estimated Number of Respondents: 27,000.

Estimated Number of Responses per Respondent: 2.72.

Estimated Number of Responses: 73,559.

Estimated Total Annual Burden on Respondents: 550,276.

Copies of this information collection can be obtained from Kimble Brown, Regulations and Paperwork Management Branch, at (202) 720–6780.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Development, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division, Rural Development U.S. Department of Agriculture, STOP 0742, Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Elizabeth Green,

Acting Administrator, Rural Housing Service.

[FR Doc. 2021–00333 Filed 1–11–21; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Office of the Under Secretary for Economic Affairs

Advisory Committee on Data for Evidence Building

AGENCY: Office of the Under Secretary for Economic Affairs, Department of Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Office of the Under Secretary for Economic Affairs is providing notice of three upcoming meetings of the Advisory Committee on Data for Evidence Building (ACDEB or Committee). These will constitute the second, third, and fourth meeting of the Committee in support of its charge to review, analyze, and make recommendations on how to promote the use of Federal data for evidence building purposes. At the conclusion of the Committee's first and second year, it will submit to the Director of the Office of Management and Budget, Executive Office of the President, an annual report on the activities and findings of the Committee. This report will also be made available to the public.

DATES: February 19, 2021; March 19, 2021; April 23, 2021. The meetings will begin at approximately 9:00 a.m. and adjourn at approximately 12:00 p.m. (ET).

ADDRESSES: Those interested in attending the Committee's public meetings are requested to RSVP to *Evidence@bea.gov* one week prior to each meeting. Agendas, background material, and meeting links will be accessible 24 hours prior to each meeting at *www.bea.gov/evidence.*

Members of the public who wish to submit written input for the Committee's consideration are welcomed to do so via email to *Evidence@bea.gov.* Additional opportunities for public input will be forthcoming.

The safety and well-being of the public, committee members, and our staff are our top priority. In light of current travel restrictions and social-distancing guidelines resulting from the COVID–19 outbreak, each meeting will be held virtually.

FOR FURTHER INFORMATION CONTACT: Gianna Marrone, Program Analyst, U.S. Department of Commerce, 4600 Silver Hill Road (BE–64), Suitland, MD 20746; phone (301) 278–9282; email *Evidence@bea.gov.*

SUPPLEMENTARY INFORMATION: The Foundations for Evidence-Based Policymaking Act (Pub. L. 115–435,

Evidence Act 101(a)(2) (5 U.S.C. 315 (a)), establishes the Committee and its charge. It specifies that the Chief Statistician of the United States shall serve as the Chair and other members shall be appointed by the Director of the Office of Management and Budget (OMB). The Act prescribes a membership balance plan that includes: One agency Chief Information Officer; one agency Chief Privacy Officer; one agency Chief Performance Officer; three members who are agency Chief Data Officers; three members who are agency Evaluation Officers; and three members who are agency Statistical Officials who are members of the Interagency Council for Statistical Policy established under section 3504(e)(8) of title 44.

Additionally, at least 10 members are to be representative of state and local governments and nongovernmental stakeholders with expertise in government data policy, privacy, technology, transparency policy, evaluation and research methodologies, and other relevant subjects. Committee members serve for a term of two years. Following a public solicitation and review of nominations, the Director of OMB appointed members per this balance plan and information on the membership can be found at *www.bea.gov/evidence.* Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term.

The ACDEB is interested in the public's input on the issues it will consider, and requests that interested parties submit statements to the ACDEB via email to *Evidence@bea.gov.* Please use the subject line ''ACDEB Meeting Public Comment.'' All statements will be provided to the members for their consideration and will become part of the Committee's records. Additional opportunities for public input will be forthcoming as the Committee's work progresses.

ACDEB Committee meetings are open, and the public is invited to attend and observe. Those planning to attend are asked to RSVP to *Evidence@bea.gov.* The call-in number, access code, and meeting link will be posted 24 hours prior to each meeting on *www.bea.gov/evidence.* The meetings are accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to Gianna Marrone at *Evidence@bea.gov* two weeks prior to each meeting.

Dated: January 6, 2021.

Gianna Marrone,

Alternate Designated Federal Official, U.S. Department of Commerce.

[FR Doc. 2021–00380 Filed 1–11–21; 8:45 am]

BILLING CODE 3510–MN–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–03–2021]

Foreign-Trade Zone 266—Madison, Wisconsin; Application for Subzone; Coating Place, Inc.; Verona, Wisconsin

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by Dane County, Wisconsin, grantee of FTZ 266, requesting subzone status for the facility of Coating Place, Inc. (Coating Place), located in Verona, Wisconsin. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on January 6, 2021.

A notification of proposed production activity has been submitted and is being processed under 15 CFR 400.37 (Doc. B–62–2020). The proposed subzone would be subject to the existing activation limit of FTZ 266.

In accordance with the FTZ Board's regulations, Elizabeth Whiteman and Juanita Chen of the FTZ Staff are designated examiners to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is February 22, 2021. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 8, 2021.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or Juanita Chen at *Juanita.Chen@trade.gov.*

Dated: January 7, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–00436 Filed 1–11–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Application for NATO International Bidding

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), 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 purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before March 15, 2021.

ADDRESSES: Interested persons are invited to submit comments by email to Mark Crace, IC Liaison, Bureau of Industry and Security, at *mark.crace@bis.doc.gov* or to *PRAcomments@doc.gov*). Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Mark Crace, IC Liaison, Bureau of Industry and Security, phone 202–482–8093 or by email at *mark.crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This new proposed information collection replaces previously approved generic collection 0694–0128. All U.S. firms desiring to participate in the NATO International Competitive Bidding (ICB) process under the NATO Security Investment Program (NSIP) must be certified as technically, financially and professionally competent. The U.S. Department of Commerce provides the Declaration of Eligibility that certifies these firms. Any such firm seeking certification is required to submit a completed Form BIS–4023P along with a current annual financial report and a resume of past projects in order to become certified and

placed on the Consolidated List of Eligible Bidders.

II. Method of Collection

Applications are submitted to the U.S. Department of Commerce's Office of Strategic Industries and Economic Security, Defense Programs Division where the contents are reviewed for completeness and accuracy by the NATO Program Specialist. The application is a one-time effort. The information provided on the BIS–4023P form is used to certify the U.S. firm and place it in the bidders list database. BIS has developed a form-fillable .PDF version of the BIS–4023P to enable electronic submission of this form. The form is available at the following URL: *http://www.bis.doc.gov/index.php/other-areas/strategic-industries-and-economic-security-sies/nato-related-business-opportunities.*

Completed applications and supporting documentation may be submitted electronically via email.

III. Data

OMB Control Number: 0694–XXXX.

Form Number(s): BIS–4023P.

Type of Review: New; Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 50.

Estimated Total Annual Cost to Public: 0.

Respondent's Obligation: Voluntary.

Legal Authority: Section 401 (10) of Executive order 12656 (November 18, 1988), 15 U.S.C. 1512.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) 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; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms 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 may 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.

Sheleen Dumas,

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

[FR Doc. 2021–00449 Filed 1–11–21; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA753]

South Atlantic Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a series of public scoping meetings via webinar pertaining to Amendment 10 to the Coral, Coral Reef and Live Hard Bottom Habitat Fishery Management Plan (FMP). The amendment addresses establishing a Shrimp Fishery Access Area along the eastern border of the northern extension of the Oculina Bank Coral Habitat Area of Particular Concern (HAPC).

DATES: The public hearings will be held via webinar on February 8 and 9, 2021.

ADDRESSES:

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC. 29405

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The scoping meetings will be conducted via webinar and accessible via the internet from the Council's website at *https://safmc.net/safmc-meetings/public-hearings-scoping-meetings/.* The scoping meeting on February 8, 2021 will begin at 5 p.m. and the scoping meeting on February 9, 2021 will begin at 9 a.m. Registration for the webinars is required. Registration information, a copy of the Public Scoping Document, an online public comment form and any additional information as needed will be posted on the Council's website at *https://safmc.net/safmc-meetings/public-hearings-scoping-meetings/* as it becomes available. Public scoping comments are due by 5 p.m. on February 10, 2021.

Amendment 10 to the Coral, Coral Reef and Live Hard Bottom Habitat FMP

The draft amendment currently addresses a request from the rock shrimp industry to create a Shrimp Fishery Access Area (SFAA) along the eastern boundary of the northern extension of the Oculina Bank Coral HAPC to allow rock shrimp trawling and access to historic rock shrimp fishing grounds. Vessels fishing for rock shrimp in the South Atlantic region are required to carry approved Vessel Monitoring Systems (VMS) to harvest or possess rock shrimp. Establishing a SFAA would allow access to the area at times where the species is found slightly west of the existing boundary while retaining the integrity of the eastern boundary of the Oculina Bank Coral HAPC, maintaining the prohibition on all other bottom tending gear.

During the scoping meetings, Council staff will present an overview of the amendment and will be available for informal discussions and to answer questions via webinar. Members of the public will have an opportunity to go on record to record their comments for consideration by the Council.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 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: January 7, 2021.

Rey Israel Marquez,

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

[FR Doc. 2021–00419 Filed 1–11–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA764]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 72 Workshop for Gulf of Mexico Gag Grouper.

SUMMARY: The SEDAR 72 assessment process of Gulf of Mexico gag grouper will consist of a series of data and assessment webinars. See **SUPPLEMENTARY INFORMATION.**

DATES: The SEDAR 72 Gag Grouper Workshop will be held via webinar February 9, 2021 through February 11, 2021, from 9 a.m. to 1 p.m., Eastern each day.

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 Julie A. Neer at SEDAR (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.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) a Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the Workshop are as follows:

- Panelists will review the data sets being considered for the assessment and discuss initial modeling efforts.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified 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 to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: January 7, 2021.

Rey Israel Marquez,

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

[FR Doc. 2021–00420 Filed 1–11–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Review of Nomination for Lake Erie Quadrangle National Marine Sanctuary

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice; request for written comments.

SUMMARY: The Office of National Marine Sanctuaries of the National Oceanic and Atmospheric Administration is requesting written comments to facilitate ONMS' five year review of the nomination for the Lake Erie Quadrangle National Marine Sanctuary (NMS). In particular, NOAA is requesting relevant information as it pertains to its evaluation criteria for inclusion in the inventory (these criteria are detailed at *https://nominate.noaa.gov/guide.html*). In this five year review, NOAA will pay particular attention to any new information about the nomination's resources, changes to any threats towards these resources, and any updates to the management framework of the area. NOAA will also assess the continuity and breadth of community-based support for the nomination. NOAA has provided the original nominating party an opportunity to share its views on these same questions. Following this information gathering and internal analysis, NOAA will make a final determination on whether or not the Lake Erie Quadrangle NMS nomination will remain in the inventory for another five year period.

DATES: Written comments must be received by February 11, 2021.

ADDRESSES: Comments may be submitted by the following method:

Federal eRulemaking Portal: https://www.regulations.gov. Submit electronic comments via the Federal eRulemaking Portal with Docket Number NOAA–NOS–2020–0167.

Instructions: All comments received are a part of the public record. All personal identifying information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NOAA will accept anonymous comments (enter N/A in the required fields to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Ellen Brody, Great Lakes Regional

Coordinator, 4840 South State Road, Ann Arbor, MI 48108 or at *ellen.brody@noaa.gov,* 734–741–2270.

SUPPLEMENTARY INFORMATION:

Background Information

In 2014, NOAA issued a final rule establishing the sanctuary nomination process (SNP), which details how communities may submit nominations to NOAA for consideration of national marine sanctuary designation (79 FR 33851). NOAA moves successful nominations to an inventory of areas that could be considered for national marine sanctuary designation. The final rule establishing the SNP included a five-year limit on any nomination added to the inventory that NOAA does not advance for designation.

In November 2019, NOAA issued a notice (84 FR 61546) to clarify procedures for evaluating and updating a nomination as it approaches the five-year mark on the inventory of areas that could be considered for national marine sanctuary designation. The nomination for Lake Erie Quadrangle NMS was accepted to the national inventory on February 22, 2016, and is therefore scheduled to expire on February 22, 2021. The full nomination can be found at *https://nominate.noaa.gov/nominations/.*

NOAA is not proposing to designate the Lake Erie Quadrangle NMS or any other new national marine sanctuary with this action. Instead, NOAA is seeking public comment on ONMS' five year review of the nomination for the Lake Erie Quadrangle NMS. Accordingly, written comments submitted as part of this request should not focus on whether NOAA should initiate the designation process for the Lake Erie Quadrangle. Rather, comments should address the relevance of the nomination towards NOAA's evaluation criteria and any new information NOAA should consider about the nominated area. Comments that do not pertain to the evaluation criteria, or present new information on the Lake Erie Quadrangle NMS nomination, will not be considered as part of this five year review.

Whether removing or maintaining the nomination for Lake Erie Quadrangle NMS, NOAA would follow the same procedure for notifying the public as was followed when the nomination was submitted, including a letter to the nominator, a notice in the **Federal Register**, and posting information on ''*nominate.noaa.gov*''.

Authority: 16 U.S.C. 1431 *et seq.*

John Armor,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–29176 Filed 1–11–21; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA794]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of scoping meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a series of scoping meetings via webinar pertaining to Amendment 50 to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region. The amendment addresses catch levels, rebuilding plan, sector allocations, accountability measures, and management measures for red porgy.

DATES: The scoping meetings will be held via webinar on February 3 and 4, 2021.

ADDRESSES: *Council address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The scoping meetings will be conducted via webinar and accessible via the internet from the Council's website at *https://safmc.net/safmc-meetings/public-hearings-scoping-meetings/.* The scoping meetings will begin at 6 p.m. Registration for the webinars is required. Registration information, a copy of the scoping materials, an online public comment form and any additional information as needed will be posted on the Council's website at *https://safmc.net/safmc-meetings/public-hearings-scoping-meetings/* as it becomes available. Public comments must be received by 5 p.m. on February 5, 2021.

Amendment 50 to the Snapper Grouper FMP

The Council must adjust catch levels for red porgy in response to the most recent stock assessment for the species in the region (SEDAR 60 2020). The stock assessment results indicated the stock continues to be overfished and is undergoing overfishing. Consequently, catch levels must be adjusted based on the acceptable biological catch recommended by the South Atlantic Council's Scientific and Statistical Committee (SSC) and the rebuilding schedule must be revised. In addition, the Council is considering modifications to sector allocations, accountability measures, and commercial and recreational management measures to end overfishing and rebuild the red porgy stock.

During the scoping meetings, Council staff will present an overview of the amendment and will be available for informal discussions and to answer questions via webinar. Members of the public will have an opportunity to go on record to provide their comments for consideration by the Council.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 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: January 7, 2021.

Rey Israel Marquez,

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

[FR Doc. 2021–00422 Filed 1–11–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA800]

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of a permit.

SUMMARY: Notice is hereby given that a permit has been issued to the following entity under the Marine Mammal Protection Act (MMPA).

ADDRESSES: The permit and related documents are available for review

upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Sara Young (Permit No. 24356) at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notice was published in the **Federal Register** on the date listed below that a request for a permit had been submitted by the below-named applicant. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the activity, go to *www.federalregister.gov* and search on the permit number provided in Table 1 below.

TABLE 1—ISSUED PERMIT

Permit No.	RTID	Applicant	Previous **Federal Register** Notice	Issuance date
24356	0648–XA614	Plimsoll Productions, Whiteladies House, 51–55 Whiteladies Road, Bristol BS8 2LY, United Kingdom (Responsible Party: James Manisty).	85 FR 70130; November 4, 2020.	December 18, 2020.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Authority: The requested permit was issued under the MMPA of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking of marine mammals (50 CFR part 216).

Dated: January 6, 2021.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–00352 Filed 1–11–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA733]

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 Pacific Fishery Management Council (Pacific Council) will hold an online work session of its Coastal Pelagic Species Management Team (CPSMT) to develop reports and products for upcoming Pacific Council meetings. This meeting is open to the public.

DATES: The online work session will be held Tuesday, February 2, 2021 through Thursday, February 4, 2021, from 9 a.m. to 3 p.m. each day, or until business for the day has been completed.

ADDRESSES:

Meeting address: The 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: Kerry Griffin, Pacific Council; telephone: (503) 820–2409.

SUPPLEMENTARY INFORMATION: The CPSMT will primarily be working on the essential fish habitat periodic review and a management flowchart/framework for the central subpopulation of northern anchovy. The CPSMT may discuss other CPS-related tasks or administrative and ecosystem matters on the Pacific Council's March meeting agenda, as necessary. A meeting agenda will be posted to the Pacific Council's website in advance of the meeting.

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: January 7, 2021.

Rey Israel Marquez,

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

[FR Doc. 2021–00417 Filed 1–11–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA765]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 71 South Atlantic Gag Grouper Assessment Webinar IV.

SUMMARY: The SEDAR 71 assessment of the South Atlantic stock of gag grouper will consist of a data webinar and a series assessment webinars.

DATES: The SEDAR 71 Gag Grouper Assessment Webinar IV has been scheduled for Tuesday, February 9, 2021, from 12 p.m. to 3 p.m., EDT.

ADDRESSES: *Meeting address:* The meeting will be held via webinar. The webinar is open to members of the public. Registration is available online at: *https://attendee.gotowebinar.com/register/9037843055622147088.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive,

Suite 201, North Charleston, SC 29405; phone: (843) 571–4371; email: *Kathleen.Howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 71 Gag Grouper Assessment Webinar IV are as follows:

- Discuss data and modeling as needed
- Finalize modeling and data discussions

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified 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 to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business 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: January 7, 2021.

Rey Israel Marquez,

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

[FR Doc. 2021–00421 Filed 1–11–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Matching Fund Opportunity for Hydrographic Surveys and Request for Partnership Proposals

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Announcement of matching fund pilot program opportunity, request for proposals, and request for interest by February 26, 2021.

SUMMARY: This notice establishes selection criteria and requirements for the NOAA National Ocean Service Office of Coast Survey's (Coast Survey) Hydrographic Surveying Matching Fund opportunity pilot program (pilot program). The purpose of this notice is to encourage non-Federal entities to partner with NOAA on jointly funded hydrographic surveying and mapping and related activities of mutual interest. NOAA would match partner funds and rely on its existing contract arrangements to conduct the actual surveying and mapping activities. NOAA is requesting that interested entities submit proposals by February 26, 2021. The goal of the pilot program is to acquire more ocean and coastal hydrographic surveying for mutual benefit, including for safe navigation, integrated ocean and coastal mapping, coastal zone management, coastal and ocean science, and other activities. The program relies on NOAA's hydrographic expertise, appropriated funds, and its authority to receive and expend matching funds contributed by partners to conduct surveying and mapping activities. This pilot program is subject to funding availability.

DATES: Proposals must be received via email by 5 p.m. EST on February 26, 2021 with any accompanying GIS files due no later than March 5, 2021. If an entity is unable to apply for this particular opportunity but has an interest in participating in similar, future opportunities, NOAA requests a one-page statement of interest by February 26, 2021, to help gauge whether to offer this matching fund program in future years.

ADDRESSES: Proposals must be submitted in PDF format via email to *iwgocm.staff@noaa.gov* by the February 26, 2021, deadline. Coast Survey strongly encourages interested entities to submit their proposals in advance of the deadline.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ashley Chappell, NOAA Integrated Ocean and Coastal Mapping Coordinator, 240–429–0293, or *ashley.chappell@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Coast Survey is responsible for conducting hydrographic and seafloor surveys for safe navigation, the conservation and management of coastal and ocean resources, and emergency response. Coast Survey is committed to meeting these missions as collaboratively as possible, adhering to the Integrated Ocean and Coastal Mapping (IOCM) principle of ''Map Once, Use Many Times.''

After the June 2020 publications of the *National Strategy for Mapping, Exploring (NOMEC), and Characterizing the U.S. Exclusive Economic Zone* and the *Alaska Coastal Mapping Strategy (ACMS),* Coast Survey released a responsive *Ocean Mapping Plan* with a goal to map the full extent of waters subject to U.S. jurisdiction to modern standards (all three plans are available at *https://iocm.noaa.gov/about/strategic-plans.html.* The Coast Survey *Ocean Mapping Plan* describes a number of motivating forces for surveying and mapping waters subject to U.S. jurisdiction, including, but not limited to:

- Safe marine transportation;
- Coastal community resilience;
- A need to better understand the influence of the ocean's composition on related physical and ecosystem processes that affect climate, weather, and coastal and marine resources and infrastructure;

- Interest in capitalizing on the Blue Economy in growth areas like seafood production, tourism and recreation, marine transportation, and ocean exploration;
- The national prerogative to exercise U.S. sovereign rights to explore, manage, and conserve natural resources in waters subject to U.S. jurisdiction; and
- International commitments to map the global oceans by 2030.

Ocean mapping data is needed for safe navigation and also informs decisions regarding emergency planning, climate adaptation and resilience, economic investment, infrastructure development, and habitat protection. Emerging sectors that require high-resolution seafloor surveys include deep sea mineral exploration, national security, and maritime domain awareness in the Arctic Ocean. Numerous other fields that rely on high-resolution ocean mapping data include fisheries management and sustainable use of natural resources, offshore renewable energy construction, and tsunami and hurricane modelling. Bathymetry is a critical factor in assessing and preparing for potential impacts of threats such as sea level rise, flooding, and storm surge to coastal communities. However, the resources needed to fully achieve the goal of comprehensively mapping U.S. oceans and coasts currently exceed Coast Survey's capacity. Mapping the full extent of waters subject to U.S. jurisdiction means relying on partners to contribute to the effort.

Coast Survey has considerable hydrographic expertise, including cutting edge understanding of the science and related acoustic systems. More detail on Coast Survey's surveying expertise and capabilities is available in the NOAA Coast Survey Ocean Mapping Capabilities report (*https://nauticalcharts.noaa.gov/about/docs/about/ocean-mapping-capabilies.pdf*). Coast Survey's hydrographic expertise is a resource available to NOAA partners, both federal and non-Federal.

Through this pilot program, Coast Survey will match funds contributed by non-Federal entities for hydrographic surveys. Coast Survey hydrographic survey services include single beam and multibeam echo sounding, side scan sonar, lidar, and backscatter acquisition by means of air and surface vehicles, autonomous underwater vehicles, and uncrewed surface vehicles.

II. Description

This notice announces a pilot program to assess whether there is sufficient stakeholder interest in matching funds with Coast Survey to partner on ocean and coastal hydrographic surveys. Proposals will be evaluated and prioritized for funding based on submitted justifications. Coast Survey will select proposals using the review process and criteria evaluation described in section IX of this notice. If there is sufficient interest in the pilot program, Coast Survey plans to increase its allocation for matching funds in future years, as appropriations allow.

The goal of this pilot program is to leverage NOAA and partner funds to acquire more coastal and ocean mapping data to a consistent standard for projects during FY2022. If appropriated funds are available, NOAA will match funds contributed by selected entities for hydrographic surveys. Coast Survey will receive the contributions through memoranda of agreement using the authority granted to NOAA under the Coast and Geodetic Survey Act of 1947 to receive and expend funds for collaborative hydrographic surveys (33 U.S.C. 883e).

Coast Survey will manage survey planning, quality-assure all data and products, provide the data and products to the partners, and handle data submission to the National Centers for Environmental Information (NCEI) for archiving and accessibility. All hydrographic data and related products resulting from this pilot program will be available to the public. The value-added services Coast Survey will provide include:

- Project management and GIS-based task order planning, negotiation and award of necessary procurement contracts:
  - Tailored to meet the interests of matching fund partners
  - Managed on aerial, shipboard, and uncrewed/autonomous vehicles
- Data acquisition collection methods include, but are not limited to:
  - Multibeam Echosounder
  - Side Scan Sonar
  - Lidar (topographic, bathymetric, mobile)
  - Subsurface and airborne feature investigations
  - Sediment sampling
- Managing survey compliance with applicable laws Products acquired may include, but not be limited to:
  - Bathymetric data (multibeam, single beam, lidar)
  - Backscatter
  - Water column (depth dependent)
  - Side scan sonar imagery
  - Feature detection reports
  - Sensor/data corrections and calibrations (*e.g.,* conductivity, temperature and depth (CTD) casts, horizontal/vertical position uncertainty)
  - Survey and control services, including the installation, operation, and removal of water level and Global Positioning System (GPS) stations
  - Data processing, quality assessment and review of all acquired hydrographic data
  - Data management and stewardship through data archive at NCEI
  - High-resolution topographic/bathymetric product generation

More information on Coast Survey's Hydrographic Surveys Specifications and Deliverables publication can be found at *https://nauticalcharts.noaa.gov/publications/docs/standards-and-requirements/specs/hssd-2020.pdf.* This publication details the requirements for NOAA hydrographic surveys. These specifications are based in part on the International Hydrographic Organization's Standards for Hydrographic Surveys, Special Publication 44 (*https://iho.int/uploads/user/pubs/Drafts/S-44_Edition_6.0.0-Final.pdf*).

Coast Survey would also like to gauge interest in this matching fund pilot program by eligible, non-Federal entities that do not plan to apply this year but that would consider applying in future years. Coast Survey welcomes eligible entities to submit a one-page statement of interest by February 26, 2021, that Coast Survey will consider in deciding whether to offer this matching fund program in future years.

III. Areas of Focus

For this opportunity, proposals will be considered that are well aligned with the goals of the NOMEC, ACMS, and the Coast Survey *Ocean Mapping Plan* (all available at *https://iocm.noaa.gov/about/strategic-plans.html*). Those goals include:

A. *Map the United States Exclusive Economic Zone (EEZ):* The goal is to coordinate mapping efforts to compile a complete map of deep water by 2030 and nearshore waters by 2040. Completing this goal will give the United States unprecedented and detailed information about the depth, shape, and composition of the seafloor of the United States EEZ (NOMEC Goal 2).

B. *Expand Alaska Coastal Data Collection to Deliver the Priority Geospatial Products Stakeholders Require:* Mapping the Alaska coast is challenging. However, using targeted and coordinated data collections will potentially reduce overall costs and improve the cost-to-benefit ratio of

expanded mapping activities. (ACMS Goal 2)

C. *Map the full extent of waters subject to U.S. jurisdiction to modern standards:* Based on analysis of data holdings at the NOAA NCEI, 54 percent of waters subject to U.S. jurisdiction are unmapped, covering an area of about two million square nautical miles (Coast Survey Ocean Mapping Plan).

IV. Proposal Eligibility

This matching fund opportunity is available to non-Federal entities. Examples of non-Federal entities include state and local governments, tribal entities, universities, researchers and academia, the private sector, non-governmental organizations (NGOs), and philanthropic partners. Qualifying proposals must demonstrate the ability to provide at least 50% matching funds, which would be transferred to NOAA by October 2021 using a memorandum of agreement. A coalition of non-Federal entities may assemble matching funds and submit a proposal jointly. In-kind contributions are welcome to strengthen the proposal, but do not count toward the match and therefore are not required.

V. Deadlines and Process Dates

All submissions must be emailed to *iwgocm.staff@noaa.gov.* Partner proposals are due by 5:00 p.m. EST on February 26, 2021 (see Section VIII. for details). Please include all required components of the proposal in one email. Incomplete and late submissions will not be considered.

- Informational Webinar, January 28, 2021, 2 p.m. EST; register at *https://attendee.gotowebinar.com/register/2034875377454911502.*
- February 26, 2021: Due date for proposals
- February 26, 2021: Due date for statements of interest regarding potential future proposals
- March 5, 2021: Due date for additional GIS files supporting a proposal
- March 26, 2021: NOAA issues its decisions on proposals (subject to appropriations)
- April 2021: NOAA works with selected partners to develop memoranda of agreement to facilitate the transfer of funds from the non-Federal partner to NOAA
- August 2021: NOAA finalizes the memoranda of agreement with partners
- October 2021: Non-Federal partners transfer matching funds to NOAA
- October 2021-September 2022: NOAA issues task orders to its survey contractors for NOAA/partner projects

VI. Funding Availability

In the first year of this pilot program, Coast Survey anticipates funding between two to five survey projects at a 50% match of up to $1 million per project. All projects are expected to have a FY2022 project start date and all non-Federal partner matching funds must be received by NOAA in October 2021. Coast Survey reserves the right to increase or decrease the available amount of matching funds based on the quality and feasibility of proposals received. This notice is subject to the availability of appropriations.

VII. Project Period

NOAA intends to complete each selected project within two (2) years. However, the period to complete a project may be extended, with no additional funding, if additional time is needed. Coast Survey will submit a final report to the non-Federal partner within 60 days of the conclusion of each project.

VIII. Submission Requirements

Project Proposal—To qualify, a proposal shall not exceed six (6) total pages (plus GIS files of project areas) and must include the following three components:

1. A project title; executive summary (3–5 sentences); and the names, affiliations, and roles of the project partners and any co-investigators, as well as the project lead that will serve as primary contact (1 page maximum).

2. A justification and statement of need; description and graphics of the proposed survey area polygon(s) including relevance to the strategic areas of focus noted in Section III and degree of flexibility on timing of survey effort (4 pages maximum).

3. A project budget that lists the source(s) and amount(s) of funding that the partner would provide as its 50% contribution to NOAA. Budget must confirm that partner funds can be transferred to NOAA by October 31, 2021 (1 page maximum).

Proposals must use 12-point, Times New Roman font, single spacing, and 1-inch margins. Failure to adhere to these requirements will result in the proposal being returned without review and eliminated from further consideration. Coast Survey welcomes the submission of GIS files of project areas noted in VIII B. as ancillary attachments to the proposal to facilitate review. These files will not count toward the 6-page proposal limit. The GIS files may arrive no later than March 5, 2021.

IX. Review Process and Evaluation Criteria

Proposals will be evaluated by the Coast Survey Hydrographic Surveying Matching Fund Program Management Team. Submissions will be ranked based on the following criteria=:

A. *Project justification (30 points)*—This criterion ascertains whether there is intrinsic IOCM value in the proposed work and/or relevance to NOAA missions and priorities, including downstream partner proposals and uses. Use of, and reference to, NOMEC, ACMS and the Coast Survey Ocean Mapping Plan (all available at *https://iocm.noaa.gov/about/strategic-plans.html*); gap assessment tools such as the U.S. Bathymetric Gap Analysis (*https://iocm.noaa.gov/seabed-2030-bathymetry.html*); and the U.S. Interagency Elevation Inventory (*https://catalog.data.gov/dataset/united-states-interagency-elevation-inventory-usiei*), among others, are recommended. Coast Survey's Hydrographic Health Model showing priority survey areas for navigation safety is available upon request. The U.S. Federal Mapping Coordination site shows current Coast Survey mapping plans (*fedmap.seasketch.org*); email *iwgocm.staff@noaa.gov* for assistance with the layers on this site if needed.

B. *Statement of need (10 points)*—This criterion assesses clarity of project need, partner proposal alternatives if not selected, anticipated outcomes and public benefit.

C. *Specified partner match (20 points)*—The proposal identifies a point of contact for the entity submitting the proposal, as well as any partnering entities, a clear statement on partner matching funds provenance (*e.g.,* state appropriations, NGO funds, or other sources), and timing of funds availability. In-kind contributions are welcome to strengthen the proposal, but do not count toward the funding match.

D. *Project costs (15 points)*—This criterion evaluates whether the proposed budget is realistic and commensurate with the proposed project needs and timeframe. If needed, please contact *iwgocm.staff@noaa.gov* for a rough estimate of cost per square nautical mile for surveys in a particular region; this figure will not be exact, as actual cost will be negotiated by region and scale of project.

E. *Project feasibility and flexibility (25 points)*—This criterion assesses the likelihood that the proposal would succeed based on survey conditions at the proposed time of year, such as project size, location, weather, NOAA analysis of environmental compliance

implications, project flexibility and adaptability to existing Coast Survey plans and schedules, and other factors.

During the proposal review period, Coast Survey reserves the right to engage with proposal points of contact to ask questions and provide feedback on project costs and feasibility.

X. Management and Oversight

Once selections are made, Coast Survey will coordinate the development of the memoranda of agreement, funding transfers, project planning, environmental compliance, acquisition awards and quality assurance process. Coast Survey may bring in additional partners and/or funding (federal and/or non-Federal) to expand a project further if feasible and agreed to by all partners. Projects will be reviewed by Coast Survey on an annual basis to ensure they are responsive to partner interests and NOAA mission requirements, and to identify opportunities for outreach and education on the societal benefits of the work.

Authority: Coast and Geodetic Survey Act of 1947 (33 U.S.C. 883 *et seq.*)

Shepard M. Smith,

Rear Admiral, Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2021–00385 Filed 1–11–21; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA752]

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 Highly Migratory Species (HMS) Subcommittee of the Pacific Fishery Management Council's (Pacific Council's) Scientific and Statistical Committee (SSC) will hold an online meeting to advise on a best scientific information available (BSIA) determination by NMFS on the use of new stock assessments to determine management limit reference points and status determination criteria (SDC) for managing bigeye and yellowfin tunas. The meeting is open to the public.

DATES: The SSC HMS Subcommittee's online meeting will be held Thursday, February 4, 2021 beginning at 1 p.m. PST and continuing until 5 p.m. or until business for the day has been completed. The meeting will reconvene, if needed, on February 5, 2021 beginning at 9 a.m. PST and continuing until 1 p.m. or until business for the day has been completed.

ADDRESSES: The SSC HMS Subcommittee meeting will be an online meeting.

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 HMS Subcommittee meeting is to discuss new stock assessments for bigeye and yellowfin tunas, which use a new probabilistic framework for informing management decisions. Specifically, the SSC HMS Subcommittee members and NMFS staff will discuss recommendations for maximum fishing mortality threshold proxies for SDC determinations based on BSIA for these tropical tuna species using new probabilistic assessments, as well as options for using probabilistic framework assessment for HMS status determinations, more generally.

The SSC HMS Subcommittee members' role will be development of recommendations and reports for consideration by the SSC and the Pacific Council at the March meeting of the Pacific Council.

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 HMS 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 business days prior to the meeting date.

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

Dated: January 7, 2021.

Rey Israel Marquez,

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

[FR Doc. 2021–00418 Filed 1–11–21; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; AmeriCorps External Reviewer Survey; Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Corporation for National and Community Service (CNCS, operating as AmeriCorps) has submitted a public information collection request (ICR) entitled AmeriCorps External Reviewer Survey for review and approval in accordance with the Paperwork Reduction Act.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by February 11, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of this ICR, with applicable supporting documentation, may be obtained by calling AmeriCorps, Curtis Cannon at 202–606–6706, or by email to *ccannon@cns.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of AmeriCorps, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;

• Propose ways to enhance the quality, utility, and clarity of the information to be collected; and

• Propose 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

A 60-day Notice requesting public comment was published in the **Federal Register** on November 13, 2020 at Vol. 85, No. 220, Pg. 72638. This comment period ended January 12, 2021. Zero public comments were received from this Notice.

Title of Collection: AmeriCorps External Reviewer Survey.

OMB Control Number: 3045–0090.

Type of Review: New.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 250.

Total Estimated Number of Annual Burden Hours: 60 hours.

Abstract: The External Reviewer Survey is used by individuals who have served as External Reviewers or External Panel Coordinators for AmeriCorps to review grant applications. The information collected will be used by AmeriCorps to assess and make improvements to grant competitions. The information is collected electronically. This is a new information collection.

Dated: January 6, 2021.

Amy Hetrick,

Director, Grants, Policy and Operations.

[FR Doc. 2021–00441 Filed 1–11–21; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of intent.

SUMMARY: Pursuant to the Bayh-Dole Act, and implementing regulations, the Department of the Air Force hereby gives notice of its intent to grant an exclusive patent license to Targeted Endo, LLC, a small business and limited liability corporation having a place of business at P.O. Box 646, Golden, CO 80402.

DATES: Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this Notice.

ADDRESSES: Submit written objections to Chastity D.S. Whitaker, Ph.D., Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Area B, Building 11, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–9318; or Email: *afmclo.jaz.tech@us.af.mil.* Include Docket No. A59–201207A–PL in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Chastity D.S. Whitaker, Ph.D., Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Area B, Building 11, Wright-Patterson AFB, OH 45433–7109; Telephone: (937) 904–5787; Facsimile: (937) 255–9318; or Email: *afmclo.jaz.tech@us.af.mil.*

SUPPLEMENTARY INFORMATION:

Abstract of Patent Application(s)

Devices and methods for guided endodontic micro-surgery using trephine burs. The device includes a surgical guide comprising a dentate guard and a port extending from the dentate guard. The dentate guard is configured to conform to dentition of a patient proximate to a surgical site. The port has a bore extending therethrough such that a distal end of the bore terminates at the surgical site. The port, and its bore, are configured to receive a trephine bur for the EMS procedure at the surgical site.

Intellectual Property

U.S. Application Publication No. 2019/0328486, published October 31, 2019, and entitled *Guided endodontic micro-surgery (EMS) with trephine burs.*

The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

Adriane Paris,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2021–00403 Filed 1–11–21; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2020–HQ–0018]

Proposed Collection; Comment Request

AGENCY: U.S. Army Corps of Engineers, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the U.S. Army Corps of Engineers announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency'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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 15, 2021.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: The DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Institute for Water Resources, Navigation and Civil Works Decision Support Center, 7701 Telegraph Road, Alexandria, VA 22315–3868, ATTN: Steven D. Riley or call 703–428–6380.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Lock Performance Monitoring System (LPMS) Waterway Traffic Report; ENG FORM 3102C and 3102D; OMB Control Number 0710–0008.

Need and Uses The U.S. Army Corps of Engineers utilizes the data collected to monitor and analyze the use and operation of federally owned or operated locks. General data of vessel identification, tonnage, and commodities are supplied by the master of vessels and all locks owned and operated by the U.S. Army Corps of Engineers. The information is used for sizing and scheduling replacements, the timing of rehabilitation or maintenance actions, and the setting of operation procedures and closures for locks and canals.

Affected Public: Business or other for-profit.

Annual Burden Hours: 26,312.

Number of Respondents: 6,529.

Responses per Respondent: 93.

Annual Responses: 607,197.

Average Burden per Response: 2.6 minutes

Frequency: On occasion.

Respondents are vessel operators who provide the vessel identification, tonnage and community information as stipulated on ENG Form 3012C, Waterway Traffic Report—Vessel Log or ENG form 3102D, Waterway Traffic Report—Detail Vessel Log. The information is applied to navigation system management to identify and prioritize lock maintenance, rehabilitation, or replacement. It is also used to measure waterway performance and the level of service of the national waterway systems.

Dated: January 7, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–00379 Filed 1–11–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Alaska Native Education Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2021 for the Alaska Native Education (ANE) program, Assistance Listing Number 84.356A. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES: *Applications Available:* January 12, 2021.

Deadline for Transmittal of Applications: April 12, 2021.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR–2019–02–13/pdf/.*

FOR FURTHER INFORMATION CONTACT: Almita Reed, U.S. Department of Education, 400 Maryland Avenue SW, room 3E222, Washington, DC 20202. Telephone: (202) 260–1979. Email: *OESE.ASKANEP@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the ANE program is to support innovative projects that recognize and address the unique educational needs of Alaska Natives. These projects must include the activities authorized under section 6304(a)(2) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), and may include one or more of the activities authorized under section 6304(a)(3) of the ESEA, including, but not limited to, curriculum development, training and professional development, early childhood and parent outreach, and enrichment programs, as well as construction.

Background: The ANE program serves the unique educational needs of Alaska Natives and recognizes the roles of Alaska Native languages and cultures in the educational success and long-term well-being of Alaska Native students. In light of the disparities in remote learning infrastructure exposed by the widespread school closures caused by the novel coronavirus 2019 (COVID–19), the need for students across the country, and low-income students in particular, to have access to high-quality remote learning is particularly acute. Thus, for this competition, the ANE program gives competitive preference to applicants whose proposals address remote learning and target certain subgroups for remote learning. Specifically, the competitive preference priority solicits applications that propose to provide reliable high-speed internet, devices, and software applications to learners who previously did not have access to such technologies. In addition, the competitive preference priority encourages applications that include providing high-quality remote learning for Native American (as defined in this notice) students.

Priorities: This notice contains one absolute priority and one competitive preference priority. In accordance with 34 CFR 75.105(b)(2)(v), the absolute priority is from section 6304(a)(2)(A) and (B) of the ESEA. In accordance with 34 CFR 75.105(b)(2)(ii), the competitive preference priority is from the notice of final administrative priority and definitions for discretionary grants programs published in the **Federal Register** on December 30, 2020 (85 FR 86545) (NFP).

Absolute Priority: For FY 2021 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

An applicant must address both parts of the absolute priority. An applicant must clearly identify in its application where the absolute priority is addressed.

This priority is:

Eligible applicants must design a project that—

1. Develops and implements plans, methods, strategies, and activities to improve the educational outcomes of Alaska Natives; and

2. Collects data to assist in the evaluation of the programs carried out under the ANE program.

Competitive Preference Priority: For FY 2021, and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 10 points to an

application, depending on how well the application meets the competitive preference priority. If an applicant chooses to address this competitive preference priority, the applicant must identify in the project narrative section of its application its response to the competitive preference priority.

The competitive preference priority is:

Building Capacity for Remote Learning. (up to 10 points)

Under this priority, an applicant must propose a project that is designed to address both of the following priority areas:

(a) Providing access to any of the following, in particular to serve learners without access to such technologies: Reliable, high-speed internet, learning devices, or software applications that meet all students' and educators' remote learning needs while inside the school building and in remote learning environments.

(b) Providing high-quality remote learning specifically for Native American (as defined in this notice) students.

The remote learning environment must be accessible to individuals with disabilities in accordance with Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act, as applicable. The remote learning environment must also provide appropriate remote learning language assistance services to English learners.

Definitions: The definitions for ''Alaska Native'' and ''Alaska Native organization'' are from section 6306 of the ESEA (20 U.S.C. 7546). For purposes of the competitive preference priority, ''Native American'' has the meaning ascribed to ''Alaska Native.'' The definitions for ''demonstrates a rationale,'' ''logic model,'' ''project component,'' and ''relevant outcome'' are from 34 CFR 77.1. The definition for ''Native'' is from section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)). In addition, the definitions for ''experience operating programs that fulfill the purposes of the ANE program,'' ''official charter or sanction,'' and ''predominately governed by Alaska Natives'' are from the notice of final definitions and requirements published June 4, 2019, in the **Federal Register** (84 FR 25682) (NFR). The definition of ''remote learning'' is from the NFP.

Alaska Native or *Native American* has the same meaning as the term Native has in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)) and includes the descendants of individuals so defined.

Alaska Native organization (ANO) means an organization that has or commits to acquire expertise in the education of Alaska Natives and is——

(a) An Indian Tribe, as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304), that is an Indian Tribe located in Alaska;

(b) A Tribal organization, as defined in section 4 of such Act (25 U.S.C. 5304), that is a Tribal organization located in Alaska; or

(c) An organization listed in clauses (i) through (xii) of section 619(4)(B) of the Social Security Act (42 U.S.C. 619(4)(B)(i) through (xii)), or the successor of an entity so listed.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Experience operating programs that fulfill the purposes of the ANE program means that, within the past four years, the entity has received and satisfactorily administered, in compliance with applicable terms and conditions, a grant under the ANE program or another Federal or non-Federal program that focused on meeting the unique education needs of Alaska Native children and families in Alaska.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Native means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community) Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group. Any decision of the Secretary of the Interior regarding eligibility for enrollment shall be final.

Official charter or sanction means a signed letter or written agreement from an Alaska Native Tribe or ANO that is dated within 120 days prior to the date of the submission of the application and expressly (1) authorizes the applicant to conduct activities authorized under the ANE program and (2) describes the nature of those activities.

Predominately governed by Alaska Natives means that at least 80 percent of the entity's governing board (*i.e.,* the board elected or appointed to direct the policies of the organization) are Alaska Natives.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Remote learning means programming where at least part of the learning occurs away from the physical building in a manner that addresses a learner's education needs. Remote learning may include online, hybrid/blended learning, or non-technology-based learning (*e.g.,* lab kits, project supplies, paper packets).

Application Requirements: The following requirements are from section 6304(a)(2) of the ESEA and from the NFR. In order to receive funding, an applicant must meet the following requirements.

(a) The applicant must provide a detailed description of the plans, methods, strategies, and activities it will develop and implement to improve the educational outcomes of Alaska Natives and how the applicant will develop and implement such plans, methods, strategies, and activities. (ESEA section 6304(a)(2))

(b) The applicant must provide a detailed description of the data it will collect to assist in the evaluation of the programs carried out under the ANE program, including data that address the performance measures in section VI.5 (Performance Measures) of this notice; and how the applicant will collect such data. (ESEA section 6304(a)(2))

(c) Group Application:

An applicant that applies as part of a partnership must meet this requirement, in addition to the requirements in paragraphs (a) and (b) above.

(1) An ANO that applies for a grant in partnership with a State educational agency (SEA) or local educational agency (LEA) must serve as the fiscal agent for the project.

(2) Group applications under the ANE program must include a partnership agreement that includes a Memorandum of Understanding or a Memorandum of Agreement (MOU/MOA) between the members of the partnership identified and discussed in the grant application. Each MOU/MOA must—

(i) Be signed by all partners, and dated within 120 days prior to the date of the submission of the application;

(ii) Clearly outline the work to be completed by each partner that will participate in the grant in order to accomplish the goals and objectives of the project; and

(iii) Demonstrate an alignment between the activities, roles, and responsibilities described in the grant application for each of the partners in the partnership agreement. (NFR)

(d) Applicants Establishing Eligibility through a Charter or Sanction from an Alaska Native Tribe or ANO:

For an entity that does not meet the eligibility requirements for an ANO, established in section 6304(a)(1) and 6306(2) of the ESEA and the definitions in this notice, and that seeks to establish eligibility through a charter or sanction provided by an Alaska Native Tribe or ANO as required under section 6304(a)(1)(C)(ii) of the ESEA, the following documentation is required, in addition to the information in Application Requirements (a) through (c) above:

(1) Written documentation demonstrating that the entity is physically located in the State of Alaska.

(2) Written documentation demonstrating that the entity has experience operating programs that fulfill the purposes of the ANE program.

(3) Written documentation demonstrating that the entity is predominately governed by Alaska Natives (as defined in this notice), including the total number, names, and Tribal affiliations of members of the governing board.

(4) A copy of the official charter or sanction (as defined in this notice) provided to the entity by an Alaska Native Tribe or ANO. (NFR)

Statutory Hiring Preference: (a) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (93 Pub. L. 638). That section requires that, to the greatest extent feasible, a grantee—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of subcontracts in connection with the administration of the grant.

(b) For purposes of this requirement, an Indian is a member of any federally recognized Indian Tribe.

Program Authority: Title VI, part C of the ESEA (20 U.S.C. 7541–7546).

Note: Projects must be awarded and operated in a manner consistent with the nondiscrimination requirements contained in the U.S. Constitution and the Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The NFR. (e) The NFP.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $15,592,043.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2021 or in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $300,000–$1,500,000 for each 12-month budget period.

Estimated Average Size of Awards: $500,000 for each 12-month period.

Estimated Number of Awards: 18.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (a) Alaska Native organizations with experience operating programs that fulfill the purposes of the ANE program;

(b) Alaska Native organizations that do not have experience operating programs that fulfill the purposes of the ANE program, but are in partnership with—

(i) An SEA or LEA; or

(ii) An Alaska Native organization that operates a program that fulfills the purposes of the ANE program; or

(c) An entity located in Alaska, and predominately governed by Alaska Natives, that does not meet the definition of an Alaska Native organization but—

(i) Has experience operating programs that fulfill the purposes of the ANE program; and

(ii) Is granted an official charter or sanction from at least one Alaska Native Tribe or Alaska Native organization to carry out programs that meet the purposes of the ANE program.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* No more than five percent of funds awarded for a grant under this program may be used for direct administrative costs (ESEA section 6305(b) and Consolidated Appropriations Act, 2021). This five percent limit does not include indirect costs.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR–2019–02–13/pdf/2019–02206.pdf,* which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the ANE program, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of

Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

4. *Funding Restrictions:* No more than five percent of funds awarded for a grant under this program may be used for direct administrative costs (ESEA section 6305(b) and Consolidated Appropriations Act, 2021). This five percent limit does not include indirect costs. See also Section III (b) and (c) of this notice (''Eligibility Information'').

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 30 pages and (2) use the following standards:

- A ''page'' is 8.5'' x 11'', on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative. An applicant will not be disqualified if it exceeds the recommended page limit.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and section 6304(a)(2)(A) of the ESEA. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is included in parentheses following the title of the specific selection criterion. Each criterion also includes the factors that reviewers will consider in determining the extent to which an applicant meets the criterion.

The selection criteria are as follows:

(a) *Need for project* (up to 10 points)

The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(1) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project (up to 5 points).

(2) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses (up to 5 points).

(b) *Quality of the project design* (up to 20 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs (up to 10 points).

(2) The extent to which the proposed project demonstrates a rationale (as defined in this notice) (up to 10 points).

(c) *Quality of project services* (up to 30 points)

The Secretary considers the quality of the services to be provided by the proposed project.

(1) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (up to 15 points).

(2) In addition, the Secretary considers the extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice (up to 15 points).

(d) *Quality of project personnel* (up to 10 points)

The Secretary considers the quality of the personnel who will carry out the proposed project.

(1) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (up to 5 points).

(2) In addition, the Secretary considers the qualifications, including relevant training and experience, of key project personnel (up to 5 points).

(e) *Quality of the management plan* (up to 20 points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (up to 10 points); and

(2) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project (up to 10 points).

(f) *Quality of the project evaluation* (up to 10 points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the extent to which the methods of evaluation will provide valid and reliable performance data on relevant outcomes.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3)(ii), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General.* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Promoting the freedom of speech and religious liberty in alignment with Promoting Free Speech and Religious Liberty (E.O. 13798) and Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities (E.O. 13864) (2 CFR 200.300, 200.303, 200.339, and 200.341);

(d) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(e) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* For the purposes of the Government Performance and Results Act of 1993 and for Department reporting under 34 CFR 75.110, we have established four performance measures for the ANE program: (1) The number of grantees who attain or exceed the targets for the outcome indicators for their projects that have been approved by the Secretary; (2) the percentage of Alaska Native children participating in early learning and preschool programs who consistently demonstrate school readiness in language and literacy as measured by the Revised Alaska Development Profile; (3) the percentage of Alaska Native students in schools served by the program who graduate from high school with a high school diploma in four years; and (4) the number of Alaska Native programs that primarily focus on Alaska Native culture and language.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and,

if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2021–00378 Filed 1–11–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

Applications for New Awards; Office of Indian Education Formula Grants to Local Educational Agencies

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2021 for Office of Indian Education (OIE) Formula Grants to Local Educational Agencies, Assistance Listing Number 84.060A. This notice relates to the approved information collection under OMB control number 1810–0021.

DATES: *Part I of Electronic Application System for Indian Education (EASIE) Applications Available:* February 8, 2021.

Deadline for Transmittal of EASIE Part I: March 11, 2021.

Part II of EASIE Applications Available: April 5, 2021.

Deadline for Transmittal of EASIE Part II: May 14, 2021.

FOR FURTHER INFORMATION CONTACT: For questions about the Formula Grants program, contact Dr. Crystal C. Moore, U.S. Department of Education, 400 Maryland Avenue SW, MS 6335, Washington, DC 20202–6335. Telephone: (202) 215–3964. Email: *crystal.moore@ed.gov.* For technical questions about the EASIE application and uploading documentation, contact the Partner Support Center (PSC). Telephone: 877–457–3336. Email: *OIE.EASIE@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), contact the Federal Relay Service (FRS), toll free, at 1–800–877–0996 or by email at: *federalrelay@sprint.com.*

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

Note: Applicants must meet the deadlines for both EASIE Part I and Part II to be eligible to receive a grant. Failure to submit the required supplemental documentation, described under *Content and Form of Application Submission* in section IV of this notice, by the EASIE Part I or II deadline will result in an incomplete application that will not be considered for funding. OIE recommends uploading the documentation at least two days prior to each deadline date to ensure that any potential submission issues are resolved prior to the deadlines.

I. Funding Opportunity Description

Purpose of Program: The Office of Indian Education Formula Grants to Local Educational Agencies (Formula Grants) program provides grants to support local educational agencies (LEAs), Indian Tribes and organizations, and other eligible entities in developing and implementing elementary and secondary school programs that serve Indian students. These funds must be used to support comprehensive programs that are designed to meet the unique cultural, language, and educational needs of American Indian and Alaska Native (AI/AN) students and ensure that all students meet challenging State academic standards. The information gathered from the project's final annual performance report (APR) will be utilized to complete OIE's required annual Government Performance and Results Act (GPRA) report. Specifically, that report covers the Secretary's established key performance measures for assessing the effectiveness and efficiency of the Formula Grants program as detailed in this notice.

Integration of Services Authorized

As authorized under section 6116 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), the Secretary will, upon receipt of an acceptable plan for the integration of education and related services, and in cooperation with other relevant Federal agencies, authorize the entity receiving the funds under this program to consolidate all Federal funds that are to be used exclusively for Indian students. Instructions for submitting an integration of education and related services plan are included in EASIE, which is described under *Application and Submission Information* in section IV of this notice.

Note: Under the Formula Grants program, all applicants are required to develop proposed projects in open consultation, including through public hearings held to provide a full opportunity to understand the program and to offer recommendations regarding the program (section 6114(c)(3)(C) of the ESEA), with parents of Indian children and teachers of Indian children, representatives of Indian Tribes on Indian lands located within 50 miles of any school that the LEA will serve if such Tribes have any children in such school, Indian organizations (IOs), and, if appropriate, Indian students from secondary schools. LEA applicants are required to develop proposed projects with the participation and written approval of an Indian Parent Committee whose membership includes parents and family members of Indian children in the LEA's schools; representatives of Indian Tribes on Indian lands located within 50 miles of any school that the LEA will serve if such Tribes have any children in such school; teachers in the schools; and, if appropriate, Indian students attending secondary schools of the LEA (ESEA section 6114(c)(4)). The majority of the Indian Parent Committee

members must be parents and family members of Indian children (section 6114(c)(4) of the ESEA).

Definitions: The following definition is from ESEA section 6112(d)(3):

Indian community-based organization (ICBO) means any organization that (1) is composed primarily of Indian parents, family members and community members, Tribal government educational officials, and Tribal members, from a specific community; (2) assists in the social, cultural, and educational development of Indians in such community; (3) meets the unique cultural, language, and academic needs of Indian students; and (4) demonstrates organizational and administrative capacity to manage the grant.

Statutory Hiring Preference:

(a) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)). That section requires that, to the greatest extent feasible, a grantee—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to IOs and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

(b) For purposes of this section, an Indian is a member of any federally recognized Indian Tribe (25 U.S.C. 1452(b)).

Program Authority: 20 U.S.C. 7421, *et seq.*

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

II. Award Information

Type of Award: Formula grants.

Estimated Available Funds: $105,381,000.

Estimated Range of Awards: $4,000 to $2,772,768.

Estimated Average Size of Awards: $81,000.

Estimated Number of Awards: 1,300.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 months.

III. Eligibility Information

1. *Eligible Applicants:* The following entities are eligible under this program: Certain LEAs, as prescribed by ESEA section 6112(b), including charter schools authorized as LEAs under State law; certain schools funded by the Bureau of Indian Education of the U.S. Department of the Interior (BIE), as prescribed by ESEA section 6113(d); Indian Tribes and IOs under certain conditions, as prescribed by ESEA section 6112(c); and ICBOs, as prescribed by ESEA section 6112(d). Consortia of two or more eligible entities are also eligible under certain circumstances, as prescribed by ESEA section 6112(a)(4).

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* ESEA Section 6114(c)(1) requires a grantee to use these grant funds only to supplement the funds that, in the absence of these Federal funds, such agency would make available for services described in this application, and not to supplant such funds.

c. *Indirect Cost Rate Information:* This program uses a restricted indirect cost rate. For more information regarding restricted indirect costs, or to obtain a negotiated restricted indirect cost rate, please see: *www2.ed.gov/about/offices/list/ocfo/restrate.html.*

d. *Administrative Cost Limitation:* We note that, under ESEA section 6115(d) and per the Consolidated Appropriations Act, 2021, no more than five percent of the funds awarded for a grant may be used for direct administrative costs. This five percent limit does not include indirect costs.

IV. Application and Submission Information

1. *How to Request an Application Package:* You can obtain an entity-specific link for the electronic application for grants under this program by contacting the PSC listed under **FOR FURTHER INFORMATION CONTACT**.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the PSC listed under **FOR FURTHER INFORMATION CONTACT**.

2. *Content and Form of Application Submission:* (a) Requirements concerning the content of an application, together with the forms you must submit and technical assistance resources, are located on the EASIE Communities of Practice website at *https://easie.grads360.org/.*

Note: To address the current needs of OIE's formula award applicants, EASIE will move to the OMB MAX Survey Portal. OIE and PSC will create dedicated technical assistance documentation to support applicants and grantees with accessing, navigating, entering data, and submitting their responses in the new system. Prior to the opening of EASIE Part I, this documentation will be announced and posted on the EASIE Communities of Practice website at: *https://easie.grads360.org/.*

User accounts will be replaced with an entity-specific link (also known as a token) to access the new EASIE application in the OMB MAX Survey Portal. Only individuals that are registered as the current Point of Contact or Superintendent/Authorized Representative will receive the entity-specific link to access the application for EASIE Part I and II. The Superintendent/Authorized Representative can continue to delegate the responsibility of completing the EASIE application in the new OMB MAX Survey to other entity contacts by sharing their entity-specific link internally. The Superintendent/Authorized Representative is ultimately responsible for the review and certification the application. Please contact the PSC with any questions related to this change.

(b) *Supplementary Documentation:* The EASIE application requires submission of the following supplementary documentation in electronic Portable Document Format (PDF):

(i) In EASIE Part I, applicants that are Tribes, IOs, or ICBOs must submit the appropriate ''Applying in Lieu of the LEA'' agreement form with their application to verify their eligibility no later than March 11, 2021 (which is the closing date of EASIE Part I). Each separate eligibility document is identified by applicant-type as either: Tribe Applying in Lieu of an LEA Agreement; IO Agreement; or ICBO Agreement. These are available on the Getting Started page in the EASIE Portal as downloadable documents. The details of the verification process, which are necessary to meet the statutory eligibility requirements for Tribes, IOs, and ICBOs, are in the application package.

(ii) In EASIE Part I, an applicant that is the lead applicant for a consortium must use the consortium agreement form that is available on the Getting

Started page in the EASIE Portal as a downloadable document and upload it to EASIE no later than March 11, 2021, the EASIE Part I closing date.

(iii) In EASIE Part II, for an applicant that is an LEA or a consortium of LEAs, the EASIE application requires the electronic PDF submission of the Indian Parent Committee Approval form no later than the deadline for transmittal of EASIE Part II, which is May 14, 2021. Applicants are encouraged to begin planning parent committee meetings early to ensure parent committee requirements are met before EASIE Part II closes. The form is available on the EASIE Communities of Practice website at *https://easie.grads360.org/.*

3. *Submission Dates and Times:*

Part I of the Formula Grant EASIE Applications Available: February 8, 2021.

Deadline for Transmittal of EASIE Part I: March 11, 2021, 11:59 p.m., Eastern Time.

Part II of the Formula Grant EASIE Applications Available: April 5, 2021.

Deadline for Transmittal of EASIE Part II: May 14, 2021, 11:59 p.m., Eastern Time.

Submit applications for grants under this program electronically using EASIE located in the OIE-provided portal. For information (including dates and times) about how to submit your application, please refer to *Other Submission Requirements* in section IV of this notice.

OIE will only consider an application that is compliant with deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN;

b. Register both your DUNS number and TIN with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your SAM application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following website: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *www2.ed.gov/fund/grant/apply/sam-faqs.html.*

6. *Other Submission Requirements:*

a. *Electronic Submission of Applications.*

Electronic Application System for Indian Education (EASIE): EASIE is an electronic application found in the EASIE OMB MAX Survey Portal via an entity-specific link. It is divided into two parts—EASIE Part I and EASIE Part II.

EASIE Part I, student count, provides the appropriate data-entry screens to submit verified, aggregated, Indian student count totals based on either the Indian School Equalization Program (ISEP) count or the Indian Student Eligibility Certification Form (ED 506 Form). All applicants must submit a current Indian student count for FY 2021. Applicants must use the ED 506 Form to document eligible Indian students; however, BIE schools may use either the ISEP count or the ED 506 Form count to verify their Indian student counts. Applicants must protect the privacy of all individual data collected and only report aggregated data to the Secretary.

Applicants that verify their Indian student count with the ED 506 Form must document their Indian student counts by completing the following: (1) Each year, the applicant must verify there is a valid ED 506 Form for each Indian child included in the count; (2) all ED 506 Forms included in the count must be completed, signed, and dated by the parent, and be on file; (3) the applicant must maintain a copy of the student enrollment roster(s) covering the same period of time indicated in the application as the count period; and (4) each Indian child included in the count must be listed on the LEA's enrollment roster(s) for at least one day during the count period.

BIE schools that enter an ISEP count to verify their Indian student count must use the most current Indian student count certified by the BIE.

Once an Indian child is determined to be eligible to be counted for such grant award, the applicant must maintain a record of such determination and must not require a new or duplicate determination or form to be made for such child for a subsequent application for a grant under this program.

Applicants must indicate the time span for the project objectives and corresponding activities and services for AI/AN students. Applicants can choose to set objectives that remain the same for up to four years to facilitate data collection and enhance long-term planning.

In EASIE Part II, all applicants are required to—

(1) Select the type of program being submitted as either regular formula grant program, formula grant project consolidated with a title I schoolwide program, or integration of services under ESEA section 6116;

(2) Select the grade levels offered by the LEA or BIE school;

(3) Identify, from a list of possible Department grant programs (*e.g.,* ESEA title I), the programs in the LEA that are currently coordinated with a title VI project, or with which the school district plans to coordinate during the project year, in accordance with ESEA section 6114(c)(5), and describe the

comprehensive program for AI/AN students with those grant programs;

(4) Describe the professional development opportunities that will be provided as part of a comprehensive program to ensure that teachers and other school professionals who are *new* to the Indian community are prepared to work with Indian children, and that all teachers who will be involved in programs assisted by this grant have been properly trained to carry out such programs, as required by ESEA section 6114(b)(5);

(5) Provide information on how the State assessment data of all Indian students (not just those served) are used and how such information will be disseminated to the Indian community, Indian Parent Committee, and Indian Tribes whose children are served by the LEA. Also describe how assessment data from the previous school year (SY) were used, as required by ESEA section 6114(b)(6);

(6) Indicate when the public hearing was held for SY 2021, as required by ESEA section 6114(c)(3)(C);

(7) For an applicant that is an LEA, BIE school, or a consortium of LEAs or BIE schools, describe the process the applicant used to meaningfully collaborate with Indian Tribes located in the community in a timely, active, and ongoing manner in the development of the comprehensive program and the actions taken as a result of such collaboration (ESEA section 6114(b)(7));

(8) Identify specific project objectives that will further the goal of providing culturally responsive education for AI/AN students to meet their academic needs and help them meet State achievement standards (ESEA section 6115(b)), and identify the data sources that will be used to measure progress toward meeting project objectives;

(9) For an LEA that selects a schoolwide application, identify how the use of such funds in a schoolwide program will produce benefits to Indian students that would not be achieved if the funds were not used in a schoolwide program (ESEA section 6115(c)(3));

(10) Submit a program budget and justification based on the estimated grant amount that the EASIE system calculates from the Indian student count submitted in EASIE Part I. After the initial grant amounts are determined, additional funds may become available due to such circumstances as withdrawn applications or reduction in another applicant's student count. An applicant whose award amount increases or decreases more than $5,000 must submit a revised budget prior to receiving its grant award but will not need to re-certify its application. If an applicant's award amount increases or decreases by less than $5,000, a budget update is not required. For an applicant that receives an increased award amount following submission of its original budget, the applicant must allocate the increased amount only to previously approved budget categories;

(11) As required by section 427 of the General Education Provisions Act (GEPA), describe the steps the applicant proposes to take to ensure equitable access to, and participation in, the project or activity to be conducted with such assistance, by addressing the special needs of students, teachers, and other program beneficiaries in order to overcome barriers to equitable participation, including barriers based on gender, race, color, national origin, disability, and age; and

(12) If needed, provide additional comments to assist OIE in the review of the application.

Registration for Formula Grant EASIE: Current, former, and new applicants interested in submitting a Formula Grant EASIE application must register for Formula Grant EASIE. Prior to the opening of EASIE Part I, PSC will send a broadcast to prior year grantees and new prospective applicants that have contacted PSC and registered for EASIE. All recipients who receive PSC's broadcast will be asked to complete their intent to apply for the upcoming application period in the EASIE Portal. All prospective applicants will be provided the opportunity to confirm if any updates to their registration information are necessary, and/or if they would like to completely decline registration. Entities that do not have an active registration or are new applicants should contact the PSC listed under **FOR FURTHER INFORMATION CONTACT** to register any time before the EASIE Part I application deadline date. Registration *does not* serve as the entity's grant application. For assistance registering, contact the PSC listed under **FOR FURTHER INFORMATION CONTACT**.

Certification for Formula Grant EASIE: The applicant's authorized representative, who must be a senior level official (Superintendent, Tribal Chief, or similar) of the entity and legally authorized by the applicant organization to approve the application, must certify EASIE Part I and Part II by the deadline date. Each applicant should identify at least three system users, one for each of the following: Project director, authorized representative, and another party (such as a Budget Director) designated to answer questions in the event the project director is unavailable. The certification process ensures that the information in the application is true, reliable, and valid. An applicant that provides a false statement in the application is subject to penalties under the False Claims Act, 18 U.S.C. 1001.

b. *Submission of Paper Applications by Mail.*

We discourage paper applications, but if electronic submission is not possible (*e.g.,* you do not have access to the internet), you must provide a written statement that you intend to submit a paper application. Send this written statement no later than Monday, January 11, 2021.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date of EASIE Part I. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date of EASIE Part I. If you email the written statement, it must be sent no later than two weeks before the application deadline date to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Address and mail or fax your statement to: Dr. Crystal C. Moore, U.S. Department of Education, Office of Indian Education, 400 Maryland Avenue SW, MS 6335 Washington, DC 20202–6335. FAX: (202) 205–0606.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

You must mail the original and two copies of your application, on or before the application deadline dates for both EASIE Part I and Part II, to the Department at the following address: U.S. Department of Education, Office of Indian Education, Attention: Assistance Listing Number 84.060A, 400 Maryland Avenue SW, MS 6335, Washington, DC 20202–6335.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark.

Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date for EASIE Part I or Part II.

c. *Submission of Paper Applications by Hand Delivery.*

If you are submitting a paper application, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline dates for both EASIE Part I and Part II, to the Department at the following address: U.S. Department of Education, Office of Indian Education, Attention: Assistance Listing Number 84.060A 400 Maryland Avenue SW, MS 6335Washington, DC 20202–6335.

The program office accepts hand deliveries daily between 8:00 a.m. and 4:30 p.m., Eastern Time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the Assistance Listing Number, including suffix letter, of this program—84.060A; and

(2) The program office will mail you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should contact the program office at (202) 453–7042.

V. Grant Administration Information

1. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice. We reference the regulations outlining the terms and conditions of a grant in the *Applicable Regulations* section of this notice.

3. *Reporting:* (a) If you apply for a grant under this program, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) You must submit an annual performance report (APR) using EASIE via the OMB MAX Survey Portal entity-specific link, including financial information, as directed by the Secretary, within 90 days after the close of the grant year. You will be able to access the APR via the EASIE portal link provided to registered entities prior to the system being open to users. Grantees will receive an email from the PSC identifying the date that the APR will be available to grantees and the deadline for its transmission.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness and efficiency of the Formula Grants program: (1) The percentage of AI/AN students in grades four and eight who score at or above the basic level in reading on the National Assessment of Educational Progress (NAEP); (2) the percentage of AI/AN students in grades four and eight who score at or above the basic level in mathematics on the NAEP; (3) the percentage of AI/AN students in grades three through eight meeting State achievement standards by scoring at or above the proficient level in reading and mathematics on State assessments; (4) the difference between the percentage of AI/AN students in grades three through eight at or above the proficient level in reading and mathematics on State assessments and the percentage of all students scoring at those levels; (5) the percentage of AI/AN students who graduate from high school as measured by the four-year adjusted cohort graduation rate; (6) the percentage of grantees providing culturally responsive activities; and (7) the percentage of funds used by grantees prior to award close-out.

Note: In any year in which NAEP or State assessment data are systematically unavailable, reporting of such data will not be required and will not be used for purposes of performance measures.

5. *Integrity and Performance System:* If you receive an award under this grant program that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through SAM. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Other Information

Accessible Format: Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) by contacting the PSC listed under **FOR FURTHER INFORMATION CONTACT**. On

Electronic Access to This Document: The official version of this document is 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 other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2021–00321 Filed 1–11–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Advisory 1776 Commission

AGENCY: Office of Communications and Outreach, U.S. Department of Education.

ACTION: Announcement of an open meeting.

SUMMARY: This notice sets forth the agenda, time, and instructions for public participation in the January 15, 2021, meeting of the President's Advisory 1776 Commission (''The 1776 Commission'') and provides information to members of the public regarding the meeting. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act (FACA). This notice is being published less than 15 days from the meeting date due to the exceptional and immediate need to establish next steps for the work of The 1776 Commission in light of ongoing attacks on the American founding and critical discussion around the nation's core principles for further enjoyment of liberty and striving ''to form a more perfect Union.''

DATES: The meeting of The 1776 Commission will be held on Friday, January 15, 2021, from 1:00 p.m. to 2:00 p.m. Eastern Standard Time at the Eisenhower Executive Office Building, 1650 Pennsylvania Avenue NW, Washington, DC 20502. Members of the public can attend virtually.

FOR FURTHER INFORMATION CONTACT: Adam Honeysett, Designated Federal Official, Office of Communications and Outreach, U.S. Department of Education, 400 Maryland Avenue SW, Room 7W220, Washington, DC 20202, telephone: (202) 401–3003 or email: *Adam.Honeysett@ed.gov.*

SUPPLEMENTARY INFORMATION: The 1776 Commission's Statutory Authority and Function: The 1776 Commission is established under Executive Order 13958 (November 2, 2020). The 1776 Commission's duties are to advise the President regarding how to better enable a rising generation to understand the history and principles of the founding of the United States in 1776 and to strive to form a more perfect Union by: (i) Producing a report, within 1 year of the date of Executive Order 13958, which shall be publicly disseminated, regarding the core principles of the American founding and how these principles may be understood to further enjoyment of ''the blessings of liberty'' and to promote our striving ''to form a more perfect Union;'' (ii) offering recommendations regarding the Federal Government's plans to celebrate the 250th anniversary of American Independence and coordinating with relevant external stakeholders on the United States Semiquincentennial Commission's plans; (iii) facilitating the development and implementation of a ''Presidential 1776 Award'' to recognize student knowledge of the American founding, including knowledge about the Founders, the Declaration of Independence, the Constitutional Convention, and the great soldiers and battles of the American Revolutionary War; (iv) advising executive departments and agencies with regard to their efforts to ensure patriotic education—meaning the presentation of the history of the American founding and foundational principles, the examination of how the United States has grown closer to those principles throughout its history, and the explanation of why commitment to America's aspirations is beneficial and justified—and provide such education to the public at national parks, battlefields, monuments, museums, installations, landmarks, cemeteries, and other places important to the American Revolution and the American founding, as appropriate and consistent with applicable law; (v) advising agencies on prioritizing the American founding in Federal grants and initiatives, including those described in section 4 of Executive Order 13958, as appropriate and consistent with applicable law; and (vi) facilitating and promoting other activities to support public knowledge and patriotic education on the American Revolution and the American founding, as appropriate and consistent with applicable law.

Meeting Agenda: The agenda for The 1776 Commission meeting is consideration of a possible report as called for under its charter.

Instructions for Accessing the Meeting

Members of the public can access the meeting by registering to obtain dial-in instructions by emailing Adam Honeysett at *Adam.Honeysett@ed.gov.* Due to technical constraints, registration is limited to 200 participants and will be available on a first-come, first-served basis.

Access to Records of the Meeting: The Department will post the official report of the meeting on the Department's website within 90 days after the meeting. In addition, pursuant to the FACA, the public may request to inspect records of the meeting at 400 Maryland Avenue SW, Washington, DC, by emailing *Adam.Honeysett@ed.gov* or by phoning (202) 401–3003 to schedule an appointment.

Public Comment: Members of the public may submit written statements regarding the work of The 1776 Commission via *Adam.Honeysett@ed.gov* (please use the subject line ''January 2021 1776 Commission Meeting Public Comment'') or by letter to Adam Honeysett, Office of Communication and Outreach, U.S. Department of Education, 400 Maryland Avenue SW, 7W220, Washington, DC 20202, by Thursday, January 14, 2021.

Reasonable Accommodations: The meeting platform and access code are accessible to individuals with disabilities. If you will need an auxiliary aid or service for the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice not later than Thursday, January 14, 2021. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* 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 Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You also may 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.

Authority: Executive Order 13958 (November 2, 2020).

Elizabeth Hill,

Delegated to perform the duties of the Assistant Secretary, Communications Director, Office of Communications and Outreach.

[FR Doc. 2021–00525 Filed 1–8–21; 4:15 pm]

BILLING CODE P

DEPARTMENT OF ENERGY

[Case Number 2019–010; EERE–2019–BT–WAV–0029]

Energy Conservation Program: Notification of Petition for Waiver of Air Innovations From the Department of Energy Walk-In Coolers and Walk-In Freezers Test Procedure and Notification of Grant of Interim Waiver

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

ACTION: Notification of petition for waiver and grant of an interim waiver; request for comments.

SUMMARY: This document announces receipt of and publishes a petition for waiver and interim waiver from Air Innovations, which seeks a waiver for specified walk-in cooler refrigeration system basic models from the U.S. Department of Energy (''DOE'') test procedure used to determine the efficiency and energy consumption of walk-in coolers and walk-in freezers. DOE also gives notice of an Interim Waiver Order that requires Air Innovations to test and rate the specified walk-in cooler refrigeration system basic models in accordance with the alternate test procedure set forth in the Interim Waiver Order, which modifies the alternate test procedure suggested by Air Innovations. DOE solicits comments, data, and information concerning Air Innovations' petition, its suggested alternate test procedure, and the alternate test procedure specified in the Interim Waiver Order so as to inform DOE's final decision on Air Innovations' waiver request.

DATES: The Interim Waiver Order is effective on January 12, 2021. Written comments and information will be accepted on or before February 11, 2021.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, interested persons may submit comments, identified by case number ''2019–010'', and Docket number ''EERE–2019–BT–WAV–0029,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AirInnovations2019WAV0029@ee.doe.gov.* Include Case No. 2019–010 in the subject line of the message.
- *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mail Stop EE–5B, Petition for Waiver Case No. 2019–010, 1000 Independence Avenue SW, Washington, DC 20585–0121. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a ''CD'', in which case it is not necessary to include printed copies.

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

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

The docket web page can be found at *https://www.regulations.gov/docket?D=EERE-2019-BT-WAV-0029.* The docket web page contains instruction on how to access all documents, including public comments, in the docket. See the **SUPPLEMENTARY INFORMATION** section for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *AS_Waiver_Request@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE is publishing Air Innovations' petition for waiver, pursuant to 10 CFR 431.401(b)(1)(iv), absent information for which the petitioner requested treatment as confidential business information. DOE invites all interested parties to submit in writing by February 11, 2021, comments and information on all aspects of the petition, including the alternate test procedure. Pursuant to 10 CFR 431.401(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Scott Toukatly, *SToukatly@airinnovations.com,* 2301 SW 145th Avenue, Miramar, FL 33027.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. If this instruction is followed, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you

have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. Faxes will not be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Signing Authority

This document of the Department of Energy was signed on January 7, 2021, 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 January 7, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

Case Number 2019–010

Interim Waiver Order

I. Background and Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes the U.S. Department of Energy (''DOE'') to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C[2] of EPCA, added by the National Energy Conservation Policy Act, Public Law 95–619, sec. 441 (Nov. 9, 1978), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve the energy efficiency for certain types of industrial equipment. Through amendments brought about by the Energy Independence and Security Act of 2007, Public Law 110–140, sec. 312 (Dec. 19, 2007), this equipment includes walk-in coolers and walk-in freezers, the subject of this Interim Waiver Order. (42 U.S.C. 6311(1)(G))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers. (42 U.S.C. 6316)

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect the energy efficiency, energy use or estimated annual operating cost of covered products and equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) The test procedure used to determine the net capacity and annual walk-in energy factor (''AWEF'') of walk-in cooler and walk-in freezer refrigeration systems is contained in the Code of Federal Regulations (''CFR'') at 10 CFR part 431, subpart R, appendix C, *Uniform Test Method for the Measurement of Net Capacity and AWEF of Walk-in Cooler and Walk-in Freezer Refrigeration Systems* (''Appendix C'').

Under 10 CFR 431.401, any interested person may submit a petition for waiver from DOE's test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. *See* 10 CFR 431.401(f)(2). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the performance of the

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

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated as Part A–1.

equipment type in a manner representative of its energy consumption characteristics of the basic model. *See* 10 CFR 431.401(b)(1)(iii). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. *See* 10 CFR 431.401(f)(2).

As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. *See* 10 CFR 431.401(1). As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule to that effect. *Id.*

The waiver process also provides that DOE may grant an interim waiver if it appears likely that the underlying petition for waiver will be granted and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the underlying petition for waiver. *See* 10 CFR 431.401(e)(2). Within one year of issuance of an interim waiver, DOE will either: (i) Publish in the **Federal Register** a determination on the petition for waiver; or (ii) publish in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver. *See* 10 CFR 431.401(h)(1).

When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. *See* 10 CFR 431.401(h)(2).

II. Air Innovations' Petition for Waiver and Application for Interim Waiver

On September 23, 2019, DOE received an email from Air Innovations filing a petition for an interim waiver from the test procedure for walk-in cooler and walk-in freezer refrigeration systems set forth at Appendix C (Air Innovations, No. 1 at p. 1 [3]). The waiver process under 10 CFR 431.401 requires that a petitioner must request a waiver for there to be consideration of a petition for an interim waiver. Air Innovations later confirmed in a May 21, 2020 email that the petition should also be considered as a petition for waiver (Air Innovations, No. 4).

The primary assertion in the petition, absent an interim waiver, is that the prescribed test procedure would evaluate the specified basic models in a manner so unrepresentative of their true energy consumption as to provide materially inaccurate comparative data. As presented in Air Innovations' petition, the specified basic models of walk-in cooler refrigeration systems operate at a temperature range of 45–65 °F; higher than that of a typical walk-in cooler refrigeration system. Thus, the 35 °F temperature specified in the DOE test procedure for medium-temperature walk-in refrigeration systems would result in the prescribed test procedures evaluating the specified basic models in a manner so unrepresentative of their true energy consumption characteristics as to provide materially inaccurate comparative data. Air Innovations also states that the specified basic models are ''wine cellar cooling systems'' that operate at temperature and relative humidity ranges optimized for the long-term storage of wine and are usually located in air-conditioned spaces. Air Innovations contends that because of these characteristics, wine cellar walk-in refrigeration systems differ in their walk-in box temperature setpoint, walk-in box relative humidity, low/high load split,[4] and compressor efficiency from other walk-in cooler refrigeration systems.

Air Innovations states that the specified basic models are designed to provide a cold environment at a temperature range between 45–65 °F with 50–70 percent relative humidity (''RH''), and typically are kept at 55 °F and 55 percent RH rather than the 35 °F and <50 percent RH test condition prescribed by the DOE test procedure. The website for Air Innovations' Wine Guardian brand stresses the importance of temperature control for optimum wine storage, and states that the ideal temperature range for wine storage is 55 °F to 57 °F and that the ideal average relative humidity is 60 percent.[5] Further, Air Innovations states that the refrigeration systems are designed solely for the purpose of long-term wine storage to mimic the temperature and humidity of natural caves. Air Innovations also asserts that operating a wine cellar at the 35 °F condition would adversely mechanically alter the intended performance of the system, which would include icing of the evaporator coil that could potentially damage the compressor, and would not result in an accurate representation of the performance of the cooling unit.

Additionally, the Thru-the-wall (TTW009 and TTW018) and Ducted Self-contained (D025, D050, D088, and D200) basic models of walk-in refrigeration systems identified in Air Innovations' waiver petition are single-package systems. Although not explicitly identified by Air Innovations, DOE recognizes that because of their single-package design, these basic models have insufficient space within the units and insufficient lengths of liquid line and evaporator outlet line for the dual mass flow meters and the dual temperature and pressure measurements required by the test procedure's refrigerant enthalpy method. AHRI 1250–2009 does not include specific provisions for testing single-package systems and testing these basic models using the refrigerant enthalpy method as required by Appendix C would require extensive additional piping to route the pipes out of the system where the components can be installed, and then back in.[6] This additional piping would impact unit performance, likely be inconsistent between test labs, and result in unrepresentative test values for the unit under test. AHRI has recently published a revised version of the test standard that provides provisions for single-package systems without requiring extensive additional piping (AHRI 1250–2020, *2020 Standard for Performance Rating of Walk-in Coolers and Freezers*). As discussed below, the interim waiver alternative test procedure presented for comment in this notification adopts the new test methods included in AHRI 1250–2020 for single-package units.

DOE has received multiple requests from wine cellar manufacturers for waiver and interim waiver from Appendix C. In light of these requests,

[3] A notation in the form ''Air Innovations, No. 1'' identifies a written submission: (1) Made by Air Innovations; and (2) recorded in document number 1 that is filed in the docket of this petition for waiver (Docket No. EERE–2019–BT–WAV–0029) and available at *http://www.regulations.gov.*

[4] The DOE test procedure incorporates by reference Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') Test Standard 1250–2009, ''Standard for Performance Rating of Walk-in Coolers and Freezers'' (including Errata sheet dated December 2015) (''AHRI 1250–2009''). Section 6 of that standard defines walk-in box thermal loads as a function of refrigeration system net capacity for both high-load and low-load periods. The waiver petition asserts that wine cellars do not have distinct high and low load periods, and that the box load levels in the test standard are not representative for wine cellar refrigeration systems.

[5] *https://wineguardian.com/proper-wine-storage-temperature-and-humidity/.*

[6] In a waiver granted to Store It Cold for certain models of single-package units, DOE acknowledged a similar issue in which the additional piping necessary to install the required testing components would affect performance of the units, rendering the results unrepresentative. See 84 FR 39286 (Aug. 9, 2019). In the case of the waiver granted to Store It Cold, the refrigerant enthalpy method yielded inaccurate data for the specified basic models compared to the basic models' true performance characteristics because of the additional piping required to attach the testing components required by the refrigerant enthalpy test. The same issues are present for the specified basic Thru-the-wall and Ducted Self-contained single-package basic models included in Air Innovations' waiver petition.

DOE met with the AHRI and wine cellar walk-in refrigeration system manufacturers to develop a consistent and representative alternate test procedure that would be relevant to each waiver request. Ultimately, AHRI sent a letter to DOE on August 18, 2020, summarizing the industry's position on several issues (''AHRI August 2020 Letter'').[7] This letter documents industry support for specific wine cellar walk-in refrigeration system test procedure requirements, allowing the provisions to apply only to refrigeration systems with a minimum operating temperature of 45 °F, since wine cellar system controls and unit design specifications prevent a temperature below 45 °F. A provision for testing walk-in wine cellar refrigeration systems at an external static pressure (''ESP'')[8] of 50 percent of the maximum ESP to be specified by manufacturers for each basic model (AHRI August 2020 Letter) is also included.

Accordingly, Air Innovations submitted an updated petition for waiver and interim waiver on October 19, 2020 (Air Innovations, No. 6). The updated petition states that all basic models listed in the petition for waiver and interim waiver cannot be operated at a temperature less than 45 °F and provides DOE with maximum ESP values for specified ducted self-contained and ducted split system basic models.[9]

Air Innovations requests an interim waiver from the existing DOE test procedure. DOE will grant an interim waiver if it appears likely that the petition for waiver will be granted, and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. See 10 CFR 431.401(e)(2).

III. Requested Alternate Test Procedure

EPCA requires that manufacturers use the applicable DOE test procedures when making representations about the energy consumption and energy consumption costs of covered equipment. (42 U.S.C. 6314(d)). Consistency is important when making representations about the energy efficiency of products and equipment, including when demonstrating compliance with applicable DOE energy conservation standards. Pursuant to its regulations at 10 CFR 431.401, and after consideration of public comments on the petition, DOE may establish in a subsequent Decision and Order an alternate test procedure for the basic models addressed by the Interim Waiver Order.

Air Innovations seeks to use an approach that would test and rate specific wine cellar walk-in refrigeration system basic models. The company's suggested approach specifies using an air-return temperature of 55 °F, as opposed to the 35 °F requirement prescribed in the current DOE test procedure. Air Innovations also suggests using an air-return relative humidity of 55 percent RH, as opposed to <50 percent RH. Additionally, Air Innovations requests that a correction factor of 0.55 be applied to the final AWEF calculation to account for the different use and load patterns of the specified basic models as compared to walk-in cooler refrigeration systems generally. Air Innovations cited the use of such a correction factor for coolers[10] and combination cooler refrigeration products under DOE's test procedure for miscellaneous refrigeration products at 10 CFR part 430, subpart B, appendix A.

IV. Interim Waiver Order

DOE has reviewed Air Innovations' application, its suggested testing approach, representations of the specified basic models on the website for the Wine Guardian brand, related product catalogs, and information provided by Air Innovations and other wine cellar walk-in refrigeration system manufacturers in meetings with DOE. Based on this review, DOE is granting an interim waiver that requires testing with a modified version of the testing approach suggested by Air Innovations.

The modified testing approach would apply to the models specified in Air Innovations' waiver petition that include two categories of WICF refrigeration systems, *i.e.,* single package and split (matched) systems. The Through-the-wall and Ducted Self-contained Systems are single-package systems. The basic models that are Through-the-wall systems (basic model numbers TTW009 and TTW018) are designed for installation through the wall of a wine cellar, while the basic models that are Ducted Self-contained systems (basic model numbers D025, D050, D088, D200) are designed to be installed remotely from the wine cellar and provide cooling by circulating air through ducts from the wine cellar to the unit and back. The basic models that are Ducted Split Systems (basic model numbers DS025, DS050, DS088, and DS200) and Ductless Split Systems (basic model numbers SS018 CS025, and CS050) are split (matched) systems, in which refrigerant circulates between the ''fan coil'' (unit cooler) portion of the unit and the ''condensing unit''. The refrigerant cools the wine cellar air in the fan coil, while the condensing unit rejects heat from the refrigeration system in a remote location, often outside. The fan coil of the Ducted Split System circulates air through ducts from the wine cellar to the fan coil and back to provide cooling, while the fan coil of the Ductless Split System is installed either partially or entirely in the wine cellar, allowing direct cooling. The capacity range of the specified basic models is from 1,130 Btu/h to 15,000 Btu/h for the specified operating conditions for each of the models.[11]

DOE considers the operating temperature range of the specified basic models to be integral to its analysis of whether such models require a test procedure waiver. Grant of the interim waiver and its alternative test procedure to the specified basic models listed in the petition is based upon the representation by Air Innovations that the operating range for the basic models listed in the interim waiver does not extend below 45 °F.

The alternate test procedure specified in the Interim Waiver Order requires testing the specified basic models according to Appendix C with the following changes. The required alternate test procedure specifies an air entering dry-bulb temperature of 55 °F and a relative humidity of 55 percent. The alternate test procedure also specifies that the capacity measurement for the specified basic models that are

[7] DOE's meetings with Air Innovations and other wine cellar refrigeration systems were conducted consistent with the Department's *ex parte* meeting guidance (74 FR 52795; October 14, 2009). The AHRI August 2020 letter memorializes this communication and is provided in Docket No. EERE- 2019–BT–WAV–0029–0005.

[8] External static pressure is the sum of all the pressure resisting the fans, in this case chiefly the resistance generated by the air moving through ductwork.

[9] Air Innovations' has stated that the maximum ESP values included in their updated petition for waiver are confidential business information. These values have been replaced by ''[ESP REDACTED]'' in the publicly available petition. Further, Air Innovations included a maximum ESP for model TTW018 in a clarifying email on December 18, 2020 (Air Innovations, No. 10). This value has also been replaced by ''[ESP REDACTED]'' in the publicly available version.

[10] A *cooler* is a cabinet, used with one or more doors, that has a source of refrigeration capable of operating on single-phase, alternating current and is capable of maintaining compartment temperatures either: (1) No lower than 39 °F (3.9 °C); or (2) In a range that extends no lower than 37 °F (2.8 °C) but at least as high as 60 °F (15.6 °C). 10 CFR 430.2.

[11] The specified operating conditions vary among the models but are generally 57 °F and 55% relative humidity cold-side air entering conditions and either 75 °F or 80 °F warm-side air entering temperature. An example series of specified models with capacity information based upon these conditions can be found at *https://wineguardian.com/wp-content/uploads/2020/01/Split-System-Datasheet-2020-01-16.pdf.*

single-package systems (*i.e.,* the Thru-the-wall and Ducted Self-contained systems) be conducted using a primary and a secondary capacity measurement method as specified in AHRI 1250–2020, using two of the following: The indoor air enthalpy method; the outdoor air enthalpy method; the compressor calibration method; the indoor room calorimeter method; the outdoor room calorimeter method; or the balanced ambient room calorimeter method.

The required alternate test procedure also includes the following additional modifications to Air Innovations' suggested approach: For systems that can be installed with (1) ducted evaporator air, (2) with or without ducted evaporator air, (3) ducted condenser air, or (4) with or without ducted condenser air, testing would be conducted at 50 percent of the maximum ESP, consistent with the AHRI August 2020 Letter recommendations, subject to a tolerance of −0.00/+0.05 in. wc.[12] DOE understands that maximum ESP is generally not published in available literature such as installation instructions, but manufacturers do generally specify the size and maximum length of ductwork that is acceptable for any given unit in such literature. The duct specifications determine what ESP would be imposed on the unit in field operation.[13] The provision of allowable duct dimensions is more convenient for installers than maximum ESP, since it relieves the installer from having to perform duct pressure drop calculations to determine ESP. DOE independently calculated the maximum pressure drop over a range of common duct roughness values[14] using duct lengths and diameters published in Air Innovations' installation manuals.[15] DOE's calculations show reasonable agreement with the maximum ESP values provided by Air Innovations for the specified basic models. Given that the number and degree of duct bends and duct type will vary by installation, DOE found the maximum ESP values provided by Air Innovations to be sufficiently representative.

Selection of a representative ESP equal to half the maximum ESP is based on the expectation that most installations will require less than the maximum allowable duct length. In the absence of field data, DOE expects that a range of duct lengths from the minimal length to the maximum allowable length would be used; thus, DOE believes that half of the maximum ESP would be representative of most installations. For basic models with condenser or evaporator systems that are not designed for the ducting of air, this design characteristic must be clearly stated.

Additionally, if there are multiple condenser or fan-coil (unit cooler) fan speed settings, the speed setting used would be as instructed in the unit's installation instructions. However, if the installation instructions do not specify a fan speed setting for ducted installation, systems that can be installed with ducts would be tested with the highest available fan speed. The ESP would be set for testing either by symmetrically restricting the outlet duct[16] or, if using the indoor air enthalpy method, by adjusting the airflow measurement apparatus blower.

The alternate test procedure also describes the requirements for measurement of ESP consistent with provisions provided in AHRI 1250–2020 when using the indoor air enthalpy method with unit coolers.

Additionally, the alternate test procedure indicates that specified basic models that are split systems must be tested as matched pairs. According to Air Innovations' petition, the walk-in refrigeration system basic models that are split-systems are sold as full systems (*i.e.,* matched pairs) rather than as individual unit cooler and condensing unit components. This Interim Waiver Order provides no direction regarding refrigerant line connection operating conditions, and as such is inapplicable to testing the basic models as individual components. Consequently, the Interim Waiver Order addresses only matched-pair testing of the specified basic models that are split-systems.

DOE notes that, despite the request from Air Innovations, it is not including a 0.55 correction factor in the alternate test procedure required by the Interim Waiver Order. The company had observed that the test procedure in appendix A to subpart B of 10 CFR part 430 (''Appendix A''), includes such a factor to account for the difference in use and loading patterns of coolers (*e.g.,* self-contained wine chiller cabinets) as compared to other residential refrigeration products and sought to include a factor as part of its petition. Coolers, like other residential refrigeration products, are tested in a 90 °F room without door openings (section 2.1.1 of Appendix A). The intent of the energy test procedure for residential refrigeration products is to simulate operation in typical room conditions (72 °F) with door openings by testing at 90 °F ambient temperature without door openings. 10 CFR 430.23(ff)(7). In section 5.2.1.1 of Appendix A, a correction factor of 0.55 is applied to the measured energy consumption of coolers so that measuring energy consumption at 90 °F ambient temperature without door openings provides test results that are representative of consumer usage at 72 °F ambient temperature with door openings. Specifically, the 0.55 correction factor reflects that (1) closed-door operation of self-contained coolers in typical 72 °F room conditions results in an average energy consumption 0.46 times the value measured at the 90 °F ambient temperature specified by the test procedure; and (2) expected door openings of a self-contained wine chiller would add an additional 20% thermal load. Multiplying 0.46 by 1.2 results in the overall correction factor of 0.55. See 81 FR 46768, 46782 (July 18, 2016) (final rule for miscellaneous refrigeration products).

In contrast, these same closed-door conditions on which the miscellaneous refrigeration correction factor is based are not present in the test procedure for walk-in cooler refrigeration systems. The WICF test procedure does not provide for closed-door testing at elevated ambient temperatures as the test procedure for residential refrigeration products does because walk-ins are tested and rated by component, with a walk-in refrigeration system tested and rated separately from a walk-in enclosure (panels and doors). See 76 FR 21580. Walk-in refrigeration load is set by using a representative ratio of box load to capacity (see discussion below). As a result, applying the 0.55 correction factor as suggested by Air Innovations is not appropriate for the specified basic models.

Further, Air Innovations asserted that the suggested 0.55 correction factor was to address the differences in run time

[12] Inches of water column (''in. wc'') is a unit of pressure conventionally used for measurement of pressure differentials.

[13] The duct material, length, diameter, shape, and configuration are used to calculate the ESP generated in the duct, along with the temperature and flow rate of the air passing through the duct. The conditions during normal operation that result in a maximum ESP are used to calculate the reported maximum ESP values, which are dependent on individual unit design and represent manufacturer-recommended installation and use.

[14] Calculations were conducted over an absolute roughness range of 1.0–4.6 mm for flexible duct as defined in pages 1–2 of an OSTI Journal Article on pressure loss in flexible HVAC ducts at *https://www.osti.gov/servlets/purl/836654* (Docket No. EERE–2019–BT–WAV–0029) and available at *http://www.regulations.gov.*

[15] Duct lengths and diameters can be found in Air Innovations' installation manuals at *http://www.regulations.gov* Docket No. EERE–2019–BT–WAV–0029–0008 and Docket No. EERE–2019–BT–WAV–0029–0009.

[16] This approach is used for testing of furnace fans, as described in Section 8.6.1.1 of 10 CFR part 430, appendix AA to subpart B.

and compressor inefficiency of the specified basic models as compared to walk-in cooler refrigeration systems more generally. It suggested that the run time for wine cellar walk-in refrigeration systems ranges from 50 to 75 percent. AHRI 1250–2009 accounts for percent run time in the AWEF calculation by setting walk-in box load equal to specific fractions of refrigeration system net capacity—the fractions are defined based on whether the refrigeration system is for cooler or freezer applications, and whether it is designed for indoor or outdoor installation (see sections 6.2 (applicable to coolers) and 6.3 (applicable to freezers) of AHRI 1250–2009). The alternate test procedure provided by this interim waiver requires calculating AWEF based on setting the walk-in box load equal to half of the refrigeration system net capacity, without variation according to high and low load periods and without variation with outdoor air temperature for outdoor refrigeration systems. Setting the walk-in box load equal to half the refrigeration system net capacity results in a refrigeration system run time fraction slightly above 50 percent, which is in the range suggested by Air Innovations as being representative for the specified basic models. As previously discussed, walk-in energy consumption is determined by component, with separate test procedures for walk-in refrigeration systems, doors, and panels. Section 6 of AHRI 1250–2009 provides equations for determining refrigeration box load as a function of refrigeration system capacity. Using these equations with an assumed load factor of 50 percent maintains consistency with Appendix C while providing an appropriate load fraction for wine cellar refrigeration systems. Accordingly, DOE has declined to adopt a correction factor for the equipment at issue.

Based on DOE's review of Air Innovations' petition, the required alternate test procedure laid out in the Interim Waiver Order appears to allow for the accurate measurement of energy efficiency of the specified basic models, while alleviating the testing issues associated with Air Innovations' implementation of wine cellar walk-in refrigeration system testing for these basic models. Consequently, DOE has determined that Air Innovations' petition for waiver will likely be granted. Furthermore, DOE has determined that it is desirable for public policy reasons to grant Air Innovations immediate relief pending a determination of the petition for waiver.

For the reasons stated, it is *Ordered* that:

(1) Air Innovations must test and rate the following Air Innovations-branded wine cellar walk-in refrigeration system basic models [17] with the alternate test procedure set forth in paragraph (2).

Through-the-wall	Ducted self-contained	Ducted split system	Ductless split system
TTW018	D025 D050 D088 D0200	DS025 DS050 DS088 DS200	SS018 CS025 CS050

(2) The alternate test procedure for the Air Innovations basic models identified in paragraph (1) of this Interim Waiver Order is the test procedure for Walk-in Cooler Refrigeration Systems prescribed by DOE at 10 CFR part 431, subpart R, appendix C (''Appendix C to Subpart R''), except as detailed below. All other requirements of Appendix C to Subpart R, and DOE's regulations remain applicable.

In Appendix C to Subpart R, revise section 3.1.1 (which specifies modifications to AHRI 1250–2009 (incorporated by reference; see § 431.303)) to read:

3.1.1. In Table 1, Instrumentation Accuracy, refrigerant temperature measurements shall have an accuracy of ±0.5 °F for unit cooler in/out. Measurements used to determine temperature or water vapor content of the air (*i.e.,* wet bulb or dew point) shall be accurate to within ±0.25 °F; all other temperature measurements shall be accurate to within ±1.0 °F.

In Appendix C to Subpart R, revise section 3.1.4 (which specifies modifications to AHRI 1250–2009) and add modifications of AHRI 1250–2009 Tables 3 and 4 to read:

3.1.4. In Tables 3 and 4 of AHRI 1250–2009, Section 5, the Condenser Air Entering Wet-Bulb Temperature requirement applies only to single-packaged dedicated systems. Tables 3 and 4 shall be modified to read:

TABLE 3—FIXED CAPACITY MATCHED REFRIGERATOR SYSTEM AND SINGLE-PACKAGED DEDICATED SYSTEM, CONDENSING UNIT LOCATED INDOOR

Test description	Unit cooler air entering dry-bulb, °F	Unit cooler air entering relative humidity, % [1]	Condenser air entering dry-bulb, °F	Maximum condenser air entering wet-bulb, °F	Compressor status	Test objective
Evaporator Fan Power	55	55	.....	.....	.....	Measure fan input wattage.[2]
Refrigeration Capacity	55	55	90	[3] 65	Compressor On.	Determine Net Refrigeration Capacity of Unit Cooler, input power, and EER at Rating Condition.

[1] The test condition tolerance (maximum permissible variation of the average value of the measurement from the specified test condition) for relative humidity is 3%.

[2] Measure fan input wattage either by measuring total system power when the compressor and condenser are turned off or by separately sub-metering the evaporator fan.

[17] Basic model TTW009 was initially included in Air Innovation's petition, prior to an email submission on December 18, 2020 stating that Air Innovations has decided to discontinue offering model TTW009 (Air Innovations, No. 10).

[3] Maximum allowable value for Single-Packaged Systems that do not use evaporative Dedicated Condensing Units, where all or part of the equipment is located in the outdoor room.

TABLE 4—FIXED CAPACITY MATCHED REFRIGERATOR SYSTEM AND SINGLE-PACKAGED DEDICATED SYSTEM, CONDENSING UNIT LOCATED OUTDOOR

Test description	Unit cooler air entering dry-bulb, °F	Unit cooler air entering relative humidity, % [1]	Condenser air entering dry-bulb, °F	Maximum condenser air entering wet-bulb, °F	Compressor status	Test objective
Evaporator Fan Power	55	55	.....	.....	.....	Measure fan input wattage.[2]
Refrigeration Capacity A	55	55	95	[3] 68	Compressor On.	Determine Net Refrigeration Capacity of Unit Cooler, input power, and EER at Rating Condition.
Refrigeration Capacity B	55	55	59	[3] 46	Compressor On.	Determine Net Refrigeration Capacity of Unit Cooler and system input power at moderate condition.
Refrigeration Capacity C	55	55	35	[3] 29	Compressor On.	Determine Net Refrigeration Capacity of Unit Cooler and system input power at cold condition.

[1] The test condition tolerance (maximum permissible variation of the average value of the measurement from the specified test condition) for relative humidity is 3%.
[2] Measure fan input wattage either by measuring total system power when the compressor and condenser are turned off or by separately sub-metering the evaporator fan.
[3] Maximum allowable value for Single-Packaged Dedicated Systems that do not use evaporative Dedicated Condensing Units, where all or part of the equipment is located in the outdoor room.

In Appendix C to Subpart R, following section 3.2.5 (instructions regarding modifications to AHRI 1250–2009), add sections 3.2.6 and 3.2.7 to read:

3.2.6. The purpose in section C1 of appendix C is modified by extending it to include Single-Packaged Dedicated Systems.

3.2.7. For general test conditions and data recording (appendix C, section C7), the test acceptance criteria in Table 2 and the data to be recorded in Table C2 apply to the Dual Instrumentation and Calibrated Box methods of test.

In Appendix C to Subpart R, revise section 3.3 to read:

3.3. *Matched systems, single-packaged dedicated systems, and unit coolers tested alone:* Test any split system wine cellar walk-in refrigeration system as a matched pair. Any condensing unit or unit cooler component must be matched with a corresponding counterpart for testing. Use the test method in AHRI 1250–2009 (incorporated by reference; see § 431.303), appendix C as the method of test for matched refrigeration systems, single-packaged dedicated systems, or unit coolers tested alone, with the following modifications:

* * * * *

In Appendix C to Subpart R, revise sections 3.3.3 through 3.3.3.2 to read:

3.3.3. *Evaporator fan power.*

3.3.3.1. The unit cooler fan power consumption shall be measured in accordance with the requirements in Section C3.5 of AHRI 1250–2009. This measurement shall be made with the fan operating at full speed, either measuring unit cooler or total system power input upon the completion of the steady state test when the compressors and condenser fan of the walk-in system is turned off, or by submetered measurement of the evaporator fan power during the steady state test.

Section C3.5 of AHRI 1250–2009 is revised to read:

Unit Cooler Fan Power Measurement. The following shall be measured and recorded during a fan power test.

$EF_{comp,on}$ Total electrical power input to fan motor(s) of Unit Cooler, W
FS Fan speed (s), rpm
N Number of motors
P_b Barometric pressure, in. Hg
T_{db} Dry-bulb temperature of air at inlet, °F
T_{wb} Wet-bulb temperature of air at inlet, °F
V Voltage of each phase, V

For a given motor winding configuration, the total power input shall be measured at the highest nameplated voltage. For three-phase power, voltage imbalance shall be no more than 2%.

3.3.3.2. Evaporator fan power for the off cycle is equal to the on-cycle evaporator fan power with a run time of ten percent of the off-cycle time.

$EF_{comp,off} = 0.1 \times EF_{comp,on}$

In Appendix C to Subpart R, following section 3.3.7.2, add new sections 3.3.8, 3.3.9, and 3.3.10 to read:

3.3.8. Measure power and capacity of single-packaged dedicated systems as described in sections C4.1.2 and C9 of AHRI 1250–2020. The third and fourth sentences of Section C9.1.1.1 of AHRI 1250–2020 (''Entering air is to be sufficiently dry as to not produce frost on the Unit Cooler coil. Therefore, only sensible capacity measured by dry bulb change shall be used to calculate capacity.'') shall not apply.

3.3.9. For systems with ducted evaporator air, or that can be installed with or without ducted evaporator air: Connect ductwork on both the inlet and outlet connections and determine external static pressure as described in ASHRAE 37–2009, sections 6.4 and 6.5. Use pressure measurement instrumentation as described in ASHRAE 37–2009 section 5.3.2. Test at the fan speed specified in manufacturer installation instructions—if there is more than one fan speed setting and the installation instructions do not specify which speed to use, test at the highest speed. Conduct tests with the external static pressure equal to 50 percent of the maximum external static pressure allowed by the manufacturer for system installation within a tolerance of −0.00/+0.05 in. wc. If testing with the indoor air enthalpy method, adjust the airflow measurement apparatus fan to set the external static pressure—otherwise, set the external static pressure by symmetrically restricting the outlet of the test duct. In case of conflict, these requirements for setting evaporator

airflow take precedence over airflow values specified in manufacturer installation instructions or product literature.

3.3.10. For systems with ducted condenser air, or that can be installed with or without ducted condenser air: Connect ductwork on both the inlet and outlet connections and determine external static pressure as described in ASHRAE 37–2009, sections 6.4 and 6.5. Use pressure measurement instrumentation as described in ASHRAE 37–2009 section 5.3.2. Test at the fan speed specified in manufacturer installation instructions—if there is more than one fan speed setting and the installation instructions do not specify which speed to use, test at the highest speed. Conduct tests with the external static pressure equal to 50 percent of the maximum external static pressure allowed by the manufacturer for system installation within a tolerance of −0.00/+0.05 in. wc. If testing with the outdoor enthalpy method, adjust the airflow measurement apparatus fan to set the external static pressure—otherwise, set the external static pressure by symmetrically restricting the outlet of the test duct. In case of conflict, these requirements for setting condenser airflow take precedence over airflow values specified in manufacturer installation instructions or product literature. If testing using the outdoor air enthalpy method, the requirements of section 8.6 of ASHRAE 37–2009 are not applicable.

In Appendix C to Subpart R, revise section 3.3.6 (which specifies modifications to AHRI 1250–2009) to read:

3.3.6. AWEF is calculated on the basis that walk-in box load is equal to half of the system net capacity, without variation according to high and low load periods and without variation with outdoor air temperature for outdoor refrigeration systems, and the test must be done as a matched or single-package refrigeration system, as follows:

For Indoor Condensing Units:

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$$\dot{BL} = 0.5 \cdot \dot{q}_{ss}(90\,^{\circ}F)$$

$$LF = \frac{\dot{BL} + 3.412 \cdot \dot{EF}_{comp,off}}{\dot{q}_{ss}(90\,^{\circ}F) + 3.412 \cdot \dot{EF}_{comp,off}}$$

$$AWEF = \frac{\dot{BL}}{\dot{E}_{ss}(90\,^{\circ}F) \cdot LF + \dot{EF}_{comp,off} \cdot (1 - LF)}$$

For Outdoor Condensing Units:

$$\dot{BL} = 0.5 \cdot \dot{q}_{ss}(95\,^{\circ}F)$$

$$LF(t_j) = \frac{\dot{BL} + 3.412 \cdot \dot{EF}_{comp,off}}{\dot{q}_{ss}(t_j) + 3.412 \cdot \dot{EF}_{comp,off}}$$

$$AWEF = \frac{\sum_{j=1}^{n} BL(t_j)}{\sum_{j=1}^{n} E(t_j)}$$

$$BL(t_j) = \dot{BL} \cdot n_j$$

$$E(t_j) = \left[\dot{E}_{ss}(t_j) \cdot LF(t_j) + \dot{EF}_{comp,off} \cdot \left(1 - LF(t_j)\right)\right] \cdot n_j$$

Where: $\dot{BL}$ is the non-equipment-related box load
LF is the load factor
And other symbols are as defined in AHRI 1250-2009.

BILLING CODE 6450–01–C

(3) *Representations.* Air Innovations may not make representations about the efficiency of a basic model listed in paragraph (1) of this Interim Waiver Order for compliance, marketing, or other purposes unless that basic model has been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing.

(4) This interim waiver shall remain in effect according to the provisions of 10 CFR 430.401.

(5) This Interim Waiver Order is issued on the condition that the statements and representations provided by Air Innovations are valid. If Air Innovations makes any modifications to the controls or configurations of a basic model subject to this Interim Waiver

Order, such modifications will render the waiver invalid with respect to that basic model, and Air Innovations will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this waiver at any time if it determines the factual basis underlying the petition for the Interim Waiver Order is incorrect, or the results from the alternate test procedure are unrepresentative of a basic model's true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, Air Innovations may request that DOE rescind or modify the Interim Waiver Order if Air Innovations discovers an error in the information provided to DOE as part of its petition, determines that the interim waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2).

(6) Issuance of this Interim Waiver Order does not release Air Innovations from the certification requirements set forth at 10 CFR part 429.

DOE makes decisions on waivers and interim waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. Air Innovations may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of Walk-in Cooler Refrigeration Systems. Alternatively, if appropriate, Air Innovations may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition consistent with 10 CFR 431.401(g).

Signed in Washington, DC, on January 7, 2021.

Daniel R Simmons,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Application for Waiver and Interim Waiver

Air Innovations (Wine Guardian Brand) is requesting for a Waiver and Interim Waiver from a DOE test procedure pursuant to provisions described in 10 CFR 431.401 for the following products on the grounds that ''either the basic model contains one or more design characteristics that prevent testing of the basic model according to the prescribed test procedures or the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.''

We ask that you refer to each of these website links to see our products, and their applications

https://wineguardian.com/https://wineguardian.com/wine-cellar-cooling-units/

https://wineguardian.com/wine-cellar-cooling-units/through-the-wall/

https://wineguardian.com/wine-cellar-cooling-units/ducted-wine-cellar-cooling-systems/

https://wineguardian.com/wine-cellar-cooling-units/split-system/

The design characteristics constituting the grounds for the Waiver and Interim Waiver Application:

AHRI 1250–2009 is silent on the definition of single packaged and matched pair refrigeration systems, however, as seen in Section 3.12 of the public comment version of soon to be published revision of AHRI 1250, these type of products are defined as follows:

3.12 Refrigeration System. The mechanism (including all controls and other components integral to the system's operation) used to create the refrigerated environment in the interior of a walk-in cooler or walk-in freezer, consisting of: A Dedicated Condensing Unit; or A Unit Cooler.

3.12.1 Matched Refrigeration System (Matched-pair). A combination of a Dedicated Condensing Unit and one or more Unit Coolers specified by the Dedicated Condensing Unit manufacturer which are all distributed in commerce together. Single-Packaged Dedicated Systems are a subset of Matched Refrigeration Systems.

3.12.2 Single-packaged Refrigeration System (Single-packaged). A Matched Refrigeration System that is a Single-packaged assembly that includes one or more compressors, a condenser, a means for forced circulation of refrigerated air, and elements by which heat is transferred from air to refrigerant, without any element external to the system imposing resistance to flow of the refrigerated air.

SELF-CONTAINED COOLING SYSTEMS FOR WALK-IN WINE CELLARS (refer to single-packaged walk-in cooler refrigeration systems in AHRI 1250)

* *All basic models listed in our petition for Waiver and Interim Waiver cannot be operated at a temperature less than 45F.*

- Self-contained cooling systems are designed to provide cold environment between 45~65 °F and maintain relative humidity within the range of 50~70% for properly insulated and sized wine cellars.
- These temperature and relative humidity ranges are optimized for long term storage of wine like that in natural caves.
- These cooling systems are all-in-one ready for use and no more refrigerant piping is required in the field.
- These cooling systems are factory-built, critically charged and tested, and only require through-the-wall installation on walk-in wine cellars in the field.
- These systems are available as indoor or outdoor uses with automatic off-cycle air defrost.
- Wine cellars are usually located in air-conditioned spaces.

SPLIT COOLING SYSTEMS FOR WALK-IN WINE CELLARS (refer to matched-pair walk-in cooler refrigeration systems in AHRI 1250)

* *All basic models listed in our petition for Waiver and Interim Waiver cannot be operated at a temperature less than 45F.*

- Split cooling systems are designed to provide cold environment between 45~65 °F and maintain relative humidity range within 50~70% for properly insulated wine cellars.
- These temperature and relative humidity ranges are optimized for long term storage of wine like that in natural caves.
- These cooling systems consist of a remote condensing unit and an evaporator unit, which are connected by a liquid line and an insulated suction line.
- These systems must be charged properly with refrigerant in the field.
- These systems are available as indoor or outdoor uses with automatic off-cycle air defrost.
- Wine cellars are usually located in air-conditioned spaces.
- As opposed to utilize large compressors, large surface area coils, multiple fans, and large volumes of refrigerant, these systems employ fractional compressors and automatic expansion valves to maintain 50~70% relative humidity.

DOE uniform test method for the measurement of energy consumption of walk-in coolers and walk-in freezers (WICF) described in 10 CFR 431.304 adopts the test standard set forth in AHRI 1250–2009. Both 10 CFR 431 and AHRI 1250 define WICF products as ''. . . an enclosed storage space refrigerated to temperatures, respectively, above, and at or below 32 degrees Fahrenheit that can be walked into, and has a total chilled storage area of less than 3,000 square feet. . .'' Walk-in wine cellar cooling systems meet this definition. Therefore, WICF products are subject to the test method and minimum energy requirements as described in 10 CFR 431.401.

AHRI 1250 specifies that for walk-in coolers, the refrigeration system is to be rated at a cooler air-return temperature of 35 °F (box setpoint) than is typically seen in a wine cellar application. Operating a wine cellar at this condition would adversely mechanically alter the intended performance of the system including icing of the evaporator coil, potential damage to the compressor, and will not result in an accurate representation of the performance of the cooling unit. Wine cellars generally are kept at 55 °F, with 55% relative humidity.

The calculation of the Annual Walk-in Energy Factor (AWEF) found in AHRI 1250 accounts for typical usage of WICF products with high and low load periods. Wine cellars see a constant load, no highs or lows, that does not resemble the use patterns that are representative of typical WICF products. Therefore, the AWEF calculation described in 10 CFR 431.304 and AHRI 1250 does not match the applications of wine cellar cooling systems.

The compressors used in wine cellar cooling systems are predominately fractional horsepower, which are inherently less efficient than larger compressors used in walk-in cooler refrigeration systems. Therefore, we do not believe there is technology on the market that will provide the needed energy efficiency in wine cellar cooling systems to meet the minimum AWEF value for commercial walk-in cooler refrigeration systems set forth in 10 CFR 431.306.

The prescribed test procedure is unrepresentative of the products true energy characteristics.

One or more design characteristics that prevent testing of the basic model according to the prescribed test procedures or cause the prescribed test procedures to evaluate the basic model in a manner so unrepresentative of its true energy or water consumption characteristics as to provide materially inaccurate comparative data.

Basic Models on which the Waiver and Interim Waiver is being requested:

Thru-The-Wall (free blow/non-ducted): TTW009, TTW018

Ducted self-contained: D025, [ESP REDACTED]
D050, [ESP REDACTED]
D088, [ESP REDACTED]
D200, [ESP REDACTED]

Ducted Split System: DS025, [ESP REDACTED]
DS050, [ESP REDACTED]
DS088, [ESP REDACTED]
DS200, [ESP REDACTED]

Ductless Split System: SS018, CS025, CS050

Specific Requirements sought to be waived

Petitioning for a Waiver and Interim Waiver to exempt wine cellar walk-in cooler systems from being tested to the current test procedures, specifically the requirement for the refrigeration system to be rated at an air-return temperature of 35 °F.

The petition also includes a correction factor of 0.55 to be applied to final AWEF calculations for wine cellar products to allow the unit to pass minimum efficiency as delineated by 10 CFR 431 subpart R. There is precedent for wine cooling products receiving a correction factor of 0.55 from Appendix A to Subpart B of 10 CFR 430 and DOE Direct Final Rule EERE–2011–BT–STD–0043–0122.

List of manufacturers of all other basic models marketing in the United States and known to the petitioner to incorporate similar design characteristics—

(a) Air Innovations
(b) Bacchus
(c) BreezAire
(d) CellarPro
(e) Vinotemp
(f) WhisperKool

Proposed alternate test procedure:

AHRI 1250 test procedure will be followed, but with the following modifications:

1. Temperature of the air returning to the walk-in cooling unit shall be 55 °F.
2. Relative humidity of the air returning to the walk-in cooling unit shall be 55%RH.
3. The AWEF calculations shall include a correction factor of 0.55 to inflate the final AWEF value for wine-related products to meet minimum efficiency standards.

Technical Justifications for the alternate test procedure:

As discussed previous, the technical justifications summarized for our products are as follows:

- Wine cellar environment is most typically at 55F/55%RH, so the return air to cooling unit is not consistent with what is prescribed in AHRl1250 presently.
- The component technology, specifically fractional HP compressors (reciprocating) are not being optimized for efficiency in the models our product sector dictate.
- Without the .55 correction factor, there is not a means to pass the minimum AWEF efficiency rating for these products. As noted earlier, there is a precedent set for applying this correction factor.
- Pending EPA SNAP regulations yet to be determined on effect for meeting minimum AWEF, as the refrigerant choices for lower GWP and model options available from component manufacturers (compressors, valves, heat exchangers, etc.) may limit ability further to comply with present requirements.

Success of the application for Interim Waiver will:

Success of the application for Interim Waiver will ensure that manufacturers of walk-in wine cellar cooling systems can continue to participate in the market.

What economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the Application for Interim Waiver:

Economic hardship will be loss of sales due to not meeting the DOE energy conservation standards set forth in 10 CFR 431.306 if the existing products were altered in order to test per current requirements set forth in 10 CFR 431.304 and AHRI 1250, it would add significant cost and increase energy consumption.

Conclusion:

Air Innovations (Wine Guardian Brand) seeks an Interim Waiver from DOE's current test method for the measurement of energy consumption of walk-in wine cellar Self-contained and Split cooling systems.

Respectfully submitted
/s/
Scott R. Toukatly,
Director of Engineering Air Innovations (Wine Guardian brand).

[FR Doc. 2021–00393 Filed 1–11–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21–38–000]

City of Springfield, Illinois, City Water, Light and Power; Notice of Filing

Take notice that on December 31, 2020, The City of Springfield, Illinois, City Water, Light and Power (CWLP), filed its proposed rate schedule, which specified CWLP's cost-based revenue requirements for Reactive Supply and Voltage Control from Generation or other Sources Service supplied by CWLP generating units, pursuant to the Open Access Transmission and Energy Markets Tariff of the Midwest Independent Transmission System Operator, Inc, along with supporting testimony and data.

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. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on January 21, 2021.

Dated: January 6, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–00406 Filed 1–11–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21–31–000]

Highlander Solar Energy Station 1, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On January 5, 2021, the Commission issued an order in Docket No. EL21–31–000 pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2018), instituting an investigation into whether Highlander Solar Energy Station 1, LLC's Proposed Rates may be unjust, unreasonable, unduly discriminatory or preferential, substantially excessive or otherwise unlawful. *Highlander Solar Energy Station 1, LLC, 174* FERC ¶ 61,003(2020).

The refund effective date in Docket No. EL21–31–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL21–31–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2019), within 21 days of the date of issuance of the order.

Dated: January 6, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–00405 Filed 1–11–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3820–012]

Aclara Meters, LLC; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed an application submitted by Aclara Meters, LLC, to surrender its Somersworth Hydroelectric Project No. 3820, located on the Salmon Falls River in Strafford County, New Hampshire, and York County, Maine, and has prepared an environmental assessment (EA) for the project. The project does not occupy federal lands.

The EA contains staff's analysis of the potential environmental impacts of the proposed action and concludes that approval of the surrender would not constitute a major federal action significantly affecting the quality of the human environment.

The EA may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). 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.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–3820–012.

For further information, contact Diana Shannon at (202) 502–6136 or by email at *diana.shannon@ferc.gov.*

Dated: January 6, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–00407 Filed 1–11–21; 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: ER20–2715–003; ER17–380–003; ER19–997–003; ER11–2424–014; ER19–358–001; ER19–359–001.

Applicants: Stored Solar, LLC, Stored Solar J&WE, LLC, Stored Solar Bethlehem, LLC, Stored Solar Tamworth, LLC, Stored Solar Whitefield LLC, Stored Solar Springfield, LLC.

Description: Notice of Non-Material Change in Status of Stored Solar Entities, et. al.

Filed Date: 1/4/21.

Accession Number: 20210104–5395.

Comments Due: 5 p.m. ET 1/25/21.

Docket Numbers: ER21–21–001.

Applicants: Harts Mill Solar, LLC.

Description: Compliance filing: Revised Rate Schedule FERC No. 1 to be effective 12/2/2020.

Filed Date: 1/6/21.

Accession Number: 20210106–5005.

Comments Due: 5 p.m. ET 1/27/21.

Docket Numbers: ER21–350–001.

Applicants: Highlander Solar Energy Station 1, LLC.

Description: Compliance filing: Revised Rate Schedule FERC No. 1 to be effective 12/1/2020.

Filed Date: 1/6/21.

Accession Number: 20210106–5021.

Comments Due: 5 p.m. ET 1/27/21.

Docket Numbers: ER21–370–001.

Applicants: Cleco Power LLC.

Description: Tariff Amendment: Amendment to Rate Schedule for Blackstart Service to be effective 1/9/2021.

Filed Date: 1/6/21.

Accession Number: 20210106–5028.

Comments Due: 5 p.m. ET 1/27/21.

Docket Numbers: ER21–711–001.

Applicants: PacifiCorp.

Description: Tariff Amendment: OATT Revised Attachment H–1 (Rev Dep Rates)—Supplemental Filing to be effective 1/1/2021.

Filed Date: 1/6/21.

Accession Number: 20210106–5040.

Comments Due: 5 p.m. ET 1/27/21.

Docket Numbers: ER21–816–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: ISO–NE & NEPOOL; Rev. Related to Disclosure Information Under FAP to be effective 3/9/2021.

Filed Date: 1/6/21.

Accession Number: 20210106–5006.

Comments Due: 5 p.m. ET 1/27/21.

Docket Numbers: ER21–817–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2021–01–06_SA 3616 Entergy Louisiana-EDF Renewables Development GIA (J1076) to be effective 3/8/2021.

Filed Date: 1/6/21.

Accession Number: 20210106–5026.

Comments Due: 5 p.m. ET 1/27/21.

Docket Numbers: ER21–818–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Correction to eTariff Metadata for SA No. 5581 Filed in Docket No. ER20–2002 to be effective 8/4/2020.

Filed Date: 1/6/21.

Accession Number: 20210106–5034.

Comments Due: 5 p.m. ET 1/27/21.

Docket Numbers: ER21–819–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Correction to eTariff Metadata for SA No. 5582 Filed in Docket No. ER20–2003 to be effective 8/4/2020.

Filed Date: 1/6/21.

Accession Number: 20210106–5035.

Comments Due: 5 p.m. ET 1/27/21.

Docket Numbers: ER21–820–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2021–01–06_SA 3617 ELL–EDF-St. James-St James II MPFCA (J1076 J1142 J1158) to be effective 3/8/2021.

Filed Date: 1/6/21.

Accession Number: 20210106–5037.

Comments Due: 5 p.m. ET 1/27/21.

Docket Numbers: ER21–821–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 5868; Queue No. AC2–165 to be effective 12/7/2020.

Filed Date: 1/6/21.

Accession Number: 20210106–5039.

Comments Due: 5 p.m. ET 1/27/21.

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: January 6, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–00404 Filed 1–11–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0308; FRL–10017–94]

United States Department of Justice and Parties to Certain Litigation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to the Environmental Protection Agency (EPA) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to the U.S. Department of Justice (DOJ) and parties to certain litigation. This transfer of data is in accordance with the CBI regulations governing the disclosure of potential CBI in litigation.

DATES: Access to this information by DOJ and the parties to certain litigation is ongoing and expected to continue during the litigation as discussed in this Notice.

FOR FURTHER INFORMATION CONTACT: Patricia Biggio, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0547; email address: *biggio.patricia@epa.gov.*

SUPPLEMENTARY INFORMATION: This notice is being provided pursuant to 40 CFR 2.209(d) to inform affected

businesses that EPA, via DOJ, will provide certain information to the parties and the Court in the matter of *Natural Resources Defense Council* v. *U.S. Environmental Protection Agency et al.,* Case No. 20–72794 (9th Cir.) (''TCVP litigation''). The information is contained in documents that have been submitted to EPA pursuant to FIFRA and FFDCA by pesticide registrants or other data-submitters, including information that has been claimed to be, or determined to potentially contain, CBI. In the TCVP Litigation, the Petitioner seeks judicial review of EPA's July 21, 2020 denial of the Natural Resources Defense Council's 2009 petition requesting that EPA cancel all pet uses of the pesticide tetrachlorvinphos (TCVP) registered under FIFRA.

The documents are being produced as part of the Administrative Record of the decision at issue and include documents that registrants or other data-submitters may have submitted to EPA regarding the pesticide TCVP, and that may be subject to various release restrictions under federal law. The information includes documents submitted with pesticide registration applications and may include CBI as well as scientific studies subject to the disclosure restrictions of FIFRA section 10(g), 7 U.S.C. 136h(g).

All documents that may be subject to release restrictions under federal law will be designated as ''Confidential or Restricted Information'' in the certified list of record materials that EPA will file in this case. Further, EPA intends to seek a Protective Order that would preclude public disclosure of any such documents by the parties in this action who have received the information from EPA, and that would limit the use of such documents to litigation purposes only. EPA would only produce such documents in accordance with the Protective Order. The anticipated Protective Order would require that such documents would be filed under seal and would not be available for public review, unless the information contained in the document has been determined to not be subject to FIFRA section 10(g) and all CBI has been redacted.

Authority: 7 U.S.C. 136 *et seq.;* 21 U.S.C. 301 *et seq.*

Dated: December 1, 2020.

Mary Reaves,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2021–00324 Filed 1–11–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0014; FRL–10017–33]

Product Cancellation Order for Certain Pesticide Registrations and Amendments To Terminate Uses; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA issued a notice in the **Federal Register** of March 19, 2019, concerning the cancellations voluntarily requested by the registrants and accepted by the Agency but have not yet become effective. This notice is being issued to amend the cancellation order, as requested by the registrant, by amending the effective date of the cancellation and the existing stocks provision for the two triadimefon registrations (264–736 and 264–740).

DATES: The **Federal Register** of March 19, 2019, announced the voluntarily cancellation of two triadimefon registrations (264–736 and 264–740) that the registrant requested.

FOR FURTHER INFORMATION CONTACT: Matthew B. Khan, Pesticide Reevaluation Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–8613 email address: *khan.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0014, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

II. What does this amendment do?

This notice is being issued to amend the voluntary cancellation effective date for the two triadimefon registrations listed in Table 1 of the cancellation notice that published in the **Federal Register** on March 19, 2019 (84 FR 10068) (FRL–9989–85), which was corrected in the **Federal Register** on May 29, 2019 (84 FR 24778) (FRL–9992–29). The agency was made aware by Bayer that the final shipments of their triadimefon technical registrations were delayed due to quarantine measures. Since the risk assessments for triadimefon have not yet been conducted and no risks of concern have been identified at this time, the agency has determined that this extension will not pose a significant risk. This amendment grants the two-month extension for the two triadimefon registrations (264–736 and 264–740). The effective cancellation date for these registrations is now February 28, 2020, with a one-year existing stocks provision.

Authority: 7 U.S.C. 136 *et seq.*

Dated: November 25, 2020.

Mary Reaves,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2021–00322 Filed 1–11–21; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Friday, January 15, 2021, 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 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.

MATTER TO BE CONSIDERED: The following item will be considered:

Proposed Updated Compliance Manual on Religious Discrimination

Note: In accordance with the Sunshine Act, the public will be able to 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 meetings.)

Please telephone (202) 663–7100 (voice) or (202) 921–2750, or email *commissionmeetingcomments@eeoc.gov* at any time for information on this meeting.

CONTACT PERSON FOR MORE INFORMATION: Rachel V. See, Acting Executive Officer, (202) 921–2545.

Dated: January 8, 2021.

Rachel V. See,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 2021–00524 Filed 1–8–21; 4:15 pm]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; CC Docket No. 18–336; FRS 17370]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission released a public notice announcing the meeting of the North American Numbering Council (NANC), which will be held via conference call and available to the public via live internet feed.

DATES: Thursday, February 4, 2021. The meeting will come to order at 9:30 a.m.

ADDRESSES: The meeting will be conducted via conference call and available to the public via the internet at *http://www.fcc.gov/live.*

FOR FURTHER INFORMATION CONTACT: Jordan Reth, Deputy Designated Federal Officer, at *jordan.reth@fcc.gov* or 202–418–1418. More information about the NANC is available at *https://www.fcc.gov/about-fcc/advisory-committees/general/north-american-numbering-council.*

SUPPLEMENTARY INFORMATION: The NANC meeting is open to the public on the internet via live feed from the FCC's web page at *http://www.fcc.gov/live.* Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice for accommodation requests; last minute requests will be accepted but may not be possible to accommodate. Members of the public may submit comments to the NANC in the FCC's Electronic Comment Filing System, ECFS, at *www.fcc.gov/ecfs.* Comments to the NANC should be filed in CC Docket No. 92–237. This is a summary of the Commission's document in CC Docket No. 92–237, CC Docket No. 18–336, DA 20–1548 released December 31, 2020.

Proposed Agenda: At the February 4 meeting, the NANC will discuss and provide input on the feasibility and cost of including an automatic dispatchable location with a 988 call to facilitate Commission preparation of a report on this topic, as directed by the National Suicide Hotline Designation Act of 2020. The NANC will also hear routine status reports, including an update from the Secure Telephone Identification Governance Authority. This agenda may be modified at the discretion of the NANC Chair and the Designated Federal Officers (DFO). (5 U.S.C. App 2 § 10(a)(2))

Federal Communications Commission.

Daniel Kahn,

Associate Bureau Chief, Wireline Competition Bureau.

[FR Doc. 2021–00423 Filed 1–11–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Government in the Sunshine Act; Meeting Notice

AGENCY: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Friday, January 15, 2021.

PLACE: Virtual Meeting via Video/Audio Conference.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED: 1. Personnel Matter.

FOR MORE INFORMATION CONTACT: Michelle Smith, Director, Division of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may access the Board's website at *www.federalreserve.gov* for an electronic announcement.

Dated: January 8, 2021.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021–00523 Filed 1–8–21; 4:15 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than February 10, 2021.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *HNB Bancorp, Inc., Hannibal, Missouri;* to become a bank holding company by acquiring HNB National Bank, Hannibal, Missouri.

Board of Governors of the Federal Reserve System, January 7, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–00415 Filed 1–8–21; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than January 27, 2021.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *G. Michael Herger Revocable Trust, G. Michael Herger, as trustee, both of Redding, California; Paul M. Herger and Cathy S. Beatty, both of Vinton Iowa;* to become members of the Herger Family Control Group, a group acting in concert, to retain voting shares of Keystone Community Bancorporation, and thereby indirectly retain voting shares of Keystone Savings Bank, both of Keystone, Iowa.

2. *Mark Curtis Bolen, Montezuma, Iowa;* to join the Arendt Family Control Group, a group acting in concert, to retain voting shares of Arendt's Inc., and thereby indirectly retain voting shares of Peoples Savings Bank, both of Montezuma, Iowa.

Board of Governors of the Federal Reserve System, January 6, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–00361 Filed 1–11–21; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice and request for comment.

SUMMARY: The FTC requests that the Office of Management and Budget (OMB) extend for three years the current Paperwork Reduction Act (PRA) clearance for information collection requirements contained in the Trade Regulation Rule titled Labeling and Advertising of Home Insulation (R-value Rule or Rule). That clearance expires on January 31, 2021.

DATES: Comments must be received by February 11, 2021.

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. The *reginfo.gov* web link is a United States Government website produced by OMB and the General Services Administration (GSA). Under PRA requirements, OMB's Office of Information and Regulatory Affairs (OIRA) reviews Federal information collections.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Room CC–9528, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2889.

SUPPLEMENTARY INFORMATION:

Title: R-value Rule, 16 CFR part 460.

OMB Control Number: 3084–0109.

Type of Review: Extension of a currently approved collection.

Likely Respondents: Insulation manufacturers, installers, home builders, home sellers, insulation sellers.

Estimated Annual Hours Burden: 132,707 hours.

Estimated Annual Cost Burden: $2,732,510 (solely related to labor costs).

Abstract: The R-value Rule establishes uniform standards for the substantiation and disclosure of accurate, material product information about the thermal performance characteristics of home insulation products. The R-value of an insulation signifies the insulation's degree of resistance to the flow of heat. This information tells consumers how well a product is likely to perform as an insulator and allows consumers to determine whether the cost of the insulation is justified.

Request for Comment

On October 27, 2020, the FTC sought public comment on the information collection requirements associated with the Rule. 85 FR 68068. The Commission received no germane comments. Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule.

Your comment—including your name and your state—will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2021–00337 Filed 1–11–21; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Response to Comments on Revised Geographic Eligibility for Federal Office of Rural Health Policy Grants

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Revised definition of rural area; final response to comments.

SUMMARY: HRSA's Federal Office of Rural Health Policy (FORHP) is modifying the definition it uses of rural for the determination of geographic areas eligible to apply for or receive services funded by FORHP's rural health grants. This notice revises the definition of rural and responds to comments received on proposed modifications to how FORHP designates areas to be eligible for rural health grant programs published in the **Federal Register** on September 23, 2020. After consideration of the public comments received, FORHP is adding Metropolitan Statistical Area (MSA) counties that contain no Urbanized Area (UA) population to the areas eligible for rural health grant programs.

DATES: All proposed changes will go into effect for new rural health grant opportunities anticipated to start in Fiscal Year 2022.

FOR FURTHER INFORMATION CONTACT: Steve Hirsch, Public Health Analyst, FORHP, HRSA, 5600 Fishers Lane, Mailstop 17W59D, Rockville, MD 20857. Phone: (301) 443–0835. Email: *ruralpolicy@hrsa.gov.*

SUPPLEMENTARY INFORMATION: FORHP published a notice in the **Federal Register** on September 23, 2020, (85 FR 59806) seeking public comment on proposed modifications to how it designates areas eligible for its rural health grant programs. FORHP proposed a data-driven methodology connected to existing geographic identifiers that could be applied nationally and be applicable to the wide variation in rural areas across the U.S.

FORHP uses the Office of Management and Budget (OMB)'s list of counties designated as part of a MSA as the basis for determining eligibility to apply for, or receive services funded by, its rural health grant programs. Currently, all areas within non-metro counties (both Micropolitan counties and counties with neither designation) are considered rural and eligible for rural health grants. FORHP also designates census tracts within MSAs as rural for grant purposes using Rural-Urban Commuting Area (RUCA) codes from the Economic Research Service (ERS) of the U.S. Department of Agriculture (USDA). These include all census tracts inside MSAs with RUCA codes 4–10 and 132 large area census tracts with RUCA codes 2 and 3. The 132 MSA census tracts with RUCA codes 2–3 are at least 400 square miles in area with a population density of no more than 35 people per square mile. Information regarding FORHP's designation of rural is publicly available on its website at: *https://www.hrsa.gov/rural-health/about-us/definition/index.html* and *https://data.hrsa.gov/tools/rural-health.*

In the **Federal Register** notice published in September 2020, FORHP proposed modifying its existing rural definition by adding outlying MSA counties with no UA population to its list of areas eligible to apply for and receive services funded by FORHP's rural health grants. UAs are defined by the Census Bureau as densely settled areas with a total population of at least 50,000 people.

FORHP received 67 comments in response to the **Federal Register** notice. Following is a summary of the comments received.

Over three quarters of the comments received supported the proposal to add outlying MSA counties with no UA population to the list of areas eligible for rural health grants. While most comments supported the proposal, several advised against adoption of the proposal. There were also several commenters who neither supported nor opposed the proposal.

The comments in favor of the proposal agreed with FORHP that proximity to a Metropolitan area does not mean a county is not rural in character and that shifts in employment and job creation have drawn people to commute to jobs in MSAs even though they still live in rural areas. Many commenters noted that FORHP's proposal appropriately identified populations that were rural in character and did not include areas or populations that were not rural in character.

Those who opposed the proposed modification did so for a variety of reasons. These included:

1. There are limited resources currently available for rural populations. Increasing the number of people and areas eligible will dilute the resources available.

2. The proposed modification does not include some areas that used to be considered rural, and still should be, but are now part of MSAs.

3. The proposal is too limited and should more expansively define what is rural.

4. The proposal, and the current definition of what is eligible for rural health grants, is too expansive and includes areas that are not truly rural.

5. Determination of need in rural areas should include whether areas are ''underserved,'' alternatively, the determination should factor in unemployment as another criteria.

Response to Comment 1: FORHP understands commenters concerns that expanding the number of areas eligible to apply for rural health grants has the potential to dilute available resources for existing rural areas. At the same time, it is important to identify the entire rural population as objectively and accurately as possible so that resource allocation decisions can be based on complete and accurate information. The modification is intended to more accurately identify rural populations within MSAs.

Response to Comment 2: After every Census, there is a process to identify areas where population has increased or decreased. Urban Clusters, which have increased in population above the 49,999 limit, are re-designated as UA and, vice versa, some UA may lose population and be re-designated as Urban Clusters. FORHP's intent, with the use of RUCA codes and this proposed modification for counties with no UA population, is to correctly identify rural populations inside of MSAs.

Response to Comment 3: FORHP is proposing clear, quantitative criteria using nationally available data for an expansion of areas eligible for rural health grants. FORHP has not identified clear, quantitative criteria beyond what was proposed.

Response to Comment 4: FORHP will continue to use the best available means it can to define rural areas.

Response to Comment 5: FORHP is modifying its identification of rural areas with this notice, consistent with its program authority to award grants to support rural health and rural health care services. While rural areas are frequently underserved and may experience shortages of health care providers, rurality and underservice are not the same thing. Unemployment is also a factor that does not determine rurality since a rural area could have high or low unemployment. Both could be used as factor in grant awards, given programmatic goals, but do not indicate rurality.

Many of the commenters, both those who supported and those who opposed the proposed FORHP modifications,

also suggested further modifications or adjustments to the way FORHP defines rural areas.

Comment: The most common suggestion was that FORHP identify difficult and mountainous terrain because travel on roads through such terrain is more difficult and time-consuming.

Response to Comment: FORHP recognizes that travel in difficult and mountainous terrain, along with distance, are often barriers to access to health care.

The ERS of U.S. Department of Agriculture was charged with researching the feasibility of identifying census tracts with difficult and mountainous terrain in Senate Report 116–110—Agriculture, Rural Development, Food and Drug Administration, and related Agencies Appropriations Bill, 2020. ERS produces the RUCA codes that FORHP uses to identify rural areas insides MSAs. ERS has greater experience and resources to analyze geography than FORHP does. If ERS does add identifiers for difficult and mountainous terrain to the RUCA codes, FORHP will examine the feasibility of using this information to designate rural census tracts in MSAs.

Comment: Many commenters suggested specific Metropolitan counties by name that they believed should be designated as rural.

Response to Comment: Consistent with other federal geographic standards, FORHP seeks only to use appropriate objective data to assess a geographic unit to determine whether a place meets those standards. FORHP cannot define individual counties as rural without having clear, data-driven criteria that can be equitably applied.

Comment: Many commenters suggested that FORHP consider expanding eligibility to urban health centers that primarily serve rural populations.

Response to Comment: FORHP implemented this suggestion after the Coronavirus Aid, Relief, and Economic Security Act (the CARES ACT, Pub. L. 116–136) reauthorized the Rural Health Care Services Outreach, Rural Health Network Development, and Small Health Care Provider Quality Improvement grant programs created by Section 330A of the Public Health Service Act (42 U.S.C. 254c). The CARES Act changed the statutory authority for Rural Health Care Services Outreach and Rural Health Network Development grants and expanded eligibility to allow urban entities to apply as the lead applicant for these rural health grants as long as they serve eligible rural populations.

Comment: Some commenters suggested that FORHP should accept state government-designated rural areas for the purpose of eligibility for rural health grant programs.

Response to Comment: FORHP understands and supports the right of states to develop definitions of rural that meet their specific needs. In determining eligibility for a federal grant program that is national in scope, the challenge for FORHP is having consistent and objective standards that can be applied consistently across the entire country. For that reason, FORHP uses quantitative standards that can be applied nationally and consistently in an administratively efficient manner.

Comment: Some commenters suggested that FORHP allow individual counties to request designations as rural.

Response to Comment: FORHP applies consistent quantitative standards to identify rural areas and populations across the nation as a whole. An exception process for individual counties would yield inconsistent results.

Comment: Commenters suggested that all providers with specific certifications or special payment designations (*e.g.,* Rural Health Clinics, Critical Access Hospitals, etc.) from the Centers for Medicare & Medicaid Services (CMS) should be designated as eligible for rural health grant programs and that FORHP should coordinate the definition of rural with CMS.

Response to Comment: Many of the providers identified as ''rural'' by CMS are classified using different standards that are specific to each special designation. In addition, some designated providers are no longer located in rural areas due to population growth over time. They have maintained their status due to reclassification or grandfathering provisions specific to those certification and payment programs. In contrast, the purpose of FORHP grants is to provide services to the rural population, as determined by a consistent, quantitative standard. FORHP notes that hospitals or clinics that have the CMS rural designation can still apply for FORHP rural health grant funding as long as they propose to serve an eligible rural population. This change was part of the recent re-authorization of the Section 330A programs described above. FORHP believes this change will address some of the concerns raised by commenters.

Comment: Several commenters suggested grandfathering providers, as legacy rural sites of care which would enable those organizations to apply for rural health grants even if they were no longer located in a rural area.

Response to Comment: This comment is similar, but not precisely the same as the earlier comment that FORHP should accept all providers with specific certifications or special payment designations from CMS as eligible for rural health grants. The change in statutory authority for the Section 330A programs will allow these providers to continue to apply for rural health grants as long as they continue to serve rural populations. Identifying and tracking legacy rural sites of care would be administratively unworkable and is not needed to target services to rural populations.

Comment: Several commenters suggested that FORHP remove incarcerated people from the total population that makes up the UA core of a MSA in cases where the UA population would fall below the floor of 50,000.

Response to Comment: FORHP has not identified a data source to consistently determine the populations of incarcerated people within the UA boundaries. Without a standard, national data source, FORHP cannot calculate the number of incarcerated people for every UA and determine whether removal of this population from a UA core would reduce the total population below 50,000. In addition, prison populations can fluctuate year to year and there are administrative challenges in validating data from local sources.

Comment: Several commenters suggested that FORHP remove college students from UA population totals.

Response to Comment: As with the population of incarcerated people mentioned above, FORHP does not have a national data source to identify the student population of an UA. Students are also able to access health care resources in the community. Without a standard, national data source, FORHP cannot calculate the number of college students for every UA and determine whether removal of this population from a UA core would reduce the total population below 50,000. In addition, there are administrative challenges in validating data from local sources.

Comment: Several commenters suggested that if FORHP does adopt the proposed modification and increases the number of people eligible to be served by rural health grants, FORHP should increase the funding available for grants.

Response to Comment: The level of resources available for any federal program is determined by Congress.

Comment: Several Tribal organizations wrote comments objecting to the modification. They suggested that all Tribal lands be defined as rural and that funds be set aside solely for awards to Tribal health providers.

Response to Comment: The statutory authority for rural health grant programs directs services at rural areas and populations. FORHP understands the unique challenges faced by Tribal entities. Rural health grants can be and have been awarded to Tribal organizations located in rural areas. With the changes in the authorization for 330A programs, urban Tribal providers can also apply for rural health grants to serve rural populations. FORHP cannot change rural health funding to direct it to urban populations, even if they are underserved, or specify funding set-asides for Tribal organizations.

Comment: Different commenters suggested that FORHP use a combination of population density, travel time or distance, geographic isolation, and access to resources to designate rural areas, or that FORHP use Frontier and Remote Area (FAR) Codes to determine rurality.

Response to Comment: Commenters did not suggest data sources that would combine population density, travel time or distance, geographic isolation, and access to resources to provide a consistent, nationally standard definition of rural areas. FAR Codes utilize population density and travel time to designate different levels of ''frontier'' or remoteness. However, much of the rural U.S. that is currently eligible for rural health grants is not designated as frontier and remote and would lose eligibility if only FAR codes were used.

FORHP thanks the public for their comments. After consideration of the public comments we received, FORHP is implementing the modification as proposed to expand its list of rural areas. FORHP will add MSA counties that contain no UA population to the areas eligible for rural health grant programs. Using the March 2020 update of MSA delineations released by OMB, 295 counties will meet this criteria as outlying MSA counties with no UA population. The expanded eligibility will go into effect for new rural health grants awarded in fiscal year 2022. FORHP will ensure information about the expanded eligibility is available to the public and update the Rural Health Grants Eligibility Analyzer at *https://data.hrsa.gov/tools/rural-health* for fiscal year 2022 funding opportunities. These changes reflect FORHP's desire to accurately identify areas that are rural in character using a data-driven methodology that relies on existing geographic identifiers and utilizes standard, national level data sources.

Thomas J. Engels,

Administrator.

[FR Doc. 2021–00443 Filed 1–11–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Docket No. FDA–2020–N–2246]

Notice That Persons That Entered the Over-the-Counter Drug Market To Supply Hand Sanitizer During the COVID–19 Public Health Emergency Are Not Subject to the Over-the-Counter Drug Monograph Facility Fee

AGENCY: Food and Drug Administration (FDA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services is issuing this Notice to clarify that persons that entered into the over-the-counter drug industry for the first time in order to supply hand sanitizers during the COVID–19 Public Health Emergency are not persons subject to the facility fee the Secretary is authorized to collect under section 744M of the Food, Drug, and Cosmetic Act.

DATES: January 12, 2021.

FOR FURTHER INFORMATION CONTACT: David Haas, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., Rm. 61075, Beltsville, MD 20705–4304, 240–402 4585.

SUPPLEMENTARY INFORMATION: On December 29, 2020, FDA published a Notice in the **Federal Register** entitled *Fee Rates Under the Over-the-Counter Monograph User Fee Program for Fiscal Year 2021.* 85 FR 85646. The Department since withdrew that Notice because it was not approved by the Secretary. For the reasons provided below, the Department is clarifying that persons that entered the over-the-counter drug market to supply hand sanitizer products in response to the COVID–19 Public Health Emergency are not subject to the facility fee the Secretary is authorized to collect under section 744M of the Food, Drug, and Cosmetic Act (FD&C Act).

In March 2020, FDA issued a temporary policy to enable increased production of alcohol-based hand sanitizers.[1] The agency acknowledged ''that some consumers and health care personnel are currently experiencing difficulties accessing alcohol-based hand sanitizers,'' and that some were relying on home-made hand sanitizers as a result.[2] FDA issued the guidance in response to requests from ''certain entities that are not currently regulated by FDA as drug manufacturers'' that nevertheless rose up to meet this public health need.[3] FDA stated it ''does not intend to take action against firms that'' produce hand sanitizer products during the COVID–19 Public Health Emergency, provided the firm's activities are consistent with the guidance.[4]

The guidance, which FDA amended after the Coronavirus Aid, Relief, and Economic Security Act (''CARES Act''), Public Law 116–136, 134 Stat. 281 (March 27, 2020) became law, contains no mention of user or facility fees. FDA's website on Hand Sanitizers and COVID–19, contains a sub-bullet under the link to the guidance announcing that ''the facility fee applies to all OTC hand sanitizer manufacturers registered with FDA, including facilities that manufacture or process hand sanitizer products under this temporary policy,'' but that language was added about the same time as the aforementioned withdrawn Notice was published in the **Federal Register**.[5] Entities that began producing hand sanitizers in reliance on the guidance were understandably surprised when FDA contacted them to collect an establishment fee in excess of $14,000.[6]

FDA's purported authority for these facility fees comes from the CARES Act. In section 3862 of the CARES Act, Congress provided the Secretary with the authority to assess user and facility fees from ''each person that owns a facility identified as an OTC drug monograph facility on December 31 of the fiscal year or at any time during the preceding 12-month period.'' FD&C Act 744M(a)(1)(A), 21 U.S.C. 379j–

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[1] FDA, Temporary Policy for Preparation of Certain Alcohol-Based Hand Sanitizer Products During the Public Health Emergency (COVID–19) Guidance for Industry (Mar. 2020; updated Aug. 7, 2020).

[2] *Id.* at 3.

[3] *Id.*

[4] *Id.*

[5] An archived version of the website shows the language at issue was not on the website as late as December 29, 2020. See: *https://web.archive.org/web/20201229105739/https://www.fda.gov/drugs/coronavirus-covid-19-drugs/hand-sanitizers-covid-19.*

[6] This surprise, coupled with the guidance's silence on facility fees, raises reliance interests concerns under the Supreme Court's decision in *Department of Homeland Security* v. *Regents of the University of California,* 140 S. Ct. 1891 (2020).

72(a)(1)(A). An ''OTC drug monograph facility'' is defined, in relevant part, as ''a foreign or domestic business or other entity that is under one management, either direct or indirect; and at one geographic location or address engaged in manufacturing or processing the finished dosage form of an OTC monograph drug.'' FD&C Act 744L(10)(A)(i)(I)–(II), 21 U.S.C. 379j–71(10)(A)(i)(I)–(II).

The Department has concluded that persons that entered the over-the-counter drug market in order to produce hand sanitizers in reliance on the guidance cited above are not ''identified as . . . OTC drug monograph facilit[ies]'' and are thus not subject to the facility fees authorized under section 744M of the FD&CT Act, 21 U.S.C. 379j–72. The Department reached this conclusion for two reasons. First, as the guidance itself acknowledges, the parties at issue are not in the drug manufacturing business. Many of them produce alcoholic beverages. These entities do not hold themselves out to the public as drug makers nor does the public generally encounter them as such. Under the extraordinary circumstances presented by the COVID–19 pandemic, the Department declines to identify these entities as OTC drug manufacturing facilities.

Second, imposing facility fees on these entities is inconsistent with Congress' stated intent elsewhere in the CARES Act. Section 2308 of the Act provides a temporary exemption from excise taxes for distilled spirits ''use[d] in or contained in hand sanitizer produced and distributed in a manner consistent with any guidance issued by the Food and Drug Administration that is related to the outbreak of virus SARS–CoV–2 or coronavirus disease 2019 (COVID–19).'' It is unlikely Congress intended to save these entities from excise taxes only to impose tens of thousands of dollars in facility fees from an unfamiliar regulator. The Department declines to discern such a design under these circumstances.

In conclusion, the Department clarifies that persons that were not registered with FDA as drug manufacturers prior to the COVID–19 Public Health Emergency, which then later registered with FDA for the purpose of producing hand sanitizers, are not ''identified'' as ''OTC drug manufacturing facilit[ies]'' under section 744M of the FD&C Act, 21 U.S.C. 379j–72, and are thus not subject to the facility fee contained therein. The Department's conclusion does not apply to such persons which (1) manufacture, distribute, and sell over-the-counter drugs in addition to hand sanitizer or (2) continue to manufacture (as opposed to hold, distribute, or sell existing inventories) hand sanitizer products as of December 31 of the year immediately following the year during which the COVID–19 Public Health Emergency is terminated. In those cases, the Department may identify such persons as OTC drug manufacturing facilities.

Dated: January 5, 2021.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2021–00237 Filed 1–8–21; 1:30 pm]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; Clinical Trials Review Committee.

Date: February 25–26, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Keary A. Cope, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 209–A, Bethesda, MD 20892–7924, (301) 827–7912, *copeka@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 6, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–00344 Filed 1–11–21; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings 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: Cell Biology Integrated Review Group; Development—1 Study Section.

Date: February 8–9, 2021.

Time: 10:00 a.m. to 6:00 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: Zubaida Saifudeen, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, *zubaida.saifudeen@nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Brain Injury and Neurovascular Pathologies Study Section.

Date: February 8–9, 2021.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexander Yakovlev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *yakovleva@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Nuclear and Cytoplasmic Structure/Function and Dynamics Study Section.

Date: February 8–9, 2021.

Time: 11:00 a.m. to 5:30 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: Jessica Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892, *jessica.smith6@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Genetics B.

Date: February 8, 2021.

Time: 1:00 p.m. to 3:00 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: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–357–9112, *smirnove@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiovascular Differentiation and Development Study Section.

Date: February 9, 2021.

Time: 10:00 a.m. to 7:00 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: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20817–7814, 301–435–0904, *sara.ahlgren@nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Pathophysiology of Eye Disease—1 Study Section.

Date: February 10–11, 2021.

Time: 8:30 a.m. to 7:00 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: Afia Sultana, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4189, Bethesda, MD 20892, (301) 827–7083, *sultanaa@mail.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genetic Variation and Evolution Study Section.

Date: February 10–11, 2021.

Time: 9:00 a.m. to 6:00 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: Guoqin Yu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1276, *guoqin.yu@nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function C Study Section.

Date: February 10–11, 2021.

Time: 9:00 a.m. to 2:00 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: William A. Greenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov.*

(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: January 6, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–00345 Filed 1–11–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Program Project Applications.

Date: February 4, 2021

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Rajiv Kumar, Ph.D., Branch Chief, Blood and Vascular Branch, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Bethesda, MD 20892–7924, 301–827–4612 *rajiv.kumar@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Small Grant Program for for NHLBI K-Award Recipient.

Date: February 12, 2021.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Shelley S Sehnert, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Suite 208–T, Bethesda, MD 20892–7924, (301) 827–7984, *ssehnert@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Atherosclerosis Risk in Communities (ARIC) Study Coordinating Center.

Date: February 19, 2021.

Time: 9:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Carol (Chang-Sook) Kim, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA National, Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 206–B, Bethesda, MD 20892–7924, (301) 827–7940 *carolko@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Atherosclerosis in Risk in Community (ARIC) Study Field Centers.

Date: February 19, 2021.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Carol (Chang-Sook) Kim, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 206–B, Bethesda, MD 20892–7924, (301) 827–7940, *carolko@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Neutrophils in Inflammation.

Date: February 25, 2021.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Michael P Reilly, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–Z, Bethesda, MD 20892–7924, (301) 827–7975, *reillymp@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung

Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 6, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–00343 Filed 1–11–21; 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; Emerging Research Opportunities in Environmental Health Sciences-Population-Based Studies.

Date: January 19, 2021.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Laura A. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Science, Research Triangle Park, NC 27709, 984–287–3328, *laura.thomas@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. 93.115, 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: January 6, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–00388 Filed 1–11–21; 8:45 am]

BILLING CODE 4140–01–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 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; Developmental Biology Subcommittee.

Date: February 26, 2021.

Time: 11:00 a.m. to 7:00 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: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6100 Executive Blvd., Room 5B01–G, Bethesda, MD 20892, 301–435–6878, *wedeenc@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: January 6, 2021.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–00386 Filed 1–11–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; Single-Site and Pilot Clinical Trials Review Committee.

Date: February 24–25, 2021.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Carol (Chang-Sook) Kim, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 206–B, Bethesda, MD 20892, (301) 827–7940, *carolko@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 6, 2021.

David W Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–00346 Filed 1–11–21; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings 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; Musculoskeletal Tissue Engineering.

Date: February 9, 2021.

Time: 11:00 a.m. to 2:00 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: Chee Lim, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, Bethesda, MD 20892, 301–435–1850 *limc4@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neuroscience of Basic Visual Processes Study Section.

Date: February 10, 2021.

Time: 9:00 a.m. to 6:00 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: Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Structure and Regeneration Study Section.

Date: February 10–11, 2021.

Time: 9:00 a.m. to 6:00 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: Yanming Bi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–451–0996, *ybi@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Clinical Data Management and Analysis Study Section.

Date: February 10–11, 2021.

Time: 9:00 a.m. to 6:00 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: Chittari V Shivakumar, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–408–9098, *chittari.shivakumar@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Basic Mechanisms of Diabetes and Metabolism.

Date: February 10, 2021.

Time: 9:30 a.m. to 10:30 a.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: Elaine Sierra-Rivera, MS, BS, Ph.D., IRG Chief, EMNR IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, 301–435–2514, *riverase@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Developmental Brain Disorders Study Section.

Date: February 10–12, 2021.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Pat Manos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–408–9866, *manospa@csr.nih.gov.*

(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: January 6, 2021.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–00387 Filed 1–11–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0664]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0119

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0119, Coast Guard Exchange System Scholarship Application; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before February 11, 2021.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2020–0664. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–6P), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION: Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the

Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2020–0664], and must be received by February 11, 2021.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0119.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (85 FR 66574, October 20, 2020) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Coast Guard Exchange System Scholarship Application.

OMB Control Number: 1625–0119.

Summary: This information collected on this form allows the Coast Guard Exchange System Scholarship Program Committee to evaluate and rank scholarship applications in order to award the annual scholarships.

Need: Community Services Command Staff Instruction, CSCINST 1780 (series), provides policy and procedure for the award of annual scholarships from the Coast Guard Exchange System to dependents of Coast Guard members and employees. The information collected by this form allows for the awarding of scholarships based upon the criteria and procedures outlined in the Instruction under the auspices of 5 U.S.C. 301.

Forms: CG–5687.

Respondents: Coast Guard dependents.

Frequency: Annually.

Hour Burden Estimate: The estimated burden remains 120 hours per year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: January 7, 2021.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2021–00429 Filed 1–11–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0181]

Guidance for Voluntarily Obtaining Merchant Mariner Credential Endorsements for Basic and Advanced Operations on Vessels Subject to the International Code of Safety for Ships Using Gases or Low Flashpoint Fuels

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of CG–MMC Policy Letter 01–21, titled ''Guidelines for Obtaining STCW Endorsements for Basic and Advanced IGF Code Operations.'' This policy provides guidance for the issuance of Merchant Mariner Credential endorsements in accordance with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended, and with the Seafarers' Training, Certification and Watchkeeping Code, for Basic and Advanced Operations on vessels subject to the International Code of Safety for Ships Using Gases or Low Flashpoint Fuels.

DATES: CG–MMC Policy Letter 01–21 was issued January 4, 2021.

ADDRESSES: Policy Letter 01–21 is available in docket number USCG–2020–0181 on *http://www.regulations.gov,* and also on the National Maritime Center website at *https://www.dco.uscg.mil/nmc/policy_regulations.*

FOR FURTHER INFORMATION CONTACT: For information about this policy, contact James Cavo, U.S. Coast Guard Mariner Credentialing Program Policy Division (CG–MMC–2); telephone (202) 372–1205, email *James.D.Cavo@uscg,mil.*

SUPPLEMENTARY INFORMATION:

Background

The International Maritime Organization (IMO) adopted the International Code of Safety for Ships Using Gases or Other Low Flashpoint Fuels (IGF Code). The IGF Code addresses safety and environmental requirements for vessels using gases or other low flashpoint fuels as well as the level of training required for personnel serving on these vessels. Additionally, in order to define the training requirements supporting the IGF Code, IMO developed amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW Convention) and to the Seafarers' Training, Certification and Watchkeeping Code, as amended (STCW Code)—the instruments that provide the international standards for mariner training. These amendments provide minimum standards of competence, sea service, and training for certification at the basic and advanced levels in IGF Code Operations.

The IGF Code and the associated amendments to the STCW Convention and to the STCW Code entered into force on January 1, 2017. These provisions set minimum standards of competence, sea service, and training for certification at the basic and advanced levels in IGF Code Operations. These minimum standards

apply to personnel on vessels subject to the IGF Code who have designated safety duties associated with or immediate responsibility for the care, use, or emergency response to the fuels on board a vessel using gases or low flashpoint fuels.

On February 19, 2015, the Coast Guard issued CG–OES Policy Letter 01–15,[1] ''Guidelines for Liquefied Natural Gas Fuel Transfer Operations and Training of Personnel on Vessels Using Natural Gas as Fuel,'' to provide voluntary guidance on fuel transfer operations and the training of personnel working on U.S. and foreign vessels that use natural gas as fuel and conduct liquefied natural gas (LNG) fuel transfer operations in waters subject to U.S. jurisdiction.[2]

On April 23, 2019, the Coast Guard issued CG–MMC Policy Letter 02–19,[3] ''Guidelines for Training of Personnel on Vessels Using Natural Gas and Other Low Flash Point Fuels.'' This policy republished the training guidance provided in CG–OES Policy Letter 01–15 without any change to the content, but aligned the policy name with the organizational structure of the Merchant Mariner Credentialing program, which was reorganized in 2016.

CG–OES Policy Letter 01–15 and CG–MMC Policy Letter 02–19 were interim measures to better ensure that U.S. mariners were sufficiently trained to work aboard vessels using natural gas and other low flash point fuels. The Coast Guard did not issue endorsements to mariners who completed training in accordance with either policy.

Discussion of Policy Letter CG–MMC Policy Letter 01–21

The Coast Guard will now begin issuing STCW endorsements in Basic and Advanced IGF Code Operations to mariners who voluntarily meet the STCW requirements for certification at the basic and advanced levels in IGF Code Operations. CG–MMC Policy Letter 01–21 [4] provides information on how to qualify for and request the endorsements. The Coast Guard is issuing these endorsements in response to industry requests and to facilitate maritime commerce. These endorsements are not currently mandated by Coast Guard regulation. However, because the United States is signatory to the STCW Convention, vessel owners and operators should be aware that their vessels are subject to foreign port state control actions, including detention, if mariners are not compliant with the STCW Convention and the STCW Code.

CG–MMC Policy Letter 01–21 was issued January 4, 2021. The National Maritime Center will begin accepting applications for IGF Code Operations endorsements when this notice is published.

The difference between CG–MMC Policy Letter 02–19 and CG–MMC Policy Letter 01–21 is that the Coast Guard will now issue MMC endorsements for Basic and Advanced IGF Code Operations to mariners who have voluntarily met the requirements for the endorsements. The Coast Guard expects that industry has already incurred costs from attending training for Basic and Advanced IGF Code Operations. However, we do not have data on how many mariners have completed training in IGF Code Operations, or how many would ultimately complete training due to the issuance of CG–MMC Policy Letter 01–21. Therefore, we present here the total costs that may have occurred or would occur if our estimated population completes training for either Basic or Advanced IGF Code Operations.

The Coast Guard estimates this policy will generate a total cost to industry and the Federal Government of $11,068,608 ($10,917,059 for costs to industry and $151,549 for costs to the Federal Government) in 2019 dollars discounted at 7 percent over the next 10 years. Table 1 presents the affected population, costs, and benefits associated with the implementation of the CG–MMC Policy Letter 01–21. Table 1 below demonstrates these costs.

TABLE 1—SUMMARY OF AFFECTED POPULATION, COSTS, AND BENEFITS FOR ISSUING STCW ENDORSEMENTS FOR IGF CODE OPERATIONS

Affected population (annual average)	Annual average of 508 mariners and 4 STCW training providers
Total Costs Annualized (7% discount rate)	$1,575,921
Total 10-year (7% discount rate)	11,068,608

TABLE 1—SUMMARY OF AFFECTED POPULATION, COSTS, AND BENEFITS FOR ISSUING STCW ENDORSEMENTS FOR IGF CODE OPERATIONS—Continued

Affected population (annual average)	Annual average of 508 mariners and 4 STCW training providers
Total Costs to Industry Annualized (7% discount rate)	1,554,344
Total 10-year (7% discount rate)	10,917,059
Total Costs to the Federal Government Annualized (7% discount rate)	21,577
Total 10-year (7% discount rate)	151,549

The affected population may choose to submit CG–719B Application for Merchant Mariner Credential for an MMC endorsement in Basic or Advanced IGF Code Operations to the U.S. Coast Guard. Applications are submitted to a Coast Guard Regional Examination Center in accordance with 46 CFR 10.209.[5] [6] There is no fee associated with adding an STCW endorsement to an MMC. We estimate that 508 mariners would voluntarily submit MMC applications to the U.S. Coast Guard on an annual basis.[7] The Coast Guard further estimates that this could lead to an increase of mariners' annual hourly burden for submitting documentation by approximately 42 hours (508 mariners × 0.083 hours).

CG–MMC Policy Letter 01–21 is not a substitute for applicable legal requirements, nor is it itself a rule. The Coast Guard does not currently require any mariner to obtain the endorsements discussed in CG–MMC Policy Letter 01–21. In other words, it is possible to comply with U.S. domestic legal obligations without undertaking the specific trainings, or obtaining the

[1] This policy letter is available at *https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/5ps/MMC/CG-MMC-2%20Policies/CG%20OES%20Policy%20Letter%2001-15%20signature%20with%20Enclosures.pdf?ver=2018-06-07-131254-300.*

[2] See **Federal Register** Notice, ''Policy Letters: Guidance for the Use of Liquefied Natural Gas as a Marine Fuel'', which announced the availability of CG–OES Policy Letter 01–15 (80 FR 10131).

[3] *https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/5ps/MMC/CG-MMC-2%20Policies/CG-MMC%2002-19%20IGF%20Vessels.pdf?ver=2019-04-23-131748-703.*

[4] CG–MMC Policy Letter 01–21 is available in the docket where indicated under the **ADDRESSES** portion of this notice.

[5] Due to the COVID–19 pandemic applications are only being accepted via email. Under normal conditions applications may be submited in person at a Regional Examination Center or via email at the mariner's convenience.

[6] *https://www.dco.uscg.mil/nmc/merchant_mariner_credential/* provides detailed instructions on how to submit an MMC application to the National Maritime Center.

[7] According to the Liquefied Gas Carrier National Center, an annual average of approximately 508 mariners would need STCW endorsements for Basic or Advanced IGF Code Operations over the 10-year period from 2020–2029. See Coast Guard ''IGF Code Policy Letter Cost Analysis,'' which is available in the docket where indicated under the **ADDRESSES** portion of this notice. This can be found in the docket USCG–2020–0181 under ''IGF Code Policy Letter Cost Analysis.''

specific endorsements, described in CG–MMC Policy Letter 01–21.

Before creating any such requirement, the Coast Guard would undertake a separate rulemaking.

We issue this notice of availability in accordance with 5 U.S.C. 552(a) and under the authority of 46 U.S.C. 7101. If you have questions about the policy letter, or believe that changes are necessary, please contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Dated: January 7, 2021.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2021–00372 Filed 1–11–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0663]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0109

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0109, Drawbridge Operation Regulations; without change.

Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before February 11, 2021.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2020–0663. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2020–0663], and must be received by February 11, 2021.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0109.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (85 FR 66572, October 20, 2020) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Drawbridge Operation Regulations.

OMB Control Number: 1625–0109.

Summary: The Bridge Program receives approximately 412 requests from bridge owners per year to change the operating schedule of various drawbridges across the navigable waters of the United States. The information needed for the change to the operating schedule can only be obtained from the bridge owner and is generally provided to the Coast Guard in either written or electronic format.

Need: 33 U.S.C. 499 authorizes the Coast Guard to change the operating schedules of drawbridges that cross over navigable waters of the United States.

Forms: None.

Respondents: The public and private owners of bridges over navigable waters of the United States.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden is 1,672 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: January 7, 2021.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2021–00408 Filed 1–11–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0041]

National Merchant Marine Personnel Advisory Committee; Vacancy

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Request for applications; re-solicitation for a member credentialed with ratings as a qualified member of the engine department.

SUMMARY: The Coast Guard is re-soliciting applications from persons interested in membership on the National Merchant Marine Personnel Advisory Committee (Committee) to represent the viewpoint of those credentialed with ratings as a qualified member of the engine department. This recently established Committee will advise the Secretary of the Department of Homeland Security on matters relating to personnel in the United States merchant marine, including the training, qualifications, certification, documentation, and fitness of mariners. Please read the notice for description of the Committee position we are seeking to fill.

DATES: Your completed application should reach the Coast Guard on or before March 15, 2021.

ADDRESSES: Applicants should send a cover letter expressing interest in an appointment to the Committee and a resume detailing their experience. We will not accept a biography.

Applications should be submitted: via the following method:

• *By Email: Megan.C.Johns@uscg.mil.* Subject Line: N–MERPAC (preferred)

FOR FURTHER INFORMATION CONTACT: Megan Johns Henry, Alternate Designated Federal Officer of the Merchant Marine Personnel Advisory Committee; Telephone 202–372–1255; or Email at *Megan.C.Johns@uscg.mil.*

SUPPLEMENTARY INFORMATION: On May 15, 2020, the Coast Guard published a request in the **Federal Register** (85 FR 29467) for applications for membership in the National Merchant Marine Personnel Advisory Committee. On July 31, 2020, the Coast Guard published an additional request in the **Federal Register** (85 FR 46141) for applications for membership in the National Merchant Marine Personnel Advisory Committee from those holding Merchant Mariner Credentials with rating endorsements. The Coast Guard is re-soliciting applications from persons interested in membership on the National Merchant Marine Personnel Advisory Committee to represent the viewpoint of those credentialed with a rating endorsement as a qualified member of the engine department. Applicants who hold a Merchant Mariner Credential with an officer endorsement are not eligible for this position. Applicants who responded to the previous notices do not need to reapply.

The National Merchant Marine Personnel Advisory Committee is a Federal advisory committee. It will operate under the provisions of the *Federal Advisory Committee Act,* 5 U.S.C. Appendix, and the administrative provisions in Section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* (specifically, 46 U.S.C. 15109).

The Committee was established on December 4, 2019, by the *Frank LoBiondo Coast Guard Authorization Act of 2018,* which added section 15103, National Merchant Marine Personnel Advisory Committee, to Title 46 of the U.S. Code. The Committee will advise the Secretary of Homeland Security on matters relating to personnel in the United States merchant marine, including the training, qualifications, certification, documentation, and fitness of mariners.

The Committee is required to meet at least once a year in accordance with 46 U.S.C. 15109(a). We expect the Committee to meet at least twice a year, but it may meet more frequently. The meetings are generally held in cities that have high concentrations of maritime personnel and related marine industry businesses.

All members serve at their own expense and receive no salary or other compensation from the Federal Government. Members may be reimbursed, however only for travel and per diem in accordance with the Federal Travel Regulations.

Under the provisions in 46 U.S.C. 15109(f)(6), if you are appointed as a member of the Committee, your membership term will expire on December 31 of the third full year after the effective date of your appointment. The Secretary may require an individual to have passed an appropriate security background examination before appointment to the Committee, 46 U.S.C. 15109(f)(4).

In this solicitation for a Committee member, we will consider applications for the following position:

• United States' citizens holding active licenses or certificates issued under 46 U.S.C. chapter 71 or merchant mariner documents issued under 46 U.S.C. chapter 73, including two credentialed with ratings: one that must be endorsed as a qualified member of the engine department.

The Department of Homeland Security does not discriminate in selection of Committee members based on race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disabilities and genetic information, age, membership in an employee organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment selections.

If you are interested in applying to become a member of the Committee, send your cover letter and resume to Megan Johns Henry, Alternate Designated Federal Officer of the National Merchant Marine Personnel Advisory Committee via one of the transmittal methods in the **ADDRESSES** section by the deadline in the **DATES** section of this notice. When you send your application to us via email, we will send you an email confirming receipt of your application.

Dated: January 7, 2021.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2021–00383 Filed 1–11–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0666]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0040

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0040, Applications for Merchant Mariner Credentials and Medical Certificates; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before February 11, 2021.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2020–0666]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2020–0666], and must be received by February 11, 2021.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0040.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (85 FR 66573, October 20, 2020) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Applications for Merchant Mariner Credentials and Medical Certificates.

OMB Control Number: 1625–0040.

Summary: This information is necessary to determine competency, character and physical qualifications for the issuance of a Merchant Mariner Credential (MMC) or Medical Certificate.

Need: Title 46 Code of Federal Regulation (CFR) parts 10–13 and 16 detail the requirements for the issuance of an MMC or Medical Certificate.

Forms:

- CG–719B, Application for Merchant Mariner Credential.
- CG–719C, Disclosure Statement for Narcotics, DWI/DUI, and/or Other Convictions.
- CG–719K, Application for Medical Certificate.
- CG–719K/E, Application for Medical Certificate, Short Form.
- CG–719P, DOT/USCG Periodic Drug Testing Form.
- CG–719S, Small Vessel Sea Service Form.

Respondents: Applicants for MMC, whether original, renewal, duplicate, raise of grade, or a new endorsement on a previously issued MMC. Applicants for Medical Certificates to include National and STCW credentialed mariners, and first-class pilots.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 47,444 hours to 62,004 hours a year; due to an increase in the estimated annual number of responses..

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: January 7, 2021.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2021–00428 Filed 1–11–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2061]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before April 12, 2021.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2061, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Anderson County, Kansas and Incorporated Areas Project: 19–07–0035S Preliminary Date: April 28, 2020	
City of Colony	City Hall, 339 Cherry Street, Colony, KS 66015.
City of Garnett	City Hall, 131 West 5th Avenue, Garnett, KS 66032.

Community	Community map repository address
City of Greeley	City Hall, 112 West Brown Avenue, Greeley, KS 66033.
City of Kincaid	City Hall, 500 5th Avenue, Kincaid, KS 66039.
City of Lone Elm	Lone Elm City Hall, 303 2nd Street, Kincaid, KS 66039.
City of Westphalia	Anderson County Courthouse, 100 East 4th Avenue, Garnett, KS 66032.
Unincorporated Areas of Anderson County	Anderson County Courthouse, 100 East 4th Avenue, Garnett, KS 66032.
Chase County, Kansas and Incorporated Areas Project: 19–07–0041S Preliminary Date: April 24, 2020	
City of Cedar Point	City Hall, 127 Cedar Street, Cedar Point, KS 66843.
City of Cottonwood Falls	City Hall, 220 Broadway, Cottonwood Falls, KS 66845.
City of Elmdale	Chase County Courthouse, 300 Pearl Street, Cottonwood Falls, KS 66845.
City of Matfield Green	Chase County Courthouse, 300 Pearl Street, Cottonwood Falls, KS 66845.
City of Strong City	City Hall, 204 West Topeka Avenue, Strong City, KS 66869.
Unincorporated Areas of Chase County	Chase County Courthouse, 300 Pearl Street, Cottonwood Falls, KS 66845.
Coffey County, Kansas and Incorporated Areas Project: 19–07–0037S Preliminary Date: April 10, 2020	
City of Burlington	City Hall, 1013 North 4th Street, Burlington, KS 66839.
City of Gridley	City Hall, 503 Main Street, Gridley, KS 66852.
City of Lebo	City Hall, 9 East 4th Street, Lebo, KS 66856.
City of LeRoy	City Hall, 713 South Main Street, LeRoy, KS 66857.
City of Waverly	City Hall, 210 Pearson Avenue, Waverly, KS 66871.
Unincorporated Areas of Coffey County	Coffey County Courthouse, 110 South 6th Street, Burlington, KS 66839.
Douglas County, Kansas and Incorporated Areas Project: 19–07–0033S Preliminary Date: May 28, 2020	
City of Baldwin City	City Hall, 803 8th Street, Baldwin City, KS 66006.
Unincorporated Areas of Douglas County	Douglas County Courthouse, 1100 Massachusetts Street, Lawrence, KS 66044.

[FR Doc. 2021–00398 Filed 1–11–21; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2075]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before April 12, 2021.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2075, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section

110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison. (Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security,Federal Emergency Management Agency.

Community	Community map repository address
Imperial County, California and Incorporated Areas Project: 18–09–0018S Preliminary Date: August 31, 2020	
Unincorporated Areas of Imperial County	Imperial County Planning and Development Services, 801 Main Street, El Centro, CA 92243.
Riverside County, California and Incorporated Areas Project: 18–09–0018S Preliminary Date: August 31, 2020	
Unincorporated Areas of Riverside County	Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92501.
San Diego County, California and Incorporated Areas Project: 18–09–0018S Preliminary Date: August 31, 2020	
Unincorporated Areas of San Diego County	Department of Public Works Flood Control, 5510 Overland Avenue, Suite 410 MS 0326, San Diego, CA 92123.
Arenac County, Michigan (All Jurisdictions) Project: 14–05–2549S Preliminary Date: November 14, 2019	
City of Au Gres	City Hall, 124 West Huron Road, Au Gres, MI 48703.
Township of Arenac	Arenac Township Hall, 2596 Arenac State Road, Standish, MI 48658.
Township of Au Gres	Township Hall, 1865 South Swenson Road, Au Gres, MI 48703.
Township of Sims	Sims Township Office, 4489 East Huron Road, Au Gres, MI 48703.
Township of Standish	Township Hall, 4997 Arenac State Road, Standish, MI 48658.
Township of Whitney	Whitney Township Hall, 1515 North Huron Road, Tawas City, MI 48763.
Iosco County, Michigan (All Jurisdictions) Project: 14–05–2537S Preliminary Date: April 30, 2020	
City of East Tawas	East Tawas Community Center, 760 Newman Street, East Tawas, MI 48730.
City of Tawas City	City Hall, 550 West Lake Street, Tawas City, MI 48764.
Township of Alabaster	Alabaster Township Hall, 1716 South U.S. 23, Tawas City, MI 48763.
Township of Au Sable	Township Hall, 4420 North U.S. 23, Au Sable, MI 48750.
Township of Baldwin	Baldwin Township Hall, 1119 Monument Road, Tawas City, MI 48763.
Township of Oscoda	Iosco County Public Safety Building, 1808 North U.S. 23, East Tawas, MI 48730.

Community	Community map repository address
Rice County, Minnesota and Incorporated Areas Project: 12–05–2135S Preliminary Date: November 15, 2019	
City of Faribault	City Hall, Council Chambers, 208 First Avenue Northwest, Faribault, MN 55021.
City of Nerstrand	City Hall, 221 Main Street, Nerstrand, MN 55053.
Township of Bridgewater	Bridgewater Township Hall, 500 Railway Street South, Dundas, MN 55019.
Unincorporated Areas of Rice County	Rice County Government Services Building, 320 Northwest Third Street, Faribault, MN 55021.
Logan County, Ohio and Incorporated Areas Project: 11–05–1562S Preliminary Date: May 29, 2020	
Unincorporated Areas of Logan County	Logan County Office Building, 100 South Madriver Street, Bellefontaine, OH 43311.
Village of Lakeview	Lakeview Municipal Building, 126 North Main Street, Lakeview, OH 43331.
Village of Russells Point	Logan County Office Building, 100 South Madriver Street, Bellefontaine, OH 43311.

[FR Doc. 2021–00399 Filed 1–11–21; 8:45 am]
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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2069]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Notice; correction.

SUMMARY: On December 1, 2020, FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table. The table provided here represents the proposed flood hazard determinations and communities affected for Boulder County, Colorado and Incorporated Areas.

DATES: Comments are to be submitted on or before April 12, 2021.

ADDRESSES: The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2069, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) *online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Correction

In the proposed flood hazard determination notice published at 85 FR 77232 in the December 1, 2020, issue of the **Federal Register**, FEMA published a table titled ''Boulder County, Colorado, and Incorporated Areas''. This table contained inaccurate information as to the community map repository for Town of Superior featured in the table.

In this document, FEMA is publishing a table containing the accurate information. The information provided below should be used in lieu of that previously published.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Boulder County, Colorado and Incorporated Areas Project: 19–08–0003S Preliminary Date: September 30, 2019	
City of Boulder	Park Central, 1739 Broadway, Boulder, CO 80302.
City of Longmont	Development Services Center, 385 Kimbark Street, Longmont, CO 80501.
Town of Erie	Town Hall, 645 Holbrook Street, Erie, CO 80516.
Town of Jamestown	Town Hall, 118 Main Street, Jamestown, CO 80455.
Town of Lyons	Town Hall, 432 5th Avenue, Lyons, CO 80540.
Town of Nederland	Town Hall, 45 West 1st Street, Nederland, CO 80466.
Town of Superior	Public Works and Utilities Department, 405 Center Drive, Suite E, Superior, CO 80027.
Town of Ward	Town Hall, 1 Columbia Street, Ward, CO 80481.
Unincorporated Areas of Boulder County	Boulder County Community Planning and Permitting Department, 2045 13th Street, Boulder, CO 80302.

[FR Doc. 2021–00395 Filed 1–11–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2080]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona:						
Pima	City of Tucson, (20–09–2061P).	The Honorable Regina Romero, Mayor, City of Tucson, 255 West Alameda Street, Tucson, AZ 85701.	Planning and Development Services, Public Works Building, 201 North Stone Avenue, Tucson, AZ 85701.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 15, 2021	040076
Pima	Town of Marana, (20–09–0784P).	The Honorable Ed Honea, Mayor, Town of Marana, 11555 West Civic Center Drive, Marana, AZ 85653.	Engineering Department, Marana Municipal Complex, 11555 West Civic Center Drive, Marana, AZ 85653.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 5, 2021	040118
California:						
Nevada	Town of Truckee, (20–09–0383P).	The Honorable David Polivy, Mayor, Town of Truckee, 10183 Truckee Airport Road, Truckee, CA 96161.	Eric W. Rood Administrative Center, 950 Maidu Avenue, Nevada City, CA 95959.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 22, 2021	060762
Orange	City of Orange, (21–09–0083X).	The Honorable Mark A. Murphy, Mayor, City of Orange, 300 East Chapman Avenue, Orange, CA 92866.	City Hall, 300 East Chapman Avenue, Orange, CA 92866.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 12, 2021	060228
Orange	City of Villa Park, (21–09–0083X).	The Honorable Robert Pitts, Mayor, City of Villa Park, 17855 Santiago Boulevard, Villa Park, CA 92861.	City Hall, 17855 Santiago Boulevard, Villa Park, CA 92861.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 12, 2021	060236
Orange	Unincorporated Areas of Orange County, (21–09–0083X).	The Honorable Michelle Steel, Chair, Board of Supervisors, Orange County, 333 West Santa Ana Boulevard, Santa Ana, CA 92701.	Orange County Flood Control Division, H.G. Osborne Building, 300 North Flower Street 7th Floor, Santa Ana, CA 92703.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 12, 2021	060212
Riverside	City of Eastvale, (18–09–2446P).	The Honorable Brandon Plott, Mayor, City of Eastvale, 12363 Limonite Avenue Suite 910, Eastvale, CA 91752.	City Hall, Public Works Department, 12363 Limonite Avenue Suite 910, Eastvale, CA 91752.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 5, 2021	060155
Riverside	City of Jurupa Valley, (18–09–2446P).	The Honorable Anthony Kelly, Jr., Mayor, City of Jurupa Valley, 8930 Limonite Avenue, Jurupa Valley, CA 92509.	City Hall, 8930 Limonite Avenue, Jurupa, CA 92509.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 5, 2021	060286
Riverside	City of Norco (18–09–2446P).	The Honorable Berwin Hanna, Mayor, City of Norco, 2870 Clark Avenue, Norco, CA 92860.	City Hall, 2870 Clark Avenue, Norco, CA 92860.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 5, 2021	060256
Riverside	Unincorporated Areas of Riverside County, (18–09–2446P).	The Honorable V. Manuel Perez, Chairman, Board of Supervisors, Riverside County, 4080 Lemon Street, 5th Floor, Riverside, CA 92501.	Riverside County, Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92501.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 5, 2021	060245
Colorado:						
Weld	Town of Milliken, (19–08–1058P).	The Honorable Elizabeth Austin, Mayor, Town of Milliken, 1101 Broad Street, Milliken, CO 80543.	Town Hall, 1101 Broad Street, Milliken, CO 80543.	*https://msc.fema.gov/portal/advanceSearch.*	Feb.1, 2021	080187
Weld	Unincorporated Areas of Weld County, (19–08–1058P).	Mr. Mike Freeman, Commissioners Chair, Weld County, 1150 O Street, Greeley, CO 80632.	Weld County Commissioner's Office, 915 10th Street, Greeley, CO 80632.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 1, 2021	080266
Hawaii: Hawaii	Hawaii County, (20–09–1839P).	The Honorable Harry Kim, Mayor, County of Hawaii, 25 Aupuni Street, Hilo, HI 76720.	Hawaii County Department of Public Works, Engineering Division, 101 Pauahi Street, Suite 7, Hilo, HI 96720.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 19, 2021	155166
Illinois:						
Cook	City of Prospect Heights, (19–05–1451P).	The Honorable Nicholas J. Helmer, Mayor, City of Prospect Heights, 8 North Elmhurst Road, Prospect Heights, IL 60070.	City Hall, 8 North Elmhurst Road, Prospect Heights, IL 60070.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 4, 2021	170919
Cook	Unincorporated Areas of Cook County, (19–05–1451P).	The Honorable Toni Preckwinkle, County Board President, Cook County, 118 North Clark Street, Room 537, Chicago, IL 60602.	Cook County Building and Zoning Department, 69 West Washington, Suite 2830, Chicago, IL 60602.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 4, 2021	170054

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Cook	Village of Wheeling, (19–05–1451P).	The Honorable Patrick Horcher, Village President, Village of Wheeling, 2 Community Boulevard, Wheeling, IL 60090.	Village Hall, Community Development Engineering Division, 2 Community Boulevard, Wheeling, IL 60090.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 4, 2021	170173
DuPage	Village of Westmont, (20–05–3289P).	The Honorable Ronald J. Gunter, Mayor, Village of Westmont, 31 West Quincy Street, Westmont, IL 60559.	Village Hall, 31 West Quincy Street, Westmont, IL 60559.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 19, 2021	170220
Kane	Unincorporated Areas of Kane County, (20–05–2475P).	The Honorable Christopher Lauzen, Chairman, Kane County Board, Kane County Government Center, Building A, 719 South Batavia Avenue, Geneva, IL 60134.	Kane County Government Center, Building A, Water Resources Department, 719 South Batavia Avenue, Geneva, IL 60134.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 19, 2021	170896
Kane	Village of Carpentersville (20–05–2475P).	The Honorable John Skillman, Village President, Village of Carpentersville, 1200 L.W. Besinger Drive, Carpentersville, IL 60110.	Village Hall, 1200 L.W. Besinger Drive, Carpentersville, IL 60110.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 19, 2021	170322
Kane	Village of Carpentersville (20–05–2659P).	The Honorable John Skillman, Village President, Village of Carpentersville, 1200 L.W. Besinger Drive, Carpentersville, IL 60110.	Village Hall, 1200 L.W. Besinger Drive, Carpentersville, IL 60110.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 25, 2021	170322
Will	Unincorporated Areas of Will County, (20–05–3060P).	Ms. Denise E. Winfrey, County Executive, Will County, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432.	Land Use Department, 58 East Clinton Street, Suite 100, Joliet, IL 60432.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 9, 2021	170695
Will	Village of Monee, (20–05–3030P).	The Honorable James F. Popp, Mayor, Village of Monee, 5130 West Court Street, Monee, IL 60449.	Village Hall, 5130 West Court Street, Monee, IL 60449.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 18, 2021	171029
Will	Village of Romeoville, (20–05–3060P).	The Honorable John D. Noak, Mayor, Village of Romeoville, 1050 West Romeo Road, Romeoville, IL 60446.	Village Hall, 1050 West Romeo Road, Romeoville, IL 60446.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 9, 2021	170711
Minnesota:						
Norman	City of Halstad (20–05–2194P).	The Honorable Lori Delong, Mayor, City of Halstad, 405 2nd Avenue West, Halstad, MN 56548.	Administrative Building, 405 2nd Avenue West, Halstad, MN 56548.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 10, 2021	270324
Norman	City of Hendrum, (20–05–2263P).	The Honorable Curt Johannsen, Mayor, City of Hendrum, P.O. Box 100, Hendrum, MN 56550.	Administrative Building, 308 Main Street East, Hendrum, MN 56550.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 10, 2021	270325
Norman	Unincorporated Areas of Norman County, (20–05–2194P).	Ms. Lee Ann Hall, Chair, Norman County Board of Commissioners, 315 West Main Street, Ada, MN 56510.	Norman County Court House, 16 3rd Avenue East, Ada, MN 56510.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 10, 2021	270322
Norman	Unincorporated Areas of Norman County, (20–05–2263P).	Ms. Lee Ann Hall, Chair, Norman County Board of Commissioners, 315 West Main Street, Ada, MN 56510.	Norman County Court House, 16 3rd Avenue East, Ada, MN 56510.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 10, 2021	270322
North Dakota:						
Traill	Township of Elm River, (20–05–2263P).	Mr. Todd Harrington, Supervisor, Township of Elm River, 948 173rd Avenue, Grandin, ND 58038.	County Courthouse, 114 West Caledonia, Hillsboro, ND 58045.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 10, 2021	380636
Traill	Township of Herberg, (20–05–2194P).	Mr. Steven Reinpold, Chairman, Township of Herberg, 221 169th Avenue, Hillsboro, ND 58045.	County Courthouse, 114 West Caledonia, Hillsboro, ND 58045.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 10, 2021	380621
Ohio:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Lucas	City of Toledo, (20–05–2610P).	The Honorable Wade Kapszukiewicz, Mayor, City of Toledo, One Government Center Suite 2200, Toledo, OH 43604.	Department of Inspection, One Government Center, Suite 1600, Toledo, OH 43604.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 31, 2021	395373
Fairfield	Unincorporated Areas of Fairfield County, (20–05–3622P).	Mr. Dave L. Levacy, Commissioner, Fairfield County, 210 East Main Street, Room 301, Lancaster, OH 43130.	Fairfield County Regional Planning Commission, 210 East Main Street, Room 104, Lancaster, OH 43130.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 4, 2021	390158
Franklin	City of Dublin, (20–05–2455P).	The Honorable Chris Amorose Groomes, Mayor, City of Dublin, City Hall, 5200 Emerald Parkway, Dublin, OH 43017.	Engineering Building, 5800 Shier-Rings Road, Dublin, OH 43017.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 24, 2021	390673
Franklin	City of Grove City, (20–05–3170P).	The Honorable Richard L. ''Ike'' Stage, Mayor, City of Grove City, 4035 Broadway, Grove City, OH 43123.	City Hall, 4035 Broadway, Grove City, OH 43123.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 19, 2021	390173
Richland	Unincorporated Areas of Richland County, (20–05–1712P).	Mr. Anthony Vero, County Executive, Richland County, 50 Park Avenue East, Mansfield, OH 44902.	Richland County Director of Building Regulations, 1495 West Longview Avenue, Suite 202A, Mansfield, OH 44906.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 23, 2021	390476
Richland	Village of Bellville, (20–05–1712P).	The Honorable Teri L. Brenkus, Mayor, Village of Bellville, 142 Park Place, Bellville, OH 44813.	Zoning Inspector, 142 Park Place, Bellville, OH 44813.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 23, 2021	390604
Texas:						
Tarrant	City of Fort Worth, (20–06–0541P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 19, 2021	480596
Wisconsin:						
Manitowoc	City of Manitowoc, (20–05–4694P).	The Honorable Justin M. Nickels, Mayor, City of Manitowoc, 900 Quay Street, Manitowoc, WI 54220.	City Hall, 900 Quay Street, Manitowoc, WI 54220.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 11, 2021	550240
Manitowoc	Unincorporated Areas of Manitowoc, (20–05–4694P).	The Honorable Jim Brey, Chair, Board of Supervisors, Manitowoc County Courthouse, 1010 South 8th Street, Manitowoc, WI 54220.	Manitowoc County Courthouse, 1010 South 8th Street, Manitowoc, WI 54220.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 11, 2021	550236

[FR Doc. 2021–00397 Filed 1–11–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance

and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Arizona: Yavapai (FEMA Docket No.: B–2052).	Unincorporated areas of Yavapai County (20–09–0368P).	Mr. Craig L. Brown, Chairman, Yavapai County Flood Control, District Board of Directors, 1015 Fair Street, Prescott, AZ 86305.	Yavapai County Development Services Department, 1120 Commerce Drive, Prescott, AZ 86305.	Nov. 30, 2020	040093
Arkansas: Washington (FEMA Docket No.: B–2054).	City of Fayetteville (19–06–3968P).	The Honorable Lioneld Jordan, Mayor, City of Fayetteville, 113 West Mountain Street, Fayetteville, AR 72701.	City Hall, 113 West Mountain Street, Fayetteville, AR 72701.	Dec. 7, 2020	050216
Colorado:					
Adams (FEMA Docket No.: B–2052).	City of Westminster (19–08–0665P).	The Honorable Herb Atchison, Mayor, City of Westminster, 4880 West 92nd Avenue, Westminster, CO 80031.	City Hall, 4880 West 92nd Avenue, Westminster, CO 80031.	Nov. 27, 2020	080008
Adams (FEMA Docket No.: B–2052).	Unincorporated areas of Adams County (19–08–0665P).	The Honorable Emma Pinter, Chair, Adams County Board of Commissioners, 4430 South Adams County Parkway, 5th Floor, Suite C5000A, Brighton, CO 80601.	Adams County Development Services Department, Engineering Division, 4430 South Adams County Parkway, 1st Floor, Suite W2000, Brighton, CO 80601.	Nov. 27, 2020	080001
Jefferson (FEMA Docket No.: B–2059).	City of Westminster (20–08–0053P).	The Honorable Herb Atchison, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	City Hall, 4800 West 92nd Avenue, Westminster, CO 80031.	Dec. 4, 2020	080008
Florida:					
Broward (FEMA Docket No.: B–2054).	City of Coral Springs (20–04–1557P).	Mr. Frank Babinec, Manager, City of Coral Springs, 9500 West Sample Road, Coral Springs, FL 33065.	City Hall, 9500 West Sample Road, Coral Springs, FL 33065.	Nov. 30, 2020	120033
Monroe (FEMA Docket No.: B–2054).	Unincorporated areas of Monroe County (20–04–1572P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Nov. 30, 2020	125129
Monroe (FEMA Docket No.: B–2054).	Unincorporated areas of Monroe County (20–04–3363P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Nov. 30, 2020	125129
Monroe (FEMA Docket No.: B–2054).	Unincorporated areas of Monroe County (20–04–3364P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Dec. 7, 2020	125129
Pasco (FEMA Docket No.: B–2052).	Unincorporated areas of Pasco County (20–04–0554P).	The Honorable Mike Moore, Chairman, Pasco County Board of Commissioners, 8731 Citizens Drive, New Port Richey, FL 34654.	Pasco County Administration Building, 8731 Citizens Drive, New Port Richey, FL 34654.	Nov. 27, 2020	120230

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Sarasota (FEMA Docket No.: B–2054).	Unincorporated areas of Sarasota County (20–04–3149P).	The Honorable Michael A. Moran, Chairman, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, F4034236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL34240.	Dec. 3, 2020	125144
Massachusetts: Nantucket (FEMA Docket No.: B–2052).	Town of Nantucket (20–01–0466P).	The Honorable Dawn E. Hill Holdgate, Chair, Town of Nantucket Board of Selectmen, 16 Broad Street, Nantucket, MA 02554.	Planning and Land Use Services Department, 2 Fairgrounds Road, Nantucket, MA 02554.	Nov. 27, 2020	250230
Mississippi: Panola (FEMA Docket No.: B–2054).	Unincorporated areas of Panola County (20–04–1139P).	The Honorable Cole Flint, President, Panola County Board of Supervisors, 151 Public Square, Batesville, MS 38606.	Panola County Land Development Commission, 245 Eureka Street, Batesville, MS 38606.	Dec. 3, 2020	280125
North Carolina: Columbus (FEMA Docket No.: B–2054).	Town of Sandyfield (20–04–3325P).	The Honorable Garry Keaton, Mayor, Town of Sandyfield, 1795 Woodyard Road, Riegelwood, NC 28546.	Town Hall, 1795 Woodyard Road, Riegelwood, NC 28546.	Dec. 7, 2020	370644
Oklahoma: Tulsa (FEMA Docket No.: B–2052).	City of Tulsa (20–06–0535P).	The Honorable G.T. Bynum, Mayor, City of Tulsa, 175 East 2nd Street, Tulsa, OK 74103.	Engineering Services Department, 2317 South Jackson Avenue, Suite S–310, Tulsa, OK 74107.	Nov. 30, 2020	405381
Texas:					
Dallas (FEMA Docket No.: B–2054).	City of Dallas (20–06–1597P).	The Honorable Eric Johnson, Mayor, City of Dallas, 1500 Marilla Street, Suite 5EN, Dallas, TX 75201.	Water Utilities Department, 312 East Jefferson Boulevard, Room 307, Dallas, TX 75203.	Dec. 7, 2020	480171
Hood (FEMA Docket No.: B–2054).	Unincorporated areas of Hood County (20–06–2645P).	The Honorable Ron, Massingill, Hood County Judge, 100 East Pearl Street, Granbury, TX 76048.	Hood County Development and Compliance Department, 1402 West Pearl Street, Suite 2, Granbury, TX 76048.	Dec. 3, 2020	480356
Utah: Cache (FEMA Docket No.: B–2054).	City of Hyrum (20–08–0206P).	The Honorable Stephanie Miller, Mayor, City of Hyrum, 60 West Main Street, Hyrum, UT 84319.	City Hall, 60 West Main Street, Hyrum, UT 84319.	Dec. 2, 2020	490017
Virginia:					
Loudoun (FEMA Docket No.: B–2059).	Town of Purcellville (20–03–0501P).	The Honorable Kwasi Fraser, Mayor, Town of Purcellville, 221 South Nursery Avenue, Purcellville, VA 20132.	Planning and Zoning Department, 221 South Nursery Avenue, Purcellville, VA 20132.	Dec. 7, 2020	510231
Loudoun (FEMA Docket No.: B–2059).	Unincorporated areas of Loudoun County (20–03–0501P).	Mr. Tim Hemstreet, Loudon County Administrator, P.O. Box 7000, Leesburg, VA 20177.	Loudoun County Office of Mapping and Geographic Information, 1 Harrison Street, Southeast, Leesburg, VA 20175.	Dec. 7, 2020	510090
Prince William (FEMA Docket No.: B–2052).	Unincorporated areas of Prince William County (20–03–0070P).	Mr. Christopher E. Martino, Prince William County Executive, 1 County Complex Court, Prince William, VA 22192.	Prince William County Department of Public Works, 5 County Complex Court, Prince William, VA 22192.	Dec. 3, 2020	510119
Wyoming: Teton (FEMA Docket No.: B–2054).	Unincorporated areas of Teton County (19–08–1023P).	The Honorable Natalia Macker, Chair, Teton County Board of Commissioners, P.O. Box 3594, Jackson, WY 83001.	Teton County Public Works Department, 320 South King Street, Jackson, WY 83001.	Dec. 3, 2020	560094
Texas:					
Gillespie (FEMA Docket No.: B–2054).	City of Fredericksburg (19–06–2756P).	The Honorable Gary Neffendorf, Mayor, City of Fredericksburg, 126 West Main Street, Fredericksburg, TX 78624.	City Hall, 126 West Main Street, Fredericksburg, TX 78624.	Nov. 19, 2020	480252
Johnson (FEMA Docket No.: B–2052).	City of Burleson (19–06–3252P).	The Honorable Ken Shetter, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	City Hall, 141 West Renfro Street, Burleson, TX 76028.	Nov. 23, 2020	485459
Montgomery (FEMA Docket No.: B–2052).	City of Conroe (19–06–2853P).	The Honorable Toby Powell, Mayor, City of Conroe, P.O. Box 3066, Conroe, TX 77305.	City Hall, 300 West Davis Street, Conroe, TX 77301.	Nov. 12, 2020	480484
Tarrant (FEMA Docket No.: B–2049).	City of Colleyville (20–06–1166P).	The Honorable Richard Newton, Mayor, City of Colleyville, 100 Main Street, Colleyville, TX 76034.	City Hall, 100 Main Street, Colleyville, TX 76034.	Nov. 12, 2020	480590
Tarrant (FEMA Docket No.: B–2052).	City of Mansfield (20–06–0705P).	Mr. Clayton Chandler, Manager, City of Mansfield, 1200 East Broad Street, Mansfield, TX 76063.	Geographic Information Systems (GIS) Department, 1200 East Broad Street, Mansfield, TX 76063.	Nov. 9, 2020	480606
Utah: Grand (FEMA Docket No.: B–2052).	Unincorporated areas of Grand County (20–08–0298P).	The Honorable Mary McGann, Chair, Grand County Council, 125 East Center Street, Moab, UT 84532.	Grand County Courthouse, 125 East Center Street, Moab, UT 84532.	Nov. 13, 2020	490232

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Virginia: Independent City (FEMA Docket No.: B–2052).	City of Fairfax (20–03–0228P).	Mr. Robert A. Stalzer, Manager, City of Fairfax, 10455 Armstrong Street, Room 316, Fairfax, VA 22030.	Public Works Department, 10455 Armstrong Street, Fairfax, VA 22030.	Nov. 16, 2020	515524

[FR Doc. 2021–00396 Filed 1–11–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2020–N101; FXES11130600000]

Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for Jones Cycladenia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of a draft recovery plan for Jones cycladenia (*Cycladenia humilis* var. *Jonesii*), a plant listed as threatened under the Endangered Species Act. We are requesting review and comment from the public on this draft plan. The draft recovery plan includes objective, measurable criteria, and site-specific management actions as may be necessary to remove it from the Federal List of Endangered and Threatened Plants.

DATES: We must receive any comments on the draft recovery plan on or before March 15, 2021.

ADDRESSES: *Document availability:* Copies of the draft recovery plan are available at *http://www.fws.gov/endangered/species/recovery-plans.html.* Alternatively, you may request a copy by U.S. mail from the Utah Ecological Services Field Office, 2369 Orton Circle, Suite 50, West Valley City, Utah 84119, telephone: 801–975–3330. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 800–877–8339.

Submitting comments: If you wish to comment on the draft recovery plan, you may submit your comments in writing by email to *yvette_converse@fws.gov,* or by U.S. mail to the Field Supervisor at the address above.

FOR FURTHER INFORMATION CONTACT: Yvette Converse, Field Supervisor, at the above U.S. mail address or telephone: 801–975–3330.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft recovery plan for Jones cycladenia (*Cycladenia humilis* var. *Jonesii*), a plant listed as threatened under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). We are requesting review and comment from the public on this draft recovery plan.

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. Recovery means improving the status of a listed species to the point at which listing is no longer necessary according to the criteria specified under section 4(a)(1) of the Act. The Act requires recovery plans for listed species unless such a plan would not promote the conservation of a particular species. To help guide recovery efforts, we prepare recovery plans to promote the conservation of the species.

The purpose of a recovery plan is to provide a recommended framework for the recovery of a species so that protection of the Act is no longer necessary. Pursuant to section 4(f) of the Act, a recovery plan must, to the maximum extent possible, include: (1) A description of site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species; (2) objective, measurable criteria which, when met, would support a determination under section 4(a)(1) of the Act that the species should be removed from the List of Endangered and Threatened Species; and (3) estimates of time and costs required to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

We used our new recovery planning and implementation (RPI) process to develop the draft recovery plan for Jones cycladenia. The RPI process helps reduce the time needed to develop and implement recovery plans, increases the relevancy of the recovery plan over longer timeframes, and adds flexibility so that the recovery plan can be more easily adjusted to new information and circumstances. Under our RPI process, a recovery plan will include the three statutorily required elements for recovery plans—objective and measurable criteria, site-specific management actions, and estimates of time and cost—along with a concise introduction and our strategy for how we plan to achieve species recovery. The RPI recovery plan is supported by a separate species biological report, which provides the scientific background information and threat assessment for Jones cycladenia, which are key to the development of the recovery plan. The species biological report is an interim approach taken as we transition to using a species status assessment (SSA) framework as the standard format to analyze species as we make decisions under the Act, and includes similar analyses of the species' viability in terms of its resiliency, redundancy, and representation. A third, separate working document, called the recovery implementation strategy (RIS), steps down the more general descriptions of actions in the recovery plan to detail the specifics needed to implement the recovery plan, which improves the flexibility of the recovery plan. The RIS will be adaptable, with new information on actions incorporated, as needed, without requiring a concurrent revision to the recovery plan, unless changes to the three statutory elements are required.

On May 5, 1986, we listed Jones cycladenia as a threatened plant (51 FR 16526). We did not designate critical habitat. Detailed information regarding the plant's biology and life history can be found in the species biological report for Jones cycladenia (Service 2020, entire). The species biological report is an in-depth but not exhaustive review of the taxon's biology and threats, an evaluation of its biological status, and an assessment of the resources and conditions needed to maintain long-term viability. The species biological report provides the scientific background and threats assessment for our draft recovery plan.

Peer Review

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' which was

published on July 1, 1994 (59 FR 34270), and our August 22, 2016, Memorandum ''Peer Review Process,'' we will seek the expert opinion of at least three appropriate and independent specialists regarding scientific data and interpretations contained in the species biological report and the draft recovery plan. We will send copies of both documents to the peer reviewers immediately following publication of this notice in the **Federal Register**. We will ensure that the opinions of peer reviewers are objective and unbiased by following the guidelines set forth in the Director's Memo, which updates and clarifies Service policy on peer review (U.S. Fish and Wildlife Service 2016). The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Accordingly, our final species biological report and recovery plan may differ from the draft documents.

Request for Public Comments

This notice opens the public review and comment period for our draft recovery plan for Jones cycladenia. Section 4(f) of the Act requires that we notify the public and provide an opportunity for public review and comment during the development of recovery plans. We will consider all information we receive during a public comment period when preparing the recovery plan for approval, and particularly look for comments that provide scientific rationale or factual background. The Service and other Federal agencies and partners will take these comments into consideration in the course of implementing an approved final recovery plan.

All comments we receive by the date specified (see **DATES**) will be considered prior to approval of the recovery plan. Written comments and materials regarding the recovery plan should be sent via the means in the **ADDRESSES** section.

We are specifically seeking comments and suggestions on the following questions:

- Understanding that the time and cost presented in the draft recovery plan will be fine-tuned when localized recovery implementation strategies are developed, are the estimated time and cost to recovery realistic? Is the estimate reflective of the time and cost of actions that may have already been implemented by Federal, State, county, or other agencies? Please provide suggestions or methods for determining a more accurate estimation.
- Do the draft recovery criteria provide clear direction to partners on what is needed to recover Jones cycladenia? How could they be improved for clarity?
- Are the draft recovery criteria both objective and measurable given the information available for Jones cycladenia now and into the future? Please provide suggestions.
- Understanding that specific, detailed, and area-specific recovery actions will be developed in the RIS, do the draft recovery actions presented in the draft recovery plan generally cover the types of actions necessary to meet the recovery criteria? If not, what general actions are missing? Are any of the draft recovery actions unnecessary for achieving recovery? Have we prioritized the actions appropriately?

Public Availability of Comments

We will summarize and respond to the issues raised by the public in an appendix to the approved final recovery plan. 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. You may request at the top of your comment that we withhold this information from public review; however, we cannot guarantee that we will be able to do so.

Species Information

Jones cycladenia is a long-lived herbaceous perennial plant in the dogbane family. It is one of three varieties within the Sacramento waxy dogbane (*Cycladenia humilis* Benth.) species. The other two varieties occur in California (*Cycladenia humilis* var. *humilis* and var. *venusta*) (Burge *et al.* 2016, p. 28). Jones cycladenia is endemic to the Colorado Plateau in Utah and Arizona. It occurs between 4,000 to 6,660 feet (ft) (1,220 to 2,030 meters (m)) in elevation and typically grows on steep slopes in soils that are easily degraded, highly erodible, and difficult to rehabilitate after disturbances. It is found in sparsely vegetated plant communities of mixed desert scrub with less than five percent vegetative cover (JGMS 2012, pp. 21–24; JGMS 2014, Appendix; Sipes *et al.* 1994, p. 16; Spence and Palmquist 2007, p. 5). Jones cycladenia reproduces by seeds (sexually) and by clonal growth (asexually).

We do not know the historical distribution of Jones cycladenia. At the time of listing in 1986, it was known from four populations in Emery, Grand, and Garfield counties, Utah (51 FR 16526, May 5, 1986). It is now known to occur at 60 sites, which we have grouped into 20 populations in Emery, Grand, Garfield, San Juan, and Kane Counties of Utah and Mohave County, Arizona. We further group these populations into four recovery units (San Rafael Swell, Greater Circle Cliffs, Moab, and Pipe Spring).

The primary threats to Jones cycladenia at the time of listing were oil, natural gas, and mineral development. These remain the primary threats to the taxon. A large percentage of the total population occurs on lands open to future energy and mineral development. Without additional protections, we anticipate an increase in the magnitude of this threat affecting the taxon's future resiliency, redundancy and representation. Small populations, lack of pollinators, and sexual reproduction limitations may exacerbate the threat.

Conservation partners conducted additional surveys after Jones cycladenia was listed. This resulted in the discovery of 16 additional populations. Consequently, Jones cycladenia is now known from more sites and has a larger range than we estimated at the time of listing. The total population was estimated to be 7,500 stems when the taxon was listed; the most recent estimate is 79,196 stems (Service 2020, pp. 14–18).

The recovery units have not yet met the proposed delisting criteria in this draft recovery plan. Therefore, we anticipate that recovery will take a minimum of 10 years—recovery criteria include a requirement for stable to increasing populations in each of the four recovery units over a 10-year period. We have estimated recovery costs for a 15-year period for added flexibility during implementation of the recovery plan, when finalized.

Recovery Strategy

Below, we summarize components from our draft recovery plan. Please reference the draft recovery plan for full details (see **ADDRESSES** above).

The draft recovery plan describes the recovery goal as the conservation and survival of Jones cycladenia. For recovery, the taxon needs at least four (redundant) and persistent (resilient) recovery units across the taxon's range, where recruitment over time equals or exceeds loss of individuals and ecological and genetic diversity are maintained (representation). These conditions provide sufficient representation and redundancy across the taxon's range.

Recovery criteria in the draft plan include: (1) Maintaining stable or increasing population growth rates and

evidence of viable seed production over a consecutive 10-year period for each of the 4 recovery units; (2) maintaining a range-wide total population of at least 3,500 individuals (approximately 77,700 stems (ramets) for at least 5 consecutive years; (3) each of the four recovery units have regulatory mechanisms or conservation plans in place that address habitat loss and degradation from energy and mineral development, thus helping meet population trend and abundance targets identified in the first two criteria; and (4) each of the four recovery units are represented in an off-site seed or tissue collection to preserve the genetic diversity of Jones cycladenia and provide added protection from potential stochastic events. Collections should represent at least 75 percent of the genetic diversity, as measured by the number of unique alleles, represented in each recovery unit. To help meet these criteria, the draft recovery plan identifies recovery actions for each criteria.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Noreen Walsh,

Regional Director, Lakewood, Colorado.

[FR Doc. 2021–00375 Filed 1–11–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2020–N113; FXES11130600000–201–FF06E00000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews of 7 Species in the Mountain-Prairie Region

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews of 7 species under the Endangered Species Act of 1973, as amended. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any new information on these species that has become available since the last review of the species.

DATES: To ensure consideration in our reviews, we are requesting submission of new information no later than March 15, 2021. However, we will continue to accept new information about any listed species at any time.

FOR FURTHER INFORMATION CONTACT: For general information, contact Craig Hansen, Regional Recovery Coordinator, by phone at 303–236–4748 or by email at *craig_hansen@fws.gov.* Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance. For information on a particular species, contact the appropriate person or office listed in the table in the **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION:

Why do we conduct 5-year status reviews?

Under the Act (16 U.S.C. 1531 *et seq.*), we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires us to review each listed species' status at least once every 5 years. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species under active review. For additional information about 5-year status reviews, go to *http://www.fws.gov/endangered/what-we-do/recovery-overview.html,* scroll down to ''Learn More about 5-Year Status Reviews,'' and click on our factsheet.

What information do we consider in our review?

A 5-year status review considers all new information available at the time of the review. In conducting these reviews, we consider the best scientific and commercial data that have become available since the listing determination or most recent status review, such as:

(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

(B) Habitat conditions, including but not limited to amount, distribution, and suitability;

(C) Conservation measures that have been implemented that benefit the species;

(D) Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the Act); and

(E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information will be considered during the 5-year status review and will also be useful in evaluating the ongoing recovery programs for the species.

Which species are under review?

This notice announces our active review of the seven species listed in the table below.

Common name	Scientific name	Listing status	Historical range	Final listing rule (**Federal Register** citation and publication date)	Contact person, phone, email	Contact person's U.S. mail address
Barneby reed-mustard	*Schoenocrambe barnebyi.*	Endangered	Utah	57 FR 1398; 1/14/1992.	Yvette Converse, Project Leader, 801–975–3330; *yvette_converse@fws.gov.*	Ecological Services, Utah Field Office, 2369 W Orton Circle, #50, West Valley City, UT 84119.
Barneby ridge-cress	*Lepidium barnebyanum.*	Endangered	Utah	55 FR 39860; 9/28/1990.	Yvette Converse (information above).	
Dwarf bear-poppy	*Arctomecon humilis*	Endangered	Utah	44 FR 64250; 11/6/1979.	Yvette Converse (information above).	
Welsh's milkweed	*Asclepias welshii*	Threatened	Utah, Arizona	52 FR 41435; 10/28/1987.	Yvette Converse (information above).	
Colorado hookless cactus.	*Sclerocactus glaucus*	Threatened	Colorado	44 FR 58868; 10/11/1979.	Ann Timberman, Colorado Field Office, 970–628–7181; *ann_timberman@fws.gov.*	Ecological Services, Western Colorado Field Office, 445 W Gunnison Ave., #240, Grand Junction, CO 81501–5711.
DeBeque phacelia	*Phacelia submutica*	Threatened	Colorado	76 FR 45054; 7/27/2011.	Ann Timberman (information above).	

Common name	Scientific name	Listing status	Historical range	Final listing rule (**Federal Register** citation and publication date)	Contact person, phone, email	Contact person's U.S. mail address
Kendall warm springs dace.	*Rhinichthys osculus thermalis.*	Endangered ...	Wyoming	35 FR 16047; 10/13/1970.	Tyler Abbott, Project Leader, 307–757–3707; *tylerabbott@fws.gov.*	Ecological Services, Wyoming Field Office, 334 Parsley Boulevard Cheyenne, WY 82007.

Request for New Information

To ensure that a 5-year status review is complete and based on the best available scientific and commercial information, we request new information from all sources. See What Information Do We Consider in Our Review? for specific criteria. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

How do I ask questions or provide information?

If you wish to provide information for any species listed above, please submit your comments and materials to the appropriate contact in the table above. Put your comment to the attention of FWS–R6–ES–2020–N113. You may also direct questions to those contacts. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

Public Availability of Submissions

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.

Contents of Submissions

Please make your comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to be relevant to agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations.

Completed and Active Reviews

A list of all completed and currently active 5-year status reviews addressing species for which the Mountain-Prairie Region of the U.S. Fish and Wildlife Service has lead responsibility is available at *http://www.fws.gov/endangered/.*

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Noreen Walsh,

Regional Director, Mountain-Prairie Region.

[FR Doc. 2021–00416 Filed 1–11–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–FAC–2020–N159; FF05F24400–201–FXFR13350500000; OMB Control Number 1018–0127]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Horseshoe Crab and Cooperative Fish Tagging Programs

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service, are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before February 11, 2021.

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. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0127 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. 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 Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), 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.

On August 3, 2020, we published in the **Federal Register** (85 FR 46694) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on October 2, 2020. We received one comment in response to that notice, but it did not address the information collection requirements. No response to that comment is required.

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 Maryland Fish and Wildlife Conservation Office (MDFWCO) will collect information on crabs and fishes captured by the public. Tag information provided by the public will be used to estimate recreational and commercial harvest rates, estimate natural mortality rates, and evaluate migratory patterns, length and age frequencies, and effectiveness of current regulations.

Horseshoe crabs play a vital role commercially, biomedically, and ecologically along the Atlantic coast. Horseshoe crabs are commercially harvested and used as bait in eel and conch fisheries. Biomedical companies along the coast also collect and bleed horseshoe crabs at their facilities. Limulus amebocyte lysate, derived from horseshoe crab blood, is used by pharmaceutical companies to test sterility of products. Finally, migratory shorebirds also depend on the eggs of horseshoe crabs to refuel on their migrations from South America to the Arctic. One bird in particular, the rufa red knot (*Calidris canutus rufa*), feeds primarily on horseshoe crab eggs during its stopover. Effective January 12, 2015, the rufa red knot was listed as threatened under the Endangered Species Act (79 FR 73706; December 11, 2014).

In 1998, the Atlantic States Marine Fisheries Commission (ASMFC), a management organization with representatives from each State on the Atlantic coast, developed a horseshoe crab management plan. The ASMFC plan and its subsequent addenda established mandatory State-by-State harvest quotas, and created the 1,500-square-mile Carl N. Shuster, Jr., Horseshoe Crab Sanctuary off the mouth of Delaware Bay.

Restrictive measures have been taken in recent years, but populations are increasing slowly. Because horseshoe crabs do not breed until they are 9 years or older, it may take some time before the population measurably increases. Federal and State agencies, universities, and biomedical companies participate in a Horseshoe Crab Cooperative Tagging Program. The Service's MDFWCO maintains the information collected under this program and uses it to evaluate migratory patterns, survival, and abundance of horseshoe crabs.

Agencies that tag and release the crabs complete FWS Form 3–2311 (Horseshoe Crab Tagging) and provide the Service with:

- Organization name;
- Contact person name;
- Tag number;
- Sex of crab;
- Prosomal width; and
- Capture site, latitude, longitude, waterbody, State, and date.

Members of the public who recover tagged crabs provide the following information using FWS Form 3–2310 (Horseshoe Crab Recapture Report):

- Tag number;
- Whether or not tag was removed;
- Condition of crab;
- Date captured/found;
- Crab fate;
- Finder type;
- Capture method;
- Capture location;
- Reporter information; and
- Comments.

At the request of the public participant reporting the tagged crab, we send data pertaining to the tagging program and tag and release information on the horseshoe crab tag that was found.

Fish will be tagged with an external tag containing a toll-free number for MDFWCO. Tagged species of fish include striped bass (*Morone saxatilis*), Atlantic (*Acipenser oxyrinchus*) and shortnose sturgeon (*Acipenser brevirostrum*), northern snakehead (*Channa argus*), and American shad (*Alosa sapidissima*). Members of the public reporting a tag will be asked a series of questions pertaining to the fish that they are referencing. The Service uses the following four forms to collect information used by fisheries managers throughout the Atlantic Coast (Interior regions 1 and 2), depending on species:

- Form 3–2493, ''American Shad Recapture Report'';
- Form 3–2494, ''Snakehead Recapture Report'';
- Form 3–2495, ''Striped Bass Recapture Report''; and
- Form 3–2496, ''Sturgeon Recapture Report.''

American shad are tagged by the New York Department of Environmental Conservation (NYDEC), which retains all fish tagging information. The public reports tags to MDFWCO, who provides information on tag returns to NYDEC. Tag return data are used to monitor migration and abundance of shad along the Atlantic coast.

Northern snakehead is an invasive species found in many watersheds throughout the mid-Atlantic region. It has been firmly established in the Potomac River since at least 2004. Federal and State biologists within the Potomac River watershed have been tasked with managing the impacts of northern snakehead. Tagging of northern snakehead is used to learn more about the species so that control efforts can be better informed. Tagging is also used to estimate population sizes to monitor trends in abundance. Recreational and commercial fishers reporting tags provide information on catch rates and migration patterns as well.

Striped bass are cooperatively managed by Federal and State agencies through the Atlantic States Marine Fisheries Commission (ASMFC). The ASMFC uses fish tag return data to conduct stock assessments for striped bass. The database and collection are housed within MDFWCO, while the tagging is conducted by State agencies participating in striped bass management. Without this data collection, striped bass management would likely suffer from a lack of quality data. As required by Congress under the Atlantic Striped Bass Conservation Act (16 U.S.C. 5151–5158), striped bass tagging data is used to manage the coast-wide stock.

Sturgeon are tagged by Federal, State, and university biologists and nongovernmental organizations along the U.S. east coast and into Canada, and throughout the United States and Canada. Local populations of Atlantic sturgeon have been listed as either threatened or endangered since 2012, and shortnose populations have been

listed since 1973. The information collected provides data on tag retention and sturgeon movement along the east coast. The data are also used to address some of the management and research needs identified by amendment 1 to the ASMFC's Atlantic Sturgeon Fishery Management Plan.

Data collected across these tagging programs are similar in nature, including:

- Tag number;
- Date of capture;
- Waterbody of capture;
- Capture method;
- Fish length, weight, and fate (whether released or killed); and
- Fisher type (*i.e.,* commercial, recreational, etc.).

In addition, if the tag reporter desires more information on their tagged fish or wants the modest reward that comes with reporting a tag, we ask their address so that we can mail them the information.

Title of Collection: Horseshoe Crab and Cooperative Fish Tagging Programs.

OMB Control Number: 1018–0127.

Form Number: FWS Forms 3–2310, 3–2311, and 3–2493 through 3–2496.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Respondents include Federal and State agencies, universities, and biomedical companies who conduct tagging, and members of the general public who provide recapture information.

Total Estimated Number of Annual Respondents: 2,006.

Total Estimated Number of Annual Responses: 3,628.

Estimated Completion Time per Response: Varies from 5 minutes to 95 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 2,239.

Respondent's Obligation: Voluntary.

Frequency of Collection: Respondents will provide information on occasion, upon tagging or upon encounter with a tagged crab or fish.

Total Estimated Annual Nonhour Burden Cost: None.

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.*).

Dated: January 6, 2021.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2021–00332 Filed 1–11–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R6–ES–2019–0010; FF06E00000 212 FXES11140600000]

Incidental Take Permit Application; Habitat Conservation Plan and Categorical Exclusion for the Threatened Grizzly Bear; Flathead, Glacier, Lincoln, and Toole Counties, Montana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of documents; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of documents related to an application for an incidental take permit (ITP) under the Endangered Species Act. BNSF Railway (BNSF) has applied for an ITP, which, if granted, would authorize take of the federally threatened grizzly bear that is likely to occur incidental to railroad operations and maintenance. The documents available for review and comment are the applicant's habitat conservation plan, which is part of the ITP application, and our draft environmental action statement and low-effect screening form, which support a categorical exclusion under the National Environmental Policy Act. We invite comments from the public and Federal, Tribal, State, and local governments.

DATES: We will accept comments received or postmarked on or before February 11, 2021. Comments submitted online at *Regulations.gov* (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Obtaining Documents:* The documents this notice announces, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No. FWS–R6–ES–2019–0010 at *http://www.regulations.gov.*

Submitting Comments: You may submit comments by one of the following methods:

- *Online: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R6–ES–2019–0010.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R6–ES–2019–0010; U.S. Fish and Wildlife Service Headquarters, MS: PERMA; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We request that you send comments by only the methods described above.

FOR FURTHER INFORMATION CONTACT: Ben Conard, by phone at 406–758–6882, by email at *Ben_Conard@fws.gov,* or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from BNSF Railway (BNSF) for a 7-year incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The application addresses the potential for take of the federally threatened grizzly bear (*Ursus arctos horribilis*) that is likely to occur incidental to ongoing operations and maintenance of approximately 206 miles of railroad.

The documents available for review and comment are the applicant's habitat conservation plan (HCP), which is part of the ITP application, and our draft environmental action statement and low-effect screening form. These documents helped inform our conclusion that the activities proposed by the permit application will have a low effect on the species and the human environment. Accordingly, the HCP qualifies for a categorical exclusion under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*).

Applicant's Habitat Conservation Plan

BNSF has submitted a low-effect HCP in support of an application for an ITP to address take of the species that is likely to occur as the result of BNSF's ongoing operations and management of approximately 206 miles of railway between Trego, Montana, and Shelby, Montana. The requested permit duration is for 7 years from permit issuance. The railway is within grizzly bear habitat in the Northern Continental Divide Ecosystem grizzly bear recovery zone. The biological goals and objectives are to reduce attractants and deter grizzly bears from entering high-risk areas of railway and to contribute to the recovery of the grizzly bear population by offsetting incidental take by reducing other sources of human-caused mortality. The proposed conservation program includes implementing measures to reduce attractants, providing financial support to Montana Fish, Wildlife, and Parks and the Blackfeet Indian Nation for reducing human/grizzly bear conflicts through increased personnel, equipment, and education.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal

identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46.305).

Stephen Small,

Assistant Regional Director, Ecological Services, Mountain-Prairie Region.

[FR Doc. 2021–00426 Filed 1–11–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AACC003300/ A0H901010.999900.253G]

Chippewa Cree Indians of the Rocky Boy's Reservation; Amendment to Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes an amendment to the Liquor Ordinance of the Chippewa Cree Indians of the Rocky Boy's Indian Reservation of Montana (Chippewa Cree Tribe). The Chippewa Cree Tribe and the State of Montana have agreed to enter into a Montana Alcoholic Beverages Tax Agreement. The purposes of the Agreement are to minimize legal controversy and possible litigation over the taxation of alcoholic beverages within the exterior boundaries of the Rocky Boy's Reservation to mitigate the effects of dual taxation on the sale of alcoholic beverages by both the Tribe and the State, and to provide an effective means by which revenues generated by the state and tribal taxes on the sale of alcoholic beverages may be shared and distributed. In order to accomplish these purposes, the State and the Tribe agree that the same level of taxation will be imposed on the sale of alcoholic beverages both within and outside the boundaries of the Reservation. The Agreement requires the Tribe to adopt and keep in force an ordinance imposing taxes equal to Montana liquor excise and license taxes and beer, wine, and hard cider taxes sold within the exterior boundaries of the Rocky Boy's Indian Reservation.

DATES: This ordinance shall take effective on February 11, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Jo-Ellen Cree, Tribal Operations Officer, Rocky Mountain Regional Office, Bureau of Indian Affairs, 2021 Fourth Avenue North, Billings, Montana 59101, Telephone: (406) 247–7964 or (406) 247–7988, Fax: (406) 247–7566; or Ms. Laurel Iron Cloud, Chief, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW, MS–4513–MIB, Washington, DC 20240, Telephone: (202) 513–7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 5886, 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 certifies and publishes in the **Federal Register** notice of adopted liquor control ordinances for the purpose of regulating liquor transactions in Indian country. The Chippewa Cree Tribe adopted Tribal Resolution No. 52–20 on May 7, 2020, and adopted Ordinance No. 01–20, Governing the Taxation of Alcoholic Beverages Sold on within the Rocky Boy's Indian Reservation. This amendment to the liquor control ordinance is incorporated and codified by Ordinance No. 01–20 within Title XVII, Chapter 7, of the Chippewa Cree Tribal Law and Order Code and codified within Chapter 6 of the Chippewa Cree Law and Order Code Alcoholic Beverage Control Ordinance.

This notice is published in accordance with the delegated authority by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Chippewa Cree Business Committee duly adopted the amendment to the Chippewa Cree Tribe Liquor Control Ordinance by Tribal Resolution No. 52–20 on May 7, 2020.

The Chippewa Cree Tribe of the Rocky Boy's Indian Reservation Liquor Ordinance, Chapter 6 reads as follows:

''Taxation of Alcoholic Beverages, Ordinance No. 01–20, Liquor Excise and Licenses, Beer, Wine, and Hard Cider''

Sec. 101. Declaration of Policy

1. This Ordinance is enacted pursuant to the inherent governing power of the Chippewa Cree Tribe and under authority recognized by federal law in accordance with provisions of the Constitution and Bylaws of the Tribe. All persons, business, lands, transactions, and activities either relocated on or occurring within the exterior boundaries of the Rocky Boy's Indian Reservation shall be subject to provisions of this Ordinance.

2. This Ordinance is enacted for the protection of the health and safety, and to promote the general welfare of the people residing within the exterior boundaries of the Rocky Boy's Indian Reservation. All its provisions shall be liberally construed for the accomplishment of that purpose.

3. The Chippewa Cree Business Committee believes that enactment of this Ordinance governing alcoholic beverages through taxation within the exterior boundaries of the Rocky Boy's Indian Reservation will help provide revenue for the continued operation of Tribal government.

4. This Ordinance shall impose taxes equal to the Montana liquor excise and license taxes and beer, wine, and hard cider taxes sold within the exterior boundaries of the Rocky Boy's Indian Reservation, pursuant to its power under Article VI, Section 1 (j) of the Constitution of the Chippewa Cree Tribe.

5. The overall purpose of this Ordinance is to aid in the collection of taxes and ensure that alcoholic beverages are not subject to both the State and the tribal tax. The provisions of this Ordinance must be broadly construed to accomplish this purpose.

Sec. 102. Definitions

As used in this Chapter, unless otherwise noted, the following definitions apply:

1. ''Alcohol'' means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

2. ''Alcoholic beverage'' means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

3. ''Agreement'' means the Chippewa Cree—Montana Alcoholic Beverage Tax Agreement.

4. ''Beer'' means:

a. A malt beverage containing not more than 8.75% of alcohol by volume; or

b. An alcoholic beverage containing not more than 8.75% of alcohol by volume:

i. that is made by alcoholic fermentation of an infusion of decoction, or a combination of both, in potable brewing water, or malted cereal grain; and

ii. in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

5. ''Beer importer'' means a person other than a brewer who imports malt beverages.

6. ''Brewer'' means a person who produces malt beverages.

7. ''Caffeinated or stimulant-enhanced malt beverage'' means:

a. a beverage:

i. that is fermented in a manner similar to beer and from which some or all of the fermented alcohol has been removed and replaced with distilled ethyl alcohol;

ii. that contains at least 0.5% of alcohol by volume;

iii. that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.5; and

iv. to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine; or

b. a beverage:

i. that contains at least 0.5% of alcohol by volume;

ii. that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55;

iii. to which is added a flavor or other ingredient containing alcohol, except for a hop extract;

iv. to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine;

v. for which the producer is required to file a formula for approval with the United States Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 CFR 25.55; and

vi. that is not exempt pursuant to 27 CFR 25.55(f).

8. ''Distributer'' means any person:

a. who imports liquor, beer, or wine for sale, use or distribution, or

b. who engages in the wholesome distribution of liquor, beer, or wine within the Reservation.

9. ''Hard cider'' means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 6.9% of alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

10. ''Import'' means to transfer beer or table wine from outside the state of Montana into the state of Montana.

11. ''Liquor'' means an alcoholic beverage except beer and table wine. The term includes a caffeinated or stimulant-enhanced malt beverage.

12. ''Malt beverage'' means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the additional of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

13. ''Person'' means any person, firm, association, joint-stock company, syndicate, or corporation.

14. ''Posted price'' means the wholesale price of liquor for sale to persons who hold liquor licenses.

15. ''Proof gallon'' means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

16. ''Sacramental wine'' means wine that contains more than 0.5% but not more than 24% of alcohol by volume that is manufactured and sold exclusively for use as sacramental wine or for other religious purposes.

17. ''State'' means the State of Montana.

18. ''Table wine'' means wine that contains not more than 16% of alcohol by volume and includes cider.

19. ''Table wine distributor'' means a person importing into or purchasing in Montana table wine or sacramental wine for sale or resale to retailers licensed in Montana.

20. ''Tribe'' means the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation.

21. ''Wholesaler'' means any person who engages in the wholesale distribution of liquor, beer, or wine within the Reservation.

22. ''Wine'' means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice or sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine.

Sec. 103. Liquor Excise Tax

1. The Tribe (with the assistance by the State pursuant to the Agreement) shall collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the Chippewa Cree Tribe an excise tax at the rate that is the percent of the retail selling price determined in accordance with the following schedule based on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed the liquor and sold the specified number of proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section:

Nationwide production	Tax rate (%)
Less than 20,000 proof gallons	3
20,000 to 50,000 proof gallons	8
50,001 to 200,000 proof gallons ..	13.8
Over 200,000 proof gallons	16

2. The tax imposed pursuant to subsection (1) is due no later than the 10th day of each month.

3. The tax imposed in this subsection shall be collected by the Tribe (with the assistance by the State pursuant to the Agreement).

Sec. 104. License Tax on Liquor

The Tribe (with the assistance of the State pursuant to the Agreement) may collect at the time of sale and delivery of any liquor of:

1. 10% of the retail selling price on all liquor sold and delivered within the Reservation by a company that manufactured, distilled, rectified, bottled, or processed and that sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

2. 8.6% of the retail selling price on all liquor sold and delivered within the Reservation by a company that manufactured, distilled, rectified, bottled, or processed and that sold more than 50,000 proof gallons buy not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

3. 2% of the retail selling price on all liquor sold and delivered within the Reservation by a company that manufactured, distilled, rectified, bottled, or processed and that sold not more than 50,000 proof gallons of liquor nationwide in the calendar year preceding imposition of tax pursuant to this section;

4. The license tax must be charged and collected on all liquor produced in or brought within the Reservation and taxed by the Tribe. The retail selling price must be computed by adding to the cost of the liquor the Tribe markup of 40.5% for all liquor other than sacramental wine, for which the markup must be 20% and fortified wine containing more than 16% but not more than 24% alcohol by volume, for which markup must be 51%. The license tax must be figured in the same manner as the Tribe excise tax and is in addition to the Tribe excise tax.

5. The licensee tax imposed in this subsection shall be collected by the Tribe (with the assistance by the State pursuant to the Agreement).

Sec. 105. Beer Exercise Tax

1. A tax is imposed on each barrel of 31 gallons of beer sold on the Reservation by a wholesaler. A barrel of beer equals 31 gallons. The tax is based upon the total number of barrels of beer produced by a brewer in a year. A brewer who produces less than 10,000 barrels of beer a year is taxed on the following increments of production:

a. up to 5,000 barrels, $1.30;

b. 5,001 barrels to 10,000 barrels, $2.30.

c. The tax on beer sold for a brewer who produces over 10,000 barrels is $4.30.

2. The Tribe shall compute the tax due on beer sold in containers other than barrels or in barrels of more or less capacity than 31 gallons.

3. The tax imposed pursuant to subsection (1) is due at the end of each month from the wholesaler upon beer sold by the wholesaler during the month.

4. The tax imposed in this subsection shall be collected by the Tribe (with the assistance by the State pursuant to the Agreement).

Sec. 106. Wine and Hard Cider Tax

1. A tax of 27 cents per liter is imposed on sacramental wine and table wine, except hard cider, imported by a table wine distributor and on table wine shipped directly to consumers or licensed retailers by a winery registered or licensed.

2. A tax of 3.7 cents per liter is imposed on hard cider imported by a table wine distributor and on hard cider shipped directly to licensed retailers by a winery licensed.

3. The tax imposed pursuant to subsection (1) is due on or before the 15th day of each month for sales in the previous month.

4. The tax imposed in this subsection shall be collected by the Tribe (with the assistance by the State pursuant to the Agreement).

Sec. 107. Uniformed Penalty and Interest Assessments for Violation of Tax

A person who fails to pay an imposed tax by due date, including any extension of time allowed, shall be assessed a late filing penalty. The penalty is greater of $50 or 5% of the tax due for each month during which there is a failure to file return or report, not to exceed an amount up to 25% of the tax due. The late filing penalty is calculated from the due date or extended due date. The penalty is computed only on the net amount of tax due, if any, as of the original due date or extended due date, after credit has been given for amounts paid through withholding, estimated tax payments, or other credits claimed on the return. The penalty and interest imposed in this subsection shall be collected by the Tribe (with the assistance by the State pursuant to the Agreement).

Sec. 108. Powers Reserved to Chippewa Cree Business Committee

Nothing in this Ordinance is intended to restrict the Tribe from prohibiting the sale and consumption of liquor or of all alcoholic beverages within the exterior boundaries of the Rocky Boy's Indian Reservation. Furthermore all powers relating to regulation and control over alcoholic beverages which are not expressly delegated in this Ordinance shall be retained by the Chippewa Cree Business Committee.

Sec. 109. Exemptions

Nothing in this Ordinance restricts the Chippewa Cree Business Committee from establishing exemptions within this Ordinance. Any exemptions shall be adopted by Resolution.

Sec. 110. Sovereign Immunity Preserved

Nothing in this Ordinance is intended or shall be construed as a waiver of sovereign immunity of the Chippewa Cree Tribe.

Sec. 111. Enforcement

The Tribe may commence and prosecute to final determination in the Chippewa Cree Tribal Court or any court of competent jurisdiction an action to collect taxes and penalties pursuant to this Ordinance.

Sec. 112. Application of Federal Laws

Federal law currently prohibits the introduction of alcoholic beverages into Indian country (18 U.S.C. 1154), and expressly delegates to the Tribes the decision regarding when and to what extent liquor transactions shall be permitted (18 U.S.C § 1661). Persons involved in acts and transactions not authorized by this Chapter shall be subject to federal criminal prosecution, as well as civil legal action in the courts of the United States.

Sec. 113. Severability

Should any section, clause, sentence, or provision of this Ordinance be held invalid for any reason, such hold or decree shall not be construed as affecting the validity of any of the remaining portions hereof, it being declared that the Chippewa Cree Business Committee would have adopted the remainder of this Ordinance, notwithstanding the invalidity of any such Section, clause, sentence, or provision.

Sec. 114. Amendment

Amendments to this Ordinance may be made only the Chippewa Cree Business Committee of the Chippewa Cree Tribe.

Sec. 115. Effective Date

This Ordinance was adopted by the Chippewa Cree Business by Resolution No. 52–20 and is effective on the 6th day of June, 2020.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–00347 Filed 1–11–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/A0A501010.999900253G]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Second Amendment to the Tribal-State Compact for Class III Gaming between the Cowlitz Indian Tribe (Tribe) and the State of Washington (State).

DATES: The compact takes effect on January 12, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Compact increases the number of player terminals the Tribe may operate, increases the Tribe's contribution to combat problem gambling, permits the Tribe's gaming facilities to accept additional forms of payment, designates the Cowlitz Tribal Court as a jurisdictional forum for certain purposes, adopts certain state law provisions related to gaming regulation, and adopts rules governing wide area progressives. The Compact is approved.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–00340 Filed 1–11–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/A0A51010.999900]

Proclaiming Certain Lands as Reservation for the Shakopee Mdewakanton Sioux Community of Minnesota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamations.

SUMMARY: This notice informs the public that the Acting Assistant Secretary—Indian Affairs proclaimed two parcels as additions to the reservation of the Shakopee Mdewakanton Sioux Community.

DATES: These proclamations were made on January 6, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene M. Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road, NW, Box #44, Albuquerque, New Mexico 87104, *Sharlene.roundface@bia.gov,* (505) 563–3132.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

Proclamations were issued according to the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 5110) for the lands described below, known as the Tinta Otunwe Parcel, consisting of 109.12 acres, more or less; and the Group E Parcel, consisting of 166.13 acres, more or less. The lands were proclaimed to be part of the Shakopee Mdewakanton Sioux Community of Minnesota Reservation in Scott County, Minnesota.

Shakopee Mdewakanton Sioux Community of Minnesota, 1 Parcel, Fifth Principal Meridian, Scott County, Minnesota, Legal Descriptions Containing 109.12 Acres, More or Less

Tinta Otunwe Parcel, 411 T 1026

Parcel 1: All that part of the Northwest Quarter of the Northeast Quarter, Section 21, Township 115 North, Range 22 West of the 5th P.M., Scott County, Minnesota, described as follows: Beginning at a point on the North and South Quarter line of said Section 21, distant 900.75 feet south of the North Quarter corner; thence south along said Quarter line a distance of 240.0 feet; thence west a distance of 544.5 feet to the point of beginning according to the United States Government Survey thereof.

Parcel 2: The Northwest ¼ of the Northeast ¼ of Section 21, Township 115 North, Range 22 West of the 5th P.M., Scott County, Minnesota, excepting therefrom the following described tract of land: All that part of the Northwest ¼ of the Northeast ¼ of Section 21, Township 115 North, Range 22 West of the 5th P.M., Scott County, Minnesota described as follows: Beginning at a point on the North and South Quarter line of said section 21 distant 900.75 feet south of the North Quarter corner; thence south along said Quarter line a distance of 240.0 feet; thence east a distance of 544.5 feet; thence north a distance if 240.0 feet; thence west a distance of 544.5 feet to a point of beginning, according to the United States Government Survey thereof.

Parcel 3: The north half of the south half of the Northeast Quarter (N½ of S½ of NE¼) of Section 21, Township 115 North, Range 22 West of the 5th P.M., Scott County, Minnesota, according to the United States Government Survey thereof.

Parcel 4: The south ½ of the south ½ of the Northeast ¼ except the west 1448.80 feet of the south ½ of the south ½ of the south ½ of the Northeast ¼, Section 21, Township 115 North, Range 22 west of the 5th P.M., Scott County, Minnesota, according to the United States Government Survey thereof.

The above described lands contain a total of 109.12 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

Shakopee Mdewakanton Sioux Community of Minnesota, 1 Parcel, Fifth Principal Meridian, Scott County, Minnesota, Legal Descriptions Containing 166.13 Acres, More or Less

Group E Parcel, 411 T 1025

Parcel 1: All that part of the following described PARCEL A, lying westerly of a line parallel with and 1086.40 feet easterly from the west line of the Northwest Quarter of Section 29, Township 115 North, Range 22 West of the 5th Principal Meridian, Scott County, Minnesota, as measured at a right angle, and its extensions.

PARCEL A: All that land lying and being in the County of Scott and State of Minnesota described as follows, to-wit:

The North Half of the Northwest Quarter (N ½ of NW ¼), the Southwest Quarter of the Northwest Quarter (SW ¼ of NW ¼) and all that part of the Southeast Quarter of the Northwest Quarter, lying North and West of a line commencing at the Northeast corner of said tract and running through the center thereof in a direct course to the Southwest corner thereof, of Section Twenty-nine (29), and all of the above described land being in Township One Hundred Fifteen (115) North, Range Twenty-two (22) West of the 5th Principal Meridian, Scott County, Minnesota, according to the Government Survey thereof, excepting the East two (2) rods of the above described land being subject to a road easement;

and excepting therefrom: The Northwest Quarter of the Southeast Quarter of Section 29, Township 115 North, Range 22 West of the 5th Principal Meridian, Scott County, Minnesota. Together with that part of the Southwest Quarter of the Northeast Quarter of said Section 29, lying South of the North 363.00 feet of said Southwest Quarter of the Northeast Quarter;

and excepting therefrom: The East 400.00 feet of the Northeast Quarter of the Northwest Quarter of Section 29, Township 115 North, Range 22 West of the 5th Principal Meridian, Scott County, Minnesota. Subject to an easement for Highway purposes over the North 75.00 feet as designated in Document No. 148471. Together with that part of the East 400.00 feet of the Southeast Quarter of the Northwest Quarter of said Section 29, lying Northwesterly of a line drawn from the Northeast corner of said Southeast Quarter of the Northwest Quarter, Southwesterly to the Southwest corner of said Southeast Quarter of the Northwest Quarter;

and excepting therefrom: A tract of land in the Northwest Quarter (NW ¼) of Section 29, Township 115 North, Range 22 West of the 5th Principal Meridian; Scott County, Minnesota described as follows: Beginning at the Southwest corner of said Northwest Quarter (NW ¼) and thence East along the South line thereof a distance of 160.2 feet to the center line of County Road No. 17; thence Northwesterly along said center line to its intersection with the West line of said Northwest Quarter (NW ¼); thence South along said West line to the point of beginning; subject to said road right-of-way.

Parcel 2: All that part of the following described PARCEL A, lying easterly of a line parallel with and 1086.40 feet easterly from the west line of the Northwest Quarter of Section 29, Township 115 North, Range 22 West of the 5th Principal Meridian, Scott County, Minnesota, as measured at a right angle, and its extensions.

PARCEL A: All that land lying and being in the County of Scott and State of Minnesota described as follows, to-wit:

The North Half of the Northwest Quarter (N ½ of NW ¼), the Southwest Quarter of the Northwest Quarter (SW ¼ of NW ¼) and all that part of the Southeast Quarter of the Northwest Quarter, lying North and West of a line commencing at the Northeast corner of said tract and running through the center thereof in a direct course to the Southwest corner thereof, of Section Twenty-nine (29), and all of the above described land being in Township One Hundred Fifteen (115) North, Range Twenty-two (22) West of the 5th Principal Meridian, Scott County, Minnesota, according to the Government Survey thereof, excepting the East two (2) rods of the above described land being subject to a road easement;

and excepting therefrom: The Northwest Quarter of the Southeast Quarter of Section 29, Township 115 North, Range 22 West of the 5th Principal Meridian, Scott County, Minnesota. Together with that part of the Southwest Quarter of the Northeast Quarter of said Section 29, lying South of the North 363.00 feet of said Southwest Quarter of the Northeast Quarter;

and excepting therefrom: The East 400.00 feet of the Northeast Quarter of the Northwest Quarter of Section 29, Township 115 North, Range 22 West of the 5th Principal Meridian, Scott County, Minnesota. Subject to an easement for Highway purposes over the North 75.00 feet at designated in Document No. 148471. Together with that part of the East 400.00 feet of the Southeast Quarter of the Northwest Quarter of said Section 29, lying Northwesterly of a line drawn from the Northeast corner of said Southeast Quarter of the Northwest Quarter, Southwesterly to the Southwest corner of said Southeast Quarter of the Northwest Quarter;

and excepting therefrom: A tract of land in the Northwest Quarter (NW ¼) of Section 29, Township 115 North, Range 22 West of the Fifth Principal Meridian; Scott County, Minnesota described as follows: Beginning at the Southwest corner of said Northwest Quarter (NW ¼) and thence East along the South line thereof a distance of 160.2 feet to the center line of County Road No. 17; thence Northwesterly along said center line to its intersection with the West line of said Northwest Quarter (NW ¼); thence South along said West line to the point of beginning; subject to said road right-of-way.

Parcel 3: The East 400 feet of the Northeast Quarter of the Northwest Quarter of Section 29, Township 115 North, Range 22 West of the 5th Principal Meridian, Scott County Minnesota AND that part of the East 400 feet of the Southeast Quarter of the Northwest Quarter of said Section 29, lying northwesterly of a line drawn from the northeast corner of said Southeast Quarter of the Northwest Quarter, southwesterly to the southwest corner of said Southeast Quarter of the Northwest Quarter, according to the United States Government Survey thereof and situate in Scott County, Minnesota.

Parcel 4: All that part of the Southeast Quarter of the Northwest Quarter (SE¼ of NW¼) of Section 29, Township 115 North, Range 22 West of the 5th Principal Meridian, Scott County, Minnesota, lying South and East of a line commencing at the Northeast corner thereof and running through the center thereof in a direct line to the Southwest corner thereof,

Together with a non-exclusive easement for travel purposes over and across the East two rods of the Northeast Quarter of the Northwest Quarter (NE¼ of NW¼) and that part of the SE¼ of NW¼, Section 29, Township 115 North, Range 22 West of the 5th Principal Meridian, Scott County, Minnesota, described as follows: Commencing at the Northeast corner of the SE¼ of NW¼; thence West on the North line of said SE¼ of NW¼ 2 rods; thence South 2 rods; thence in a Northeasterly direction 2 rods to the point of beginning.

Parcel 5: The North 363.00 feet of the Southwest Quarter of the Northeast Quarter (SW¼ of NE¼), excepting therefrom the east 300 feet, Section 29, Township 115 North, Range 22 West of the 5th Principal Meridian, according to the United States Government Survey thereof and situate in Scott County, Minnesota.

Abstract Property

The above described lands contain a total of 166.13 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record. The above described lands contain a combined total of 276.25 acres, more or less. This proclamation does not affect title to the lands described above, nor does it affect any valid existing easements for public roads, highways, public utilities, railroads and pipelines, or any other valid easements or rights-of-way or reservations of record.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–00339 Filed 1–11–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/ A0A501010.999900]

HEARTH Act Approval of the Cahuilla Band of Indians, California Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Cahuilla Band of Indians Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into business and residential leases without further BIA approval.

DATES: BIA issued the approval on January 6, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *sharelene.roundface@bia.gov,* (505) 563–3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Cahuilla Band of Indians, California.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the

Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self- government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Cahuilla Band of Indians, California.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–00338 Filed 1–11–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BAC 4331–11]

Notice of Public Meetings of the Idaho Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior Bureau of Land Management's (BLM) Idaho Resource Advisory Council (RAC) will meet as indicated below.

DATES: The BLM Idaho RAC will meet on Wednesday, April 14, 2021. The meeting will be held from 9:00 a.m. to 5:00 p.m. (Mountain Standard Time). The RAC will also meet Wednesday, August 11, 2021. The meeting will be held from 9:00 a.m. to 5:00 p.m. (Mountain Standard Time).

ADDRESSES: The April 21, 2021, meeting will be held virtually.

The August 11, 2021, meeting is scheduled to be held at the BLM Idaho State Office, located at 1387 South Vinnell Way, Boise, Idaho 83709, in the Sagebrush/Ponderosa conference rooms. There will be an option to participate virtually as well. Virtual participation information will be posted online 2 weeks in advance of each meeting at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/idaho.*

FOR FURTHER INFORMATION CONTACT: MJ Byrne, 1387 South Vinnell Way, Boise, Idaho 83709; (208) 373–4006; *mbyrne@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Idaho RAC is chartered, and the 15 members are appointed by the Secretary of the Interior. Their diverse perspectives are

represented in commodity, non-commodity, and local interests. The RAC serves in an advisory capacity to BLM and USDA Forest Service officials concerning planning and management of public land and national forest resources located, in whole or part, within the State of Idaho.

Agenda items for the April meeting include management of wildland fire and fuels and outdoor recreation; review of and/or recommendations regarding proposed actions by the BLM's Boise, Twin, Falls, Idaho Falls, and/or Coeur d'Alene Districts and USDA Forest Service units; and any other business that may reasonably come before the RAC. Agenda items for the August meeting will be formalized at the conclusion of the April meeting.

Final agendas will be posted online 2 weeks in advance of each meeting at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/idaho.* All meetings are open to the public in their entirety. Public comment periods will be held in the afternoon on each meeting day. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Comments can be mailed to: BLM Idaho State Office; Attn: MJ Byrne; 1387 South Vinnell Way; Boise, ID 83709. All comments received will be provided to the Idaho RAC members.

Before including your address, phone number, email address, or other personal identifying information in your comments, please 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 we will be able to do so.

(Authority: 43 CFR 1784.4–2)

John F. Ruhs,

Idaho State Director.

[FR Doc. 2021–00437 Filed 1–11–21; 8:45 am]

BILLING CODE 4331–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Control Number 1010–0057; Docket ID: BOEM–2017–0016]

Agency Information Collection Activities; Pollution Prevention and Control

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Ocean Energy Management (BOEM) proposes to renew its information collection control number 1010–0057 through the Office of Management and Budget (OMB).

DATES: Interested persons are invited to submit comments on or before February 11, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection request (ICR) should be sent to OMB's Desk Officer for the Department of the Interior at *www.reginfo.gov/public/do/PRAMain* within 30 days of publication of this notice. Find this ICR by selecting ''Department of the Interior'' in the ''Select Agency'' pulldown menu under ''Currently under Review'', clicking the box marked ''Only Show ICR For Public Comment'' near the top left-hand side of the resulting web page, and scrolling down to OMB Control Number 1010–0057. Alternatively, the search function may be used. Please provide a copy of your comments to the BOEM Information Collection Clearance Officer, Anna Atkinson, by mail service addressed to her at Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia, 20166; or by email to *anna.atkinson@boem.gov.* Please reference OMB Control Number 1010–0057 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Anna Atkinson by email or by telephone at 703–787–1025. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, BOEM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps BOEM assess the impact of the information collection requirements and minimize the public's reporting burden. It also helps the public understand BOEM's information collection requirements and provide the requested data in the desired format.

Abstract: Section 5(a) of the Outer Continental Shelf Lands Act (OCSLA), as amended (43 U.S.C. 1334(a)), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to manage the mineral resources of the Outer Continental Shelf (OCS). Such rules and regulations apply to all operations conducted under a lease, right-of-use and easement, and pipeline right-of-way.

Section 5(a)(8) of OCSLA requires that regulations prescribed by the Secretary include provisions ''for compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*), to the extent that activities authorized under this subchapter significantly affect the air quality of any State.'' This information collection renewal concerns information that is submitted to BOEM under 30 CFR part 550, subpart C, ''Pollution Prevention and Control,'' which implements section 5(a)(8), and related notices to lessees and operators (NTLs), which clarify and provide additional, nonbinding guidance on aspects of the regulations. BOEM uses this information to inform its decisions on plan approval, to ensure operations are conducted according to all applicable regulations and plan conditions of approval, and to inform State and regional planning organizations' modeling efforts.

BOEM prepares an emissions inventory every three years to help ensure that its regulations comply with section 5(a)(8) of OCSLA and to implement the requirements at 30 CFR 550.303(k) and 550.304(g). These emission inventories provide the essential input that BOEM needs to assess the impacts of OCS oil and gas activity on the States as mandated by the OCSLA. Also, these inventories provide the States with essential information needed to perform their implementation plan demonstrations to the U.S. Environmental Protection Agency (USEPA) and the operators with essential data for their mandatory reporting of greenhouse gases to the USEPA.

BOEM began planning for the next emissions inventory, scheduled for calendar year 2021, by issuing NTL No. 2020–N03, 2021 OCS Emissions Inventory—Western Gulf of Mexico (GOM) and Adjacent to the North Slope Borough of the State of Alaska, on October 1, 2020. The NTL instructed lessees and operators on submitting information about their facility operations, as required by OCSLA and BOEM's regulations, through BOEM's new, web-based emissions reporting tool, the OCS Air Quality System (OCS AQS). OCS AQS allows operators to submit their facility activity data electronically into the system, instantaneously calculates monthly and annual emissions, assures and controls data quality, generates reports, such as emission inventory reports, and creates data graphics including geographic

information system (GIS) maps for operators and BOEM.

During previous emission inventories, BOEM used the Gulfwide Offshore Activity Data System (GOADS) software to collect the necessary emissions data from lessees and operators. This software is outdated and resides on a platform that BOEM is no longer able to utilize satisfactorily. Unlike GOADS, OCS AQS makes it easy for users to enter activity data, calculate emissions data in real-time, and leverage built-in validation features to quality check calculations prior to submission.

Title of Collection: 30 CFR part 550, subpart C, Pollution Prevention and Control.

OMB Control Number: 1010–0057.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents comprise Federal OCS oil and gas or sulfur lessees and operators and States.

Total Estimated Number of Annual Respondents: 807.

Respondent's Obligation: Mandatory or required to obtain or retain a benefit.

Frequency: Every three years.

Total Estimated Annual Non-hour Burden Cost: None.

Estimated Reporting and Recordkeeping Hour Burden: BOEM estimates the annual burden for this collection to be 51,080 hours. In view of industry comment to the 60-day notice regarding this ICR, BOEM recalculated its estimated information collection burden hours per OCS facility and concluded that an increase of 20 hours per facility was warranted based, in part, on industry feedback to account for reporting responsibilities for certain drilling rig and construction vessel emissions. This recalculation resulted in an increase of 15,880 burden hours over OMB's currently approved 35,200 burden hours for control number 1010–0057. The following table details the individual BOEM information collections under control number 1010–0057 and respective hour burden estimates for this ICR. Any changes to the annual burden hours compared with the already-approved IC are bolded.

BURDEN TABLE

Citation 30 CFR 550 subpart C and related NTL(s)	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Facilities described in new or revised EP or DPP				
303; 304(a), (f)	Submit, modify, or revise Exploration Plans and Development and Production Plans; submit information required under 30 CFR Part 550, Subpart B.	Burden covered under 1010–0151 (30 CFR Part 550, Subpart B).		0
303(k); 304(a), (g); NTL	Collect and report (in manner specified) air quality emissions related data (such as facility, equipment, fuel usage, and other activity information) during each specified calendar year for input into BOEM's impacts assessments, and State and regional planning organizations' modeling through specified software. (NTL OCS Emissions Inventory).	64 hrs per facility	794 facilities	50,816
303(l); 304(h)	Collect and submit (in manner specified) meteorological data (not routinely collected); emission data for existing facilities to a State..	8	1 submission	8
Subtotal		795 responses	50,824.	
Existing Facilities				
304(a), (f)	Affected State may submit request, with supporting information to BOEM, for basic emission data from existing facilities to update State's emission inventory.	16	5 requests	80
304(e)(2)	Submit compliance schedule for application of best available control technology (BACT).	40	1 schedule	40
304(e)(2)	Apply for suspension of operations	Burden covered under BSEE 1014–0022 (30 CFR 250.174).		0
304(f)	Submit information to demonstrate that exempt facility is not significantly affecting air quality of onshore area of a State. Submit additional information to determine if controls are required..	16	1 submission	16

BURDEN TABLE—Continued

Citation 30 CFR 550 subpart C and related NTL(s)	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Subtotal		7 responses	136.	
General				
303–304	Departure and alternative compliance (as cited in 550.142) requests from 303 and 304 not specifically covered elsewhere in subpart C regulations.	24	5 requests	120
Subtotal		5 responses	120.	
Total Burden			807 responses	51,080

BOEM issued a **Federal Register** notice with a 60-day public comment period soliciting comments on this proposed ICR, which was published on August 10, 2020 (85 FR 48261). The Offshore Operators Committee (OOC) submitted the only comments. This organization commented on the burden estimates and OCS AQS functionality. Based on OOC's input, BOEM updated OCS AQS to address the system's technical issues and modified the burden estimates.

The OOC comments and BOEM's responses are summarized below. For additional details, please review the comment and responses by searching for OMB Control Number 1010–0057 on *regsinfo.gov.*

Comment: Regarding the reporting of non-platform data, OOC stated, ''Historically, collection of non-platform air emission data was the responsibility of BOEM. By shifting the responsibility of collecting and reporting non-platform source data to operators, BOEM is increasing the burden of reporting. For example, the Burden Table included in the Notice of Information Collection estimates 44 hours per facility to collect and report emissions data. As described in the attached comments, we estimate that for drilling rigs alone (exclusive of platforms and other support vessels) the estimated reporting burden is 117 hours per facility.''

BOEM Response: BOEM requires emissions reporting from ''facilities,'' as defined in its regulations implementing its OCSLA authority. The projected emissions from these sources are reported in the plans review process and documented in the air quality spreadsheets (BOEM–0138 and BOEM–0139), which fall under OMB Control Number 1010–0151.

BOEM would require the operator to submit activity or emissions data for all facilities corresponding to the definition of facility in BOEM's regulation and the recently updated plan review process, which includes drilling rig emissions when the rig is attached to the seabed and construction vessel emissions when the vessel is engaged in construction.

Upon further review, BOEM acknowledges that there will be additional burden hours for reporting emissions from these drilling rigs and construction vessels. BOEM will simplify the reporting of drilling rig data in OCS AQS by including a look up table for horsepower ratings, so that the operator needs to input only fuel throughput and total hours of drilling. Moreover, BOEM notes that reporting information on construction vessels will not be an altogether new burden because, during the plan review process, some construction vessels are subject to a standard condition of approval that requires submission of fuel throughput compliance verification to BSEE. This current burden is included in OMB Control Number 1010–0151.

The current emissions collection and reporting burden is 44 hours per facility for platform sources. This burden will remain the same for the first year for these sources (with a chance of decreasing in three years due to the learning curve of a new reporting tool). Assuming one drilling rig and one construction vessel per facility, BOEM believes that an additional 20 hours per facility (10 hours per emission source) should be added to the current 44 burden hours to reflect the new reporting responsibilities. Therefore, BOEM is increasing the burdens to 64 hours per facility.

Comment: It appeared to OOC that BOEM is requiring the reporting of data from drilling rigs and construction vessels underway within 25 miles of a facility. OOC indicated that drilling rigs and vessels underway do not meet the definition of ''facility'' in 30 CFR 550.302 because, when underway, the rig or vessel is not attached to the seabed. Therefore, according to OOC, the rig or vessel does not fall under BOEM's OCSLA authority.

BOEM Response: BOEM requires the reporting of data from facilities as defined in its regulations, which includes drilling rigs attached to the seabed and construction vessels engaged in construction. BOEM will not require the reporting of emissions when these sources are otherwise underway within 25 miles of a facility.

Comment: Regarding potential changes to reporting frequencies, OOC stated, ''It is unclear if the 3-year reporting frequency will change with the implementation of AQS. For example, will operators be required to submit monthly data on an ongoing basis? If that is the case, then the estimated burden will increase substantially, at least by a factor of 3 because reporting will no longer be required every 3 years. If this is the intent of the agency, then a new burden estimate must be completed prior to implementation of the new system.''

BOEM Response: BOEM intends to collect emissions data roughly every three years. However, because of the delay in development of OCS AQS, BOEM is off-cycle; its last emissions inventory was in 2017. BOEM is planning for the next inventory in 2021 followed by another one in 2023 in order to align with USEPA's emissions reporting cycle.

Comment: Regarding complexities of reporting flare information, OOC stated that the complexity of how flare emissions data is constructed in OCS AQS raises concerns.

BOEM's Response: Operators should report one flare source per flare using their flare design specifications from the manufacturer for the smoke condition

and total volume flared (including pilot light). BOEM will clarify this in the updated OCS AQS user's manual. This guidance is consistent with the 2017 emissions inventory collection and does not affect the burden hours.

Comment: Regarding Oil and Gas Operations Report reconciliation, OOC stated that those reports should not be utilized for emissions calculations or emissions data quality assurance or control because the accounting standards and requirements applicable to the reports do not yield technically correct emissions estimates.

BOEM's Response: Oil and Gas Operations Reports were mentioned in the OCS AQS training guide, while the tool was under development, because BOEM is uploading these reports into OCS AQS to reconcile volumes vented and flared. It was a reminder to operators to ensure consistency in reporting, not an indication that report data was to be used in calculating or reporting emissions in OCS AQS.

Comment: Regarding OCS AQS's quality assurance and control (QA/QC) functionality, OOC indicated that the functionality could be streamlined to improve system effectiveness and reduce burden.

BOEM's Response: BOEM has updated OCS AQS's QA/QC functionality to support the requested performance improvements. Specifically, when a user selects the option to submit an emissions inventory, a QA/QC check is automatically executed against that inventory. If any QA/QC issues are detected, the user is notified and provided with a spreadsheet detailing the specific issues that were identified by the check. This spreadsheet can be downloaded from OCS AQS. The user's manual is being updated to reflect this change.

Comment: Regarding confidentiality of data and defined user roles, OOC indicated that BOEM should clarify and ensure controls are integrated into OCS AQS so that data remains confidential and available only to the organization reporting the data.

BOEM's Response: BOEM agrees that only an operator's designated representatives or agent should be able to access data for an assigned facility during the inventory reporting year. Operators and the public will be able to access the results of the final, historical inventory for all facilities as BOEM has always made this data publicly available and plans to continue doing so. The publicly available results of the inventory will not include any confidential business information.

Comment: Regarding file naming conventions associated with OCS AQS's import and export functions, OOC suggested enhancements to OCS AQS to allow users to define file names during data import and export to reduce burden and improve system functionality.

BOEM's Response: All supported browsers (Firefox, Chrome, Edge) provide this option for the user. By default, this option is usually set to the Downloads folder. However, there is an option to have the application ask where to save the file, which then allows the user to rename the file during the operation. The browser options are beyond the control of the OCS AQS software. The updated user's manual will provide additional guidance.

Comment: Regarding the 2021 initial inventory using OCS AQS and the transfer of GOADS data, OOC said it is unclear what GOADS data from the 2017 inventory (the last reporting year using GOADS) will be transferred for the initial OCS AQS inventory in 2021. Historical activity data does not need to be included, but all historical descriptive, static data should be transferred to minimize company burden to populate.

BOEM's Response: As with GOADS, operators will receive all static data for platform sources from the past inventory (in this case, 2017), including complex and structure identification and emission sources data. As commented, activity data such as throughput and hours of operation are not carried forward as this information is expected to change year to year. Operators should review the static data to ensure its accuracy before entering any activity data.

Comment: Regarding clarification on reporting storage tank emissions, OOC stated, ''Reporting of data to estimate storage tank emissions is appropriate and necessary. However, changes to the types of storage data and the calculations within AQS would reduce burden.''

BOEM's Response: As with GOADS, BOEM will continue to require the reporting of crude oil storage tanks, but not other types of storage tanks. This is consistent with the reporting requirements in the plan review process on the air quality spreadsheets.

In addition to these comments, OOC pointed out several technical errors with OCS AQS and other issues needing further clarification. BOEM appreciates the technical comments and observations, and is working with its contractors to update OCS AQS and the user's manual, as necessary.

Under OMB's governing regulations, BOEM seeks public comments on this proposed ICR. BOEM is especially interested in comment addressing the following issues: (1) Is the collection necessary to the proper functions of BOEM; (2) what can BOEM do to ensure this information will be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might BOEM enhance the quality, utility, and clarity of the information to be collected; and (5) how might BOEM minimize the burden of this collection on the respondents, including minimizing the burden through the use of information technology?

Comments that you submit in response to this notice are a matter of public record. BOEM will include or summarize each comment in its request to OMB for approval of this ICR. You should be aware that your entire comment—including your address, phone number, email address, or other personally identifying information—may be made publicly available at any time. In order for BOEM to withhold your personally identifiable information from disclosure, you must identify any information contained in your comment that, if released, would clearly constitute an unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences that disclosure of your information would cause, such as embarrassment, injury, or other harm. While you can ask BOEM in your comment to withhold your personally identifiable information from public review, BOEM cannot guarantee that it will be able to do so.

BOEM protects proprietary information in accordance with the Freedom of Information Act (5 U.S.C. 552), the Department of the Interior's implementing regulations (43 CFR part 2), and BOEM's regulations at 30 CFR 550.197.

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.*).

Deanna Meyer-Pietruszka,

Chief, Office of Policy, Regulation, and Analysis.

[FR Doc. 2021–00382 Filed 1–11–21; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–522 and 731–TA–1258 (Review)]

Passenger Vehicle and Light Truck Tires From China; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the countervailing and antidumping duty orders on passenger vehicle and light truck tires from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: October 5, 2020.

FOR FURTHER INFORMATION CONTACT: Alejandro Orozco (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: *Background.*—On October 5, 2020, the Commission determined that the domestic interested party group response to its notice of institution (85 FR 39581, July 1, 2020) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on January 8, 2021, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before January 14, 2021 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by January 14, 2021. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 7, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–00435 Filed 1–11–21; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the response to its notice of institution filed by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (''domestic interested party''), which represents workers at five domestic producers of PVLT tires: Cooper Tire & Rubber Company, the Goodyear Tire & Rubber Company, Michelin North America Inc., Sumitomo Rubber USA, LLC, and the Yokohama Rubber Co., Ltd., to be adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–763]

Importer of Controlled Substances Application: Medi-Physics, Inc. dba GE Healthcare

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Medi-Physics, Inc. dba GE Healthcare has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before February 11, 2021. Such persons may also file a written request for a hearing on the application on or before February 11, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield,

Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on December 15, 2020, Medi-Physics, Inc. dba GE Healthcare, 3350 North Ridge Avenue, Arlington Heights, Illinois 60004–1412, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Cocaine	9041	II

The company plans to import small quantities of Ioflupane, in the form of three separate analogues of Cocaine, to validate production and quality control systems, for a reference standard, and for producing material for a future investigational new drug submission. Supplies of this particular controlled substance are not available in the form needed within the current domestic supply of the United States. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2021–00353 Filed 1–11–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–756]

Bulk Manufacturer of Controlled Substances Application: Cedarburg Pharmaceuticals

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Cedarburg Pharmaceuticals has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before March 15, 2021. Such persons may also file a written request for a hearing on the application on or before March 15, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on October 16, 2020, Cedarburg Pharmaceuticals 870 Badger Circle, Grafton, Wisconsin 53024, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Tetrahydrocannabinols	7370	I
3, 4-Methylenedioxymethamphetamine.	7405	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Methylphenidate	1724	II
Nabilone	7379	II
4-Anilino-N-phenethyl-4-piperidine (ANPP).	8333	II
Fentanyl	9801	II

The company plans to manufacture bulk active pharmaceutical ingredients (API) for distribution to its customers. In reference to the drug code 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture as synthetic. No other activity for this drug code is authorized for this registration.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2021–00351 Filed 1–11–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–765]

Bulk Manufacturer of Controlled Substances Application: Organix, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Organix, Inc. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before March 15, 2021. Such persons may also file a written request for a hearing on the application on or before March 15, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on September 22, 2020, Organix, Inc., 240 Salem Street, Woburn, Massachusetts 01801, applied to be registered as an bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I
Lysergic acid diethylamide	7315	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
5-Methoxy-N-N-dimethyltryptamine	7431	I
Bufotenine	7433	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
Heroin	9200	I

Controlled substance	Drug code	Schedule
Morphine	9300	II

The company plans to synthesize the above listed control substances for distribution to its customers. In reference to drug codes 7360 (Marihuana) and 7370 (Tetrahydrocannabinol), the company plans to bulk manufacture these drugs as synthetics. No other activity for these drug codes are authorized for this registration.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2021–00356 Filed 1–11–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–762]

Importer of Controlled Substances Application: S&B Pharma LLC dba Norac Pharma

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: S&B Pharma LLC, dba: Norac Pharma has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before February 11, 2021. Such persons may also file a written request for a hearing on the application on or before February 11, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on August 25, 2020, S&B Pharma LLC, dba: Norac Pharma, 405 South Motor Avenue, Azusa, California 91702, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
4-Anilino-N-phenethyl-4-piperidine (ANPP).	8333	II
Tapentadol	9780	II

The company plans to import the listed controlled substances in bulk for the manufacture of controlled substances for distribution to its customers. No other activity for these drug codes is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2021–00326 Filed 1–11–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–764]

Bulk Manufacturer of Controlled Substances Application: Siegfried USA, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Siegfried USA, LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before March 15, 2021. Such persons may also file a written request for a hearing on the application on or before March 15, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on December 9, 2020, Siegfried USA, LLC, 33 Industrial Park Road, Pennsville, New Jersey 08070–3244, applied to be registered as an bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid.	2010	I
Amphetamine	1100	II
Methylphenidate	1724	II
Amobarbital	2125	II
Pentobarbital	2270	II
Secobarbital	2315	II
Codeine	9050	II
Oxycodone	9143	II
Hydromorphone	9150	II
Hydrocodone	9193	II
Methadone	9250	II
Methadone intermediate	9254	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Opium tincture	9630	II
Oxymorphone	9652	II
Tapentadol	9780	II

The company plans to bulk manufacture the listed controlled substances in bulk for sale to its customers. No other activities for these drug codes are authorized for this registration.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2021–00354 Filed 1–11–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–760]

Bulk Manufacturer of Controlled Substances Application: Bulk Manufacturer of Marihuana: Natural Fulfillment LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: The Drug Enforcement Administration (DEA) is providing notice of an application it has received from an entity applying to be registered to manufacture in bulk basic class(es) of controlled substances listed in schedule I. DEA intends to evaluate this and other pending applications according to its regulations governing the program of growing marihuana for scientific and medical research under DEA registration.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefor, may file written comments on or objections to the issuance of the proposed registration on or before March 15, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW 8701 Morrissette Drive, Springfield, Virginia 22152. To ensure proper handling of comments, please reference Docket No—DEA–760 in all correspondence, including attachments.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act (CSA) prohibits the cultivation and distribution of marihuana except by persons who are registered under the CSA to do so for lawful purposes. In accordance with the purposes specified in 21 CFR 1301.33(a), DEA is providing notice that the entity identified below has applied for registration as a bulk manufacturer of schedule I controlled substances. In response, registered bulk manufacturers of the affected basic class(es), and applicants therefor, may file written comments on or objections of the requested registration, as provided in this notice. This notice does not constitute any evaluation or determination of the merits of the application submitted.

The applicant plans to manufacture bulk active pharmaceutical ingredients (APIs) for product development and distribution to DEA registered researchers. If the application for registration is granted, the registrant would not be authorized to conduct other activity under this registration aside from those coincident activities specifically authorized by DEA regulations. DEA will evaluate the application for registration as a bulk manufacturer for compliance with all applicable laws, treaties, and regulations and to ensure adequate safeguards against diversion are in place.

As this applicant has applied to become registered as a bulk manufacturer of marihuana, the application will be evaluated under the criteria of 21 U.S.C. 823(a). DEA will conduct this evaluation in the manner described in the rule published at 85 FR 82333 on December 18, 2020, and reflected in DEA regulations at 21 CFR part 1318.

In accordance with 21 CFR 1301.33(a), DEA is providing notice that on December 1, 2020, Natural Fulfillment LLC, 5495 North Academy Boulevard, Colorado Springs, Colorado 80918, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Marihuana	7360	I

William T. McDermott,

Assistant Administrator.

[FR Doc. 2021–00327 Filed 1–11–21; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Notice of Open to the Public Meetings of the Networking and Information Technology Research and Development (NITRD) Program

AGENCY: Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation.

ACTION: Notice of public meetings.

SUMMARY: The NITRD Program holds meetings that are open to the public to attend. The Joint Engineering Team (JET) and Middleware And Grid Interagency Coordination (MAGIC) Team provide an opportunity for the public to engage and participate in information sharing with Federal agencies. The JET and MAGIC Teams report to the NITRD Large Scale Networking (LSN) Interagency Working Group (IWG).

DATES: January 2021–December 2021.

FOR FURTHER INFORMATION CONTACT: NITRD NCO at *admin@nitrd.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Joint Engineering Team (JET), established in 1997, provides an opportunity for information sharing among Federal agencies and non-Federal participants who have an interest in high-performance research and engineering or research and education (REN) networking and networking to support science applications.

The MAGIC Team, established in 2002, provides for information sharing among Federal agencies and non-Federal participants with interests and responsibility for middleware, Grid, and cloud projects; individuals involved in middleware, Grid, and cloud research and infrastructure; individuals involved in implementing or operating Grids and clouds; and users of Grids, clouds and middleware. The JET and MAGIC Team meetings are hosted by the NITRD NCO with WebEx and/or teleconference participation available for each meeting.

Public Meetings Website: The JET and MAGIC Team meetings are scheduled 30 days in advance of the meeting date. Please reference the NITRD Public Meetings web page (*https://www.nitrd.gov/meetings/public/*) for each Team's upcoming meeting dates and times, in addition to the agendas, minutes, and other meeting materials and information.

Public Meetings Mailing Lists: Members of the public may be added to the mailing lists by sending their full name and email address to *jet-signup@nitrd.gov* for JET and *magic-signup@nitrd.gov* for MAGIC, with the subject line: ''Add to JET'' and/or ''Add to MAGIC.'' Meeting notifications and information are shared via the mailing lists.

Public Comments: The government seeks individual input; attendees/participants may provide individual advice only. Members of the public are welcome to submit their comments for JET to *jet-comments@nitrd.gov* and for MAGIC to *magic-comments@nitrd.gov*. Please note that under the provisions of the Federal Advisory Committee Act (FACA), all public comments and/or presentations will be treated as public documents and may be made available to the public via the JET and MAGIC web pages.

Reference Website: NITRD website at: *http://www.nitrd.gov/*.

Submitted by the National Science Foundation in support of the Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO) on January 6, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021–00365 Filed 1–11–21; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–316; NRC–2021–0019]

Indiana Michigan Power Company; Donald C. Cook Nuclear Plant, Unit No. 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to provide 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 Renewed Facility Operating License No. DPR–74, issued to Indiana Michigan Power Company (I&M), for operation of the Donald C. Cook Nuclear Plant, Unit No. 2 (CNP–2). The proposed amendment would revise the CNP–2 technical specifications (TSs) to allow a one-time change to permit the current integrated leak rate test interval of 15 years to be extended by approximately 18 months to no later than the plant startup after the fall 2022 refueling outage.

DATES: Submit comments by February 11, 2021. Requests for a hearing or petitions for leave to intervene must be filed by March 15, 2021.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2021–0019. Address questions about 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: Scott P. Wall, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2855; email: *Scott.Wall@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0019 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–2021–0019.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The application for amendment dated December 14, 2020, is available in ADAMS under Accession No. ML20363A011.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2021–0019 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 Renewed Facility Operating License No. DPR–74, issued to I&M, for operation of the CNP–2, located in Berrien County, Michigan.

The proposed amendment would revise the CNP–2 TSs to allow a one-time change to permit the current integrated leak rate test interval of 15 years to be extended by approximately 18 months to no later than the plant startup after the fall 2022 refueling outage.

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 § 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 amendment involves changes to the [CNP–2] containment leakage rate testing program. The proposed amendment does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The primary containment function is to provide an essentially leak-tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the containment itself, and the testing requirements to periodically demonstrate the integrity of containment, exist to ensure the plant's ability to mitigate the consequences of an accident and do not involve any accident precursors or initiators. Therefore, the probability of occurrence of an accident previously evaluated is not significantly increased by the proposed amendment.

The proposed amendment modifies TS 5.5.14, Containment Leakage Rate Testing Program, to allow for a one-time extension to

the containment Type A test interval. The potential consequences of extending the containment Type A test interval one time by approximately eighteen months have been evaluated by analyzing the resulting changes in risk. The increase in risk in terms of person-rem per year within 50 miles resulting from design basis accidents was estimated to be acceptably small and determined to be within the guidelines published in the [NRC] Final Safety Evaluation for Nuclear Energy Institute (NEI) Topical Report (TR) 94–01, Revision 3–A. Additionally, the proposed change maintains defense-in-depth by preserving a reasonable balance among prevention of core damage, prevention of containment failure, and consequence mitigation. I&M has determined that the increase in conditional containment failure probability due to the proposed change would be very small. Therefore, it is concluded that the proposed amendment 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 amendment modifies TS 5.5.14, Containment Leakage Rate Testing Program, to allow for a one-time extension to the containment Type A test interval. Containment, and the testing requirements to periodically demonstrate the integrity of containment, exist to ensure the plant's ability to mitigate the consequences of an accident and do not involve any accident precursors or initiators. The proposed change does not involve a physical change to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the manner in which the plant is operated or controlled. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment modifies TS 5.5.14, Containment Leakage Rate Testing Program, to allow for a one-time extension to the containment Type A test interval. This amendment does not alter the manner in which safety limits, limiting safety system setpoints, or limiting conditions for operation are determined. The specific requirements and conditions of the containment leakage rate testing program, as defined in the TS, ensure that the degree of primary containment structural integrity and leak-tightness that is considered in the plant's safety analysis is maintained. The overall containment leakage rate limit specified by the TS is maintained, and the Type A, Type B, and Type C containment leakage tests would be performed at the frequencies established in accordance with the NRC-accepted guidelines of NEI 94–01, Revision 3–A. Containment inspections performed in accordance with other plant programs serve to provide a high degree of assurance that containment would not degrade in a manner that is not detectable by a Type A Test. A risk assessment using the current [CNP–2] Probabilistic Risk Analysis model concluded that extending the Type A test interval onetime by approximately eighteen months results in a small change to the risk profile. 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 that 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 that 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 that, 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, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. 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 petition is submitted, 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 December 14, 2020 (ADAMS Accession No. ML20363A011).

Attorney for licensee: Robert B. Haemer, Senior Nuclear Counsel, Indiana Michigan Power Company, One Cook Place, Bridgman, MI 49106.

NRC Branch Chief: Nancy L. Salgado.

Dated: January 6, 2021.

For the Nuclear Regulatory Commission.

Scott P. Wall,

Senior Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–00368 Filed 1–11–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0183]

Fire Protection Program for Nuclear Power Plants During Decommissioning

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 1 to Regulatory Guide (RG) 1.191, ''Fire Protection Program for Nuclear Power Plants During Decommissioning.'' Revision 1 of RG 1.191 addresses new information identified since Revision 0 of this guide was issued. The guidance in Revision 0 of the RG does not include guidance for plants that have transitioned to the National Fire Protection Association (NFPA) Standard 805, ''Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants,'' 2001 Edition.

DATES: Revision 1 to RG 1.191 is available on January 12, 2021.

ADDRESSES: Please refer to Docket ID NRC–2020–0183 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0183. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *Attention:* The PDR, where you may examine, and order copies of public documents is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

Revision 1 to RG 1.191 and the regulatory analysis may be found in ADAMS under Accession Nos. ML20287A199 and ML20078K925, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Naeem Iqbal, Office of Nuclear Reactor Regulation, telephone: 301–415–3346, email: *Naeem.Iqbal@nrc.gov,* and Harriet Karagiannis, Office of Nuclear Regulatory Research, telephone: 301–415–3346, email: *Harriet.Karagiannis@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

Revision 1 of RG 1.191 was issued with a temporary identification of Draft Regulatory Guide, DG–1370. It addressed new information identified since Revision 0 of this guide was issued. The guidance in Revision 0 of the RG does not include guidance for plants that have transitioned to the NFPA 805, 2001 Edition.

II. Additional Information

The NRC published a notice of the availability of DG–1370 (ADAMS Accession No. ML20078K920), in the **Federal Register** on August 11, 2020 (85 FR 48573), for a 60-day public comment period. The public comment period closed on October 13, 2020. Public comments on DG–1370 and the staff responses to the public comments are available in ADAMS under Accession No. ML20287A198.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

Revision 1 of RG 1.191 describes methods acceptable to the NRC staff for

complying with the NRC's regulations for fire protection programs for licensees that have certified that their plants have permanently ceased operations and that the fuel has been permanently removed from the reactor vessels.

The staff does not, at this time, intend to impose the positions represented in the RG in a manner that would constitute backfitting or affect the issue finality of a part 52 of title 10 of the *Code of Federal Regulations* approval. If, in the future, the staff seeks to impose a position in the RG in a manner that constitutes backfitting or does not provide issue finality as described in the applicable issue finality provision, then the staff would need to address the backfit rule or the criteria for avoiding issue finality as described in the applicable issue finality provision.

The staff does not, at this time, intend to impose the positions represented in the RG in a manner that would constitute forward fitting. If, in the future, the staff seeks to impose a position in the RG in a manner that constitutes forward fitting, then the staff would need to address the forward fitting criteria in Management Directive 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests'' (ADAMS Accession No. ML18093B087).

Dated: January 6, 2021.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2021–00334 Filed 1–11–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–025; NRC–2008–0252]

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Unit 3; Unit 3 Auxiliary Building Wall 11 Seismic Gap Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information in Tier 1 of the plant-specific design control document (DCD) and is issuing License Amendment No. 182 to Combined License (COL) NPF–91. The COL is for construction and operation of the Vogtle Electric Generating Plant (VEGP) Unit 3, located in Burke County, Georgia. The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on August 4, 2020.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about 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.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was designated License Amendment Request (LAR) 20–001 and submitted by letter dated February 7, 2020, (ADAMS Accession No. ML20038A939).
- *Attention:* The PDR, where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Cayetano Santos, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7270; email: *Cayetano.Santos@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing License Amendment No. 182 to COL NPF–91 and is granting an exemption from Tier 1 information in the plant-specific DCD for VEGP Unit 3. The generic AP1000 DCD is incorporated by reference in appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR). The exemption, granted pursuant to paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' of 10 CFR part 52, appendix D, allows the licensee to depart from the Tier 1 information. With the requested amendment, SNC sought proposed changes to the north-south minimum seismic gap requirements above grade between the nuclear island and the annex building west of Column Line I from elevation 141 feet through 154 feet to accommodate as-built localized nonconformances.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption and license amendment requests. The exemption met all applicable regulatory criteria set forth in §§ 50.12, 52.7, and 52.63, and in section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML20132A078.

The exemption document for VEGP Unit 3 can be found in ADAMS under Accession No. ML20132A077. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COL NPF–91 are available in ADAMS under Accession No. ML20132A052. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced in this notice is the exemption document issued to VEGP Unit 3. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated February 7, 2020, Southern Nuclear Operating Company requested from the Nuclear Regulatory Commission an exemption to allow

departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, appendix D, ''Design Certification Rule for the AP1000 Design,'' as part of license amendment request (LAR) 20–001, ''Unit 3 Auxiliary Building Wall Seismic Gap Requirements.''

For the reasons set forth in Section 3.2 of the NRC staff's Safety Evaluation, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, SNC is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the facility Combined License, as described in the licensee's request dated February 7, 2020. This exemption is related to, and necessary for, the granting of License Amendment No. 182, which is being issued concurrently with this exemption.

3. As explained in Section 6.0 of the NRC staff's Safety Evaluation, this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated February 7, 2020, SNC requested that the NRC amend COL NPF–91 for VEGP Unit 3. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for this amendment that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made the findings required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to the COL, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with this action, was published in the **Federal Register** on March 10, 2020 (85 FR 13944). No comments were received during the 30-day comment period.

The Commission has determined that this amendment satisfies the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

IV. Final No Significant Hazards Consideration Determination

A request for hearing was filed on May 11, 2020, by the Blue Ridge Environmental Defense League and its chapter, Concerned Citizens of Shell Bluff (collectively ''BREDL'') (ADAMS Package Accession No. ML20132D299). Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has made a final determination that no significant hazards consideration is involved. While the hearing request was pending before an Atomic Safety and Licensing Board (ASLB), the NRC staff issued the amendment on August 4, 2020, after making a final determination that no significant hazards consideration was involved, as discussed in Section 4.0 of the combined safety evaluation.

Subsequently, the ASLB denied BREDL's request for hearing and terminated the proceeding in its order LBP–20–08, dated August 10, 2020 (ADAMS Accession No. ML20223A385). On September 4, 2020, BREDL appealed the ASLB decision (ADAMS Accession No. ML20248J166). On December 22, 2020, the Commission affirmed the ASLB's decision (ADAMS Accession No. ML20357A101).

V. Conclusion

For the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that SNC requested on February 7, 2020. The exemption and amendment were issued on August 4, 2020, as part of a combined package to SNC (ADAMS Package Accession No. ML20132A032).

Dated: January 7, 2021.

For the Nuclear Regulatory Commission.

Omar R. Lopez-Santiago,

Chief, Vogtle Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–00410 Filed 1–11–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0221]

Information Collection: NRC Form 483, ''Registration Certificate—In Vitro Testing with Byproduct Material Under General License''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, NRC Form 483, ''Registration Certificate—In Vitro Testing with Byproduct Material Under General License.''

DATES: Submit comments by February 11, 2021. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://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: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0221 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–2020–0221. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2020–0221 on this website.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML20205L413. The supporting statement is available in ADAMS under Accession No. ML20335A465.

• *Attention:* The PDR, where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2020–0221 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 OMB, 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 comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, NRC Form 483, ''Registration Certificate—In Vitro Testing with Byproduct Material Under General License.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on October 8, 2020 (85 FR 63591).

1. *The title of the information collection:* NRC Form 483, ''Registration Certificate—In Vitro Testing with Byproduct Material Under General License.''
2. *OMB approval number:* 3150–0038.
3. *Type of submission:* Extension.
4. *The form number if applicable:* NRC Form 483.
5. *How often the collection is required or requested:* There is a one-time submittal of information to receive a validated copy of the NRC Form 483 with an assigned registration number. In addition, any changes in the information reported on the NRC Form 483 must be reported in writing to the NRC within 30 days after the effective date of the change.
6. *Who will be required or asked to respond:* Any physician, veterinarian in the practice of veterinary medicine, clinical laboratory, or hospital which desires a general license to receive, acquire, possess, transfer, or use specified units of byproduct material in certain in vitro clinical or laboratory tests.
7. *The estimated number of annual responses:* 6 responses.
8. *The estimated number of annual respondents:* 6 respondents.
9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 1.12 hours.
10. *Abstract:* Section 31.11 of title 10 of the *Code of Federal Regulations* (10 CFR), established a general license authorizing any physician, clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital to possess certain small quantities of byproduct material for in vitro clinical or laboratory tests not involving the internal or external administration of the byproduct material or the radiation therefrom to human beings or animals. Possession of byproduct material under 10 CFR 31.11 is not authorized until the physician, clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital has filed the NRC Form 483 and received from the Commission a validated copy of the NRC Form 483 with a registration number. The licensee can use the validated copy of the NRC Form 483 to obtain byproduct material from a specifically licensed supplier. The NRC incorporates this information into a database which is used to verify that a general licensee is authorized to receive the byproduct material.

Dated: January 6, 2021.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2021–00331 Filed 1–11–21; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34165; File No. 812–15066]

Symmetry Panoramic Trust and Symmetry Partners, LLC

January 6, 2021.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order pursuant to: (a) Section 6(c) of the Investment Company Act of 1940 (''Act'') granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements and transactions. Applicants request an order that would permit certain registered management investment companies to participate in a joint lending and borrowing facility.

Applicants: Symmetry Panoramic Trust, a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Symmetry Partners, LLC (''Symmetry Partners''), a Connecticut limited liability company

that is registered as an investment adviser under the Investment Advisers Act of 1940.

Filing Dates: The application was filed on September 4, 2019, and amended on May 28, 2020, September 4, 2020, and December 18, 2020.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving Applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on February 1, 2021, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Mark C. Amorosi, Esq., *mark.amorosi@klgates.com* (with a copy to Philip R. McDonald, *pmcdonald@SymmetryPartners.com*).

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, or Trace W. Rakestraw, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application:

1. Applicants request an order that would permit the Applicants to participate in an interfund lending facility where each Fund could lend money directly to and borrow money directly from other Funds to cover unanticipated cash shortfalls, such as unanticipated redemptions or sales fails.[1] The Funds will not borrow under the facility for leverage purposes and the loans' duration will be no more than 7 days.[2]

2. Applicants anticipate that the proposed facility would provide a borrowing Fund with a source of liquidity at a rate lower than the bank borrowing rate at times when the cash position of the Fund is insufficient to meet temporary cash requirements. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or certain other short term money market instruments. Thus, Applicants assert that the facility would benefit both borrowing and lending Funds.

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Among others, the Adviser, through a designated committee, would administer the facility as a disinterested fiduciary as part of its duties under the investment advisory and administrative services agreements with the Funds and would receive no additional fee as compensation for its services in connection with the administration of the facility. The facility would be subject to oversight and certain approvals by the Funds' Board, including, among others, approval of the interest rate formula and of the method for allocating loans across Funds, as well as review of the process in place to evaluate the liquidity implications for the Funds. A Fund's aggregate outstanding interfund loans will not exceed 15% of its net assets at the time of the loan, and the Fund's loans to any one Fund will not exceed 5% of the lending Fund's net assets.[3]

4. Applicants assert that the facility does not raise the concerns underlying section 12(d)(1) of the Act given that the Funds are part of the same group of investment companies and there will be no duplicative costs or fees to the Funds.[4] Applicants also assert that the proposed transactions do not raise the concerns underlying sections 17(a)(1), 17(a)(3), 17(d) and 21(b) of the Act as the Funds would not engage in lending transactions that unfairly benefit insiders or are detrimental to the Funds. Applicants state that the facility will offer both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and each Fund would have an equal opportunity to borrow and lend on equal terms based on an interest rate formula that is objective and verifiable. With respect to the relief from section 17(a)(2) of the Act, Applicants note that any collateral pledged to secure an interfund loan would be subject to the same conditions imposed by any other lender to a Fund that imposes conditions on the quality of or access to collateral for a borrowing (if the lender is another Fund) or the same or better conditions (in any other circumstance).[5]

5. Applicants also believe that the limited relief from section 18(f)(1) of the Act that is necessary to implement the facility (because the lending Funds are not banks) is appropriate in light of the conditions and safeguards described in the application and because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined interfund loans and bank borrowings, have at least 300% asset coverage.

6. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction, including the compensation to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each

[1] Applicants request that the order apply to the Applicants and to any registered open-end management investment company or series thereof for which Symmetry Partners or any successor thereto, or an investment adviser controlling, controlled by, or under common control with Symmetry Partners or any successor thereto, serves as investment adviser (each such investment company or series thereof, a ''Fund'' and collectively the ''Funds,'' and each such investment adviser, an ''Adviser''). For purposes of the requested order, ''successor'' is limited to any entity that results from a reorganization into another jurisdiction or a change in the type of a business organization.

[2] Any Fund, however, will be able to call a loan on one business day's notice.

[3] Under certain circumstances, a borrowing Fund will be required to pledge collateral to secure the loan.

[4] Applicants state that the obligation to repay an interfund loan could be deemed to constitute a security for the purposes of sections 17(a)(1) and 12(d)(1) of the Act.

[5] Applicants state that any pledge of securities to secure an interfund loan could constitute a purchase of securities for purposes of section 17(a)(2) of the Act.

registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Rule 17d–1(b) under the Act provides that in passing upon an application filed under the rule, the Commission will consider whether the participation of the registered investment company in a joint enterprise, joint arrangement or profit sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of the other participants.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–00330 Filed 1–11–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90862; File No. SR–LCH SA–2020–007]

Self-Regulatory Organizations; LCH SA; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Amendments of the CDSClear Fee Grid

January 6, 2021.

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 December 31, 2020, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been prepared by LCH SA. LCH SA filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(2) [4] thereunder, so that the proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is to review and modify the current CDSClear fee grid applied by LCH SA.

The text of the proposed rule change has been annexed as Exhibit 5 [sic].

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, LCH SA 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. LCH SA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed fee changes is for LCH SA CDSClear to revise the (i) fees under the Unlimited Tariff for General Members,[5] (ii) fees for Corporates and Financials Index and Single Name CDS under the Introductory Tariff for both General and Select Members, (iii) fees set up for the Options clearing service for both General and Select Members and Clients as well and introduce (iv) new fee conditions for Affiliates clearing as client.

LCH SA is currently applying the below fee grid for CDSClear members:

CURRENT SELF-CLEARING TARIFF FOR CORPORATES AND FINANCIALS INDEX AND SINGLE NAME CDS

Membership	Annual fixed fee	Self-clearing/variable fees				
		EUR indices	EUR single names	USD indices	USD single names	
General Member—Unlimited Tariff.	€ 1,300,000	No Variable Fee				Covers all self-clearing Corporate and Financials Index and Single Name activity for a Clearing Member and its affiliates.
General Member—Introductory Tariff.	€200,000 if the total annual gross notional cleared is under €15 billion.	€3.5 Per million gross notional cleared.	€10 Per million gross notional cleared.	$4.5 Per million gross notional cleared.	$13 Per million gross notional cleared.	Cap on total annual self-clearing fees (fixed + variable) of EUR 1,300,000 after which all further trades cleared in the calendar year are subject to a fee holiday.
	€400,000 if the total annual gross notional cleared is over €15 billion.	€3.5 Per million gross notional cleared.	€10 Per million gross notional cleared.	$4.5 Per million gross notional cleared.	$13 Per million gross notional cleared.	
Select Member	€250,000 if the total annual gross notional cleared is under €25 billion.	€4 Per million gross notional cleared.	€10 Per million gross notional cleared.	$5 Per million gross notional cleared.	$13 Per million gross notional cleared.	
	€450,000 if the total annual gross notional cleared is over €25 billion.					

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] All capitalized terms not defined herein have the same definition as the CDSClearing Rule Book, Supplement or Procedures, as applicable.

OPTIONS TARIFF INCLUDING FEE REBATE

General Member		
Introductory Tariff	Cover only one legal entity (no affiliate coverage). In-year switches are not permitted.	
Clearing Fees	$15 €15	per million of option notional on US Indices. per million of option notional on European Indices.
Floor on clearing fees	*€ 150k*	*Per calendar year (no pro-rating).*
Cap on Clearing fees	*€ 375k*	*Per calendar year (no pro-rating).*
Unlimited Tariff	Cover all affiliates of a given Clearing Member Group Cover all clearing fees for Credit Option House activity for both iTraxx and CDX.NA underlying index families. Excludes any potential future EEP usage fees. In-year switches are not permitted.	
Fixed fee (annual)	*€ 375k Per calendar year (no pro-rating).*	
Discounted Rates *	*€ 150k if notionals cleared strictly above €6bn but equal to or below €13.5bn € 75k if notionals cleared strictly above €13.5bn.*	
Onboarding Fees *(both Introductory & unlimited)*	€ 30k	One-off fee per Legal Entity under the Introductory tariff or per Clearing Member Group under Unlimited tariff waived until 30-Apr-2020.
Select Member		
Introductory Tariff	Cover only one legal entity (no affiliate coverage) In-year switches are not permitted.	
Clearing Fees	$ 18 € 18	per million of option notional on US Indices. per million of option notional on European Indices.
Cap on Clearing fees	*€ 400k*	*Per calendar year (no pro-rating).*
Unlimited Tariff	Cover all affiliates of a given Clearing Member Group. Cover all clearing fees for Credit Option House activity for both iTraxx and CDX.NA underlying index families. Excludes any potential future EEP usage fees. In-year switches are not permitted.	
Fixed fee (annual)	*€ 400k*	*Per calendar year (no pro-rating).*
Discounted Rates *	*€ 150k if notionals cleared strictly above €6bn but equal to or below €13.5bn € 75k if notionals cleared strictly above €13.5bn.*	
Onboarding Fees *(both Introductory & unlimited)*	€ 30k	One-off fee per Legal Entity under the Introductory tariff or per Clearing Member Group under Unlimited tariff waived until 30-Apr-2020.

* Cumulative conditions for the Fee rebate:
(i) Application to the Unlimited Tariff only;
(ii) Application to all Clearing Members registering to the Index Swaptions clearing service (registration letter or application file signature date); and
(iii) Index Swaptions notional cleared for the determination of the discount rate to be observed from the regulatory effective date of the rebate.

Client		
Clearing Fees	$ 20 € 20	per million of option notional on US Indices. per million of option notional on European Indices.

As specified in the new fee grid attached under Exhibit 5 [sic], LCH SA is proposing to amend the CDSClear fee grid from January 1st, 2021.

The proposed fee changes are driven by the evolution of the CDSClear business and arrangements.

—for the Index and Single Names: The fee change reflects a transition to a more matured phase of development of the CDSClear service, and

—for the Options fee grid: The intent is to adjust the fee conditions and rebate to the new competitive environment as well as encourage the development of options clearing by clients,

—for Affiliates clearing as client, the need to take into consideration the evolution of the corporate structure of dealers and the use of multiple legal entities.

(1) Change the Fees Under the Unlimited Tariff for General Members

CDSClear currently offers an Unlimited Tariff for General Members that covers all self-clearing Corporate and Financials CDS Index and Single Names activity for a Financial Group of a Clearing Member for an annual fixed fee of €1,300,000 (no variable fees).

The proposed change consists in increasing the annual fixed fee amount to €1,350,000 per year from January 1, 2021.

(2) Change the Fees Under the Introductory Tariff for Both General and Select Members

(a) For General Members

As specified in the new LCH SA CDSClear fee grid attached below in Exhibit 5 [sic], from January 1, 2021, the annual fixed fee under the Introductory Tariff will be set for General Members to €200,000 if the total annual gross notional cleared is under €10bn (vs €15bn today) and to €400,000 per year when clearing more than €10bn (vs €15bn today).

LCH SA is also proposing to remove the previous annual cap on total annual fees (fixed + variable) of €1,300,000 under the Introductory Tariff for General Members.

The variable fees remain the same as the current ones.

(b) For Select Members

From January 1, 2021, the annual fixed fee under the Introductory Tariff will be set for Select Members to €250,000 if the total annual gross notional cleared is under €20bn (vs €25bn today) and to €450,000 per year

for Select Members when clearing more than €20bn (vs €25bn today).

The variable fees remain the same as the current ones.

(3) Revise the Fees Set Up For the Options Clearing Service for Both General and Select Members as Well as Clients

(a) Options Unlimited Tariff for General and Select Members

From January 1, 2021, the annual fixed fee covering all clearing fees for Credit Index Options House activity for all Affiliates of a given Financial Group of a Clearing Member is proposed to change from a two tier discount (the first one if the notional cleared is strictly above €6bn and the second one if the notional cleared is strictly above €13.5bn) to a single discount if the notional cleared is strictly above €15bn. The fixed fee would in the new fee grid then be reduced from €375,000 to €115,000 (no prorating) for General Members and from €400,000 to €115,000 (no prorating) for Select Members compared to €150k and €75k for the two tiers currently.

(b) Options Introductory Tariff for General and Select Members

The current Options Introductory Tariff for both General and Select Members covers only the legal entity that is registering to the service.

The Options Introductory Tariff for a General Member is proposed to be based on the annual floor and conditions below:

- Floor of €115,000 for a single entity (vs €150,000 today per entity)
- Floor of €150,000 for 2 entities of the same Financial Group of a Clearing Member
- Floor of €190,000 for 3 or more entities of the same Financial Group of a Clearing Member
- Removal of the annual cap of €375,000 on Options clearing fees
- Reduction of variable fees from €15/$15 to €8/$8 per million of option notional cleared.

The Options Introductory Tariff for a Select Member is proposed to be based on the conditions below:

- Reduction of variable fees from €18/$18 to €10/$10 per million of option notional cleared
- Removal of the annual cap on Options clearing fees of €400,000

(c) Options Clearing Members (General Members Under Unlimited or Introductory)

LCH SA is proposing an up to €200,000 fee rebate limited to the total amount of Options clearing fees paid by a Financial Group of a Clearing Member in 2021 for the first two Clearing Members clearing Options for at least one Client by 31 July 2021.

(d) Options Clearing Fees for Clients

The Options clearing fee grid for Clients is proposed to include the following changes:

- Clients variable clearing fees for Options decreased from €20/$20 to €5/$5 per million of option notional cleared
- Fee holiday for Clients clearing Options in 2021

(4) Introduction of New Fee Conditions for Affiliates Clearing as Client

As specified in the new LCH SA CDSClear options fee grid attached below in Exhibit 5 [sic], LCH SA CDSClear is proposing to offer a full rebate on client clearing variable fees for Affiliates of a Clearing Member that is clearing as client of that Clearing Member under the following conditions:

- The Clearing Member is a General Member under the Unlimited Tariff,
- The Affiliate is a legal entity part of the same Financial Group as the Clearing Member,
- The rebate applies to 1 trade account per Affiliate and for all clearing services for which the Clearing Member is under the Unlimited Tariff (*i.e.* Index & Single Names and/or Options),
- The rebate cannot apply to any account opened for CCM Indirect Clients, and
- A fixed annual account fee of €100,000 is charged per Affiliate of a Clearing Member onboarded as a Client and benefiting from the full rebate on variable fees.

2. Statutory Basis

Section 17A(b)(3)(D) of the Act requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges.[6]

LCH SA believes that its clearing fee change proposal is consistent with the requirements of Section 17A of the Act[7] and the regulations thereunder applicable to it, and in particular provides for the equitable allocation of reasonable fees, dues, and other charges among clearing members and market participants by ensuring that clearing members and clients pay reasonable fees and dues for the services provided by LCH SA, within the meaning of Section 17A(b)(3)(D) of the Act.

With respect to the change of the Index and Single Name CDS Unlimited Tariff for General Members, LCH SA has determined in consultation with its clearing members that the slight increase in the annual fixed fee amount for General Members covering their Index and Single Name CDS self-clearing activity is reasonable and appropriate as the CDSClear business is now reaching a more mature stage in its development and the likelihood to onboard new General Members under the Unlimited Tariff is small or even negligible given the structure of the CDS market and the limited number of market makers in this space.

With respect to the Index and Single Names CDS Introductory Tariffs for both General and Select Members, both the annual fixed fee and the variable fees remain the same. The removal of the cap as well as the lowering of the notional thresholds aim at reflecting the fact that market participants are now more familiar with the CDSClear service as well as their own activity in the Credit Derivatives space:

—the removal of the cap which was struck at the level of the fixed fee under the Unlimited Tariff incentivizes Clearing Members to select the most appropriate tariff for them at the start of the year.

—the lowering of the notional thresholds would constitute an increase of fees for the Members which have cleared less than the current threshold but more than the new one. No member is in that situation.

The main change in the fee grid of the Options clearing service is the decrease of the variable fees for General and Select Members as well as Clients in order to make clearing of options more attractive for all, and in particular for clients to begin clearing options.

Besides, and after discussing with its Clearing Members, LCH SA has elected to maintain a similar volume-based discount fee structure for its Options Unlimited Tariff for both General and Select Members in which the cost of clearing options decreases as more volumes are cleared. The increase of the notional threshold as well as of the decrease of the discount percentage are reflective of the growth of the Option clearing service over the last year which now is more broadly used by LCH SA Clearing Members and which justifies the increase of total fees paid by the Clearing Members having selected this scheme.

Consequently, the General Member Introductory Tariff has been redesigned to be more appropriate for smaller Options trading members: In particular, the decrease of the annual floor, the

[6] 15 U.S.C. 78q–1(b)(3)(D).

[7] 15 U.S.C. 78q–1.

introduction of 2 new levels of annual floor depending on the number of legal entities of a given Financial Group of a Clearing Member joining the service as well as the removal of the cap are meant to ease the introduction of new members to the Options clearing service.

Changes following the same principles and rationale have also been made to the Select Members Options fee grid to ensure a consistent access between the 2 membership tiers.

Lastly, and in order to incentivize the development of Options Client clearing, LCH SA is proposing to provide the first 2 Clearing Members clearing options on behalf of at least one of their clients, and before 31 July 2021, with a one-off fee rebate equal to the total amount of Options clearing fees paid in 2021, capped at €200,000, in order to mitigate the cost associated with the systems developments required to enable clients to access the LCH SA Options clearing service. The rationale to limit the number of Clearing Members eligible to this one-off rebate to the first two clearing an option trade on behalf of clients is twofold:

—Further incentivize competition between the Clearing Members which have an interest in building client clearing capabilities for options by offering a rebate substantial enough to cover some of the build costs that will be incurred by the Clearing Members.

—Mitigate financial risk for LCH SA by predefining the maximum amount of rebate it could have to pay back to its Clearing Members as well as the amount of the rebate they would get, thus maintaining the attractiveness of the rebate for them. All clearing members will have the same opportunity to equally benefit from the proposed incentive rebate according to the specified conditions.

Finally, the introduction of a specific fee structure (full variable fee rebate plus fixed account charge) for Affiliates of a given Financial Group of a Clearing Member clearing as Clients of such Clearing Member and under a set of pre-defined conditions aims at offering Financial Groups of Clearing Members under the General Membership Unlimited Tariff additional, fairly-priced ways for their Affiliates to gain access to LCH SA CDSClear service.

LCH SA CDSClear has thus determined that the proposed new fee structure is more appropriate and takes into account the expected volume of transactions. All the clearing fee conditions remain transparent and equally applicable to any market participant wishing to access the CDSClear clearing service for both Index & Single Names as well as Options.

For all the reasons stated above, LCH SA believes that the proposed fee rates are reasonable and have been set up at an appropriate level so that LCH SA can provide the CDSClear services.

B. Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[8]

LCH SA does not believe that the proposed rule change would impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act because LCH SA is offering the possibility for CDSClear members and clients to get a more attractive access to the clearing services. It does not affect the ability of such Clearing Members or other market participants generally to engage in cleared transactions or to access clearing services especially to the clearing of credit index swaptions that remains not mandatory.

Additionally, the proposed volume-based discount scheme for the Options Unlimited Tariff will be available to any Financial Group of a Clearing Member using CDSClear services.

Similarly, the proposed Index and Single Names Unlimited Tariff will be available to any Financial Group including an entity registered as a General Member of the CDSClear service.

The annual fixed fee increase does not impact any competition between General and Select Members as the choice of membership tier made by a Clearing Member is mainly driven by the material differences in the obligations of a General Member versus those of a Select Member (in terms of price contribution and auction bidding notably) which are reflected in the tariffs available for each tier.

The rebate offered on client clearing fees for Affiliates of a General Member under the Unlimited Tariff relies on the fact that should such Affiliate join as a Clearing Member his fees would be covered by the fixed fee of the Unlimited Tariff whereas this wouldn't the [sic] case for Select Members.

More broadly, none of the proposed changes impacts competition between General and Select Members as they have been designed consistently across both tiers or are more extensions of existing features of the current fee grid.

Further, as explained above, LCH SA believes that the fee rates have been set up at an appropriate level given the costs and expenses to LCH SA in offering the relevant clearing services.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received but a consultation has been conducted with and verbal feedback sought from CDSClear members. No comment or question has been received following this consultation. LCH SA will notify the Commission of any subsequent written comments received by LCH SA.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)9 [sic] of the Act and Rule 19b–4(f)(2)10 [sic] thereunder because it establishes a fee or other charge imposed by LCH SA on its Clearing Members. 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.

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–LCH SA–2020–007 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–LCH SA–2020–007. 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

[8] 15 U.S.C. 78q–1(b)(3)(I).

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 LCH SA and on LCH SA's website at: *https://www.lch.com/resources/rulebooks/proposed-rule-changes.* 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–LCH SA–2020–007 and should be submitted on or before February 2, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–00348 Filed 1–11–21; 8:45 am]

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[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90861; File No. SR–ICEEU–2020–018]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Partial Amendment No. 1 To Proposed Rule Change Relating to Amendments to the ICE Clear Europe CDS Procedures and CDS Default Management Policy

January 6, 2021.

On December 14, 2020, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') 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 modify its CDS Procedures and CDS Default Management Policy related to its CDS Default Committee. The proposed rule change was published for comment in the **Federal Register** on January 4, 2021.[3] On December 31, 2020, ICE Clear Europe filed Partial Amendment No. 1 to the proposed rule change. Pursuant to Section 19(b)(1) of the Act[4] and Rule 19b–4 thereunder,[5] the Commission is publishing notice of this Partial Amendment No. 1 to the proposed rule change as described in Item I below, which has been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comment on Partial Amendment No. 1 from interested persons.

I. Clearing Agency's Statement of the Terms of Partial Amendment No. 1 to the Proposed Rule Change

ICE Clear Europe submits this partial amendment (''Partial Amendment No. 1'') to its previously submitted proposed rule changes (the ''Initial Filing'') to modify its CDS Procedures (the ''CDS Procedures'' or the ''Procedures'')[6] to update the requirements for a Clearing Member to be approved to be a CDS Committee-Eligible Clearing Member for purposes of the CDS Default Committee, as well as certain other updates and clarifications, and to modify its CDS Default Management Policy (the ''CDS Default Management Policy'' or ''Policy'') to make corresponding updates to the requirements for a Clearing Member to be eligible to serve on the CDS Default Committee, as well as to provide more detail with respect to review and testing of its default procedures, remove appendices and make certain other updates and clarifications to be consistent with other ICE Clear Europe policies. Partial Amendment No. 1 is intended to amend Item 3(a) of the Initial Filing to add an explanation as to the circumstances pursuant to which ICE Clear Europe may permit a CDS Committee-Eligible Clearing Member to postpone participation in the CDS Default Committee for a Relevant CDS Default Committee Period for which it is otherwise due to take part. The text of the proposed rule changes in the Initial Filing is unchanged.

As described in the Initial Filing, amendments to paragraph 5.3 of the CDS Procedures would add that if a CDS Committee-Eligible Clearing Member considers that it is unable to take part in the CDS Default Committee for the Relevant CDS Default Committee Period for which it is due to take part, it may request to postpone its participation for that period. ICE Clear Europe could, at its discretion, approve such request. In this Partial Amendment No. 1, ICE Clear Europe is providing the explanation in the paragraph below to supplement the description of the amendment to paragraph 5.3 of the CDS Procedures that was provided in the Initial Filing.

In general, paragraph 5.3 is intended to give ICE Clear Europe a degree of flexibility in responding to a request for postponement from a Clearing Member, in light of the difficulty in outlining in advance all potential scenarios where it may be appropriate. In ICE Clear Europe's view, based on its experience and discussions with Clearing Members about service on the committee, an acceptable excuse would most likely relate to temporary resource constraints at the Clearing Member. For example, if the committee member were already serving on the default committee of another clearing house during the relevant period or if a committee member otherwise had limited staffing resources to commit to the committee during that period, this may be considered satisfactory. ICE Clear Europe would expect to discuss the particular situation with the Clearing Member in question and would respond to any request for postponement to let the Clearing Member know whether its rationale was satisfactory. ICE Clear Europe believes this type of flexible approach is ultimately more favorable to both the Clearing House and Clearing Members than having a more rigid rule.

The purpose of the rule change as set out in Item 3(a) of the Initial Filing is otherwise unchanged.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the ICE Clear Europe CDS Procedures and CDS Default Management Policy, Securities Exchange Act Release No. 90806 (December 28, 2020), 86 FR 169 (January 4, 2021) (SR–ICEEU–2020–018).

[4] 15 U.S.C. 78s(b)(1)

[5] 17 CFR 240.19b–4.

[6] Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules and the CDS Procedures.

(A) By order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2020–018 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–ICEEU–2020–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website *https://www.theice.com/clear-europe/regulation.*

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–ICEEU–2020–018 and should be submitted on or before February 2, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–00350 Filed 1–11–21; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90863; File No. SR–CboeBZX–2021–004]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee Schedule Relating to LMM Financial Incentives

January 6, 2021.

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 January 4, 2021, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the fee schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://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

The Exchange proposes to amend the fee schedule applicable to its equities trading platform (''BZX Equities'') to update the Standard Rates and Enhanced Rates provided under the Lead Market Maker (''LMM'') Liquidity Provision Rates, effective January 4, 2021. The Exchange believes the proposed changes will better incentivize LMMs to meet the Standard and Enhanced Minimum Performance Standards where their average aggregate daily auction volume is 1,000,000 shares or less.

The Exchange first notes that its listing business operates in a highly-competitive market in which market participants, which includes issuers of securities, LMMs, and other liquidity providers, can readily transfer their listings, opt not to participate, or direct order flow to competing venues if they deem fee levels, liquidity provision incentive programs, or any other factor at a particular venue to be insufficient or excessive. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to participate as LMMs in the Exchange's LMM Program, which the Exchange believes will enhance market quality in all securities listed on the Exchange and encourage issuers to list new products and transfer existing products to the Exchange.

The Exchange currently offers daily incentives for LMMs in Exchange Traded Products (''ETPs'') listed on the Exchange for which the LMM meets certain Minimum Performance Standards.[3] Such daily incentives are

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in Rule 11.8(e)(1)(E), the term ''Minimum Performance Standards'' means a set of standards applicable to an LMM that may be determined from time to time by the Exchange. Such standards will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered. The performance measurements will include: (A) Percent of time at the NBBO; (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread. For additional detail, see Original LMM Filing.

determined based on the number of Cboe-listed ETPs for which the LMM meets such Minimum Performance Standards and the average auction volume across such securities. Generally speaking, the more LMM Securities [4] for which the LMM meets the Minimum Performance Standards and the higher the auction volume across those ETPs, the greater the total daily payment to the LMM. Such daily incentive Standard Rates are structured as follows:

	Average aggregate daily auction volume in LMM Securities					
	0–10,000	10,001–100,000	100,001–500,000	500,001–1,000,000	1,000,001–3,000,000	3,000,001 or greater
Daily Incentive for each Qualified Security 1–5	$10	$25	$40	$50	$150	$200
Daily Incentive for each Qualified Security 6–25	10	25	25	30	100	150
Daily Incentive for each Qualified Security 26–50	10	10	20	25	75	100
Daily Incentive for each Qualified Security 51–100	10	10	15	20	50	75
Daily Incentive for each Qualified Security Greater Than 100	10	10	15	15	25	50

By way of example, if an LMM has 30 LMM Securities, each of which is a Qualified ETP,[5] 10 of which each have an average daily auction volume of 5,000 shares (combined between the opening and closing auction), 10 of which each have an average daily auction volume of 50,000 shares (combined between the opening and closing auction), and 10 of which each have an average daily auction volume of 200,000 shares (combined between the opening and closing auction), then the LMM would fall into the fifth column (10 * 5,000 + 10 * 50,000 + 10 * 200,000 = 2,550,000 average aggregate daily auction volume). As such, the LMM would receive $150 each for five Qualified ETPs, $100 each for Qualified ETPs 6–25, and $75 each for Qualified ETPs 26–30. This would result in a daily payment of ($150 * 5) + ($100 * 20) + ($75 * 5) = $3,125 to the LMM.

LMMs that meet a more stringent set of standards also receive enhanced daily incentives (*i.e.,* the Enhanced Rates), as follows:

	Average aggregate daily auction volume in LMM Securities					
	0–10,000	10,001–100,000	100,001–500,000	500,001–1,000,000	1,000,001–3,000,000	3,000,001 or greater
Daily Incentive for each Enhanced Security 1–5	$2.50	$6.25	$10	$12.50	$37.50	$50
Daily Incentive for each Enhanced Security 6–25	2.50	6.25	6.25	7.50	25	37.50
Daily Incentive for each Enhanced Security 26–50	2.50	2.50	5	6.25	18.75	25
Daily Incentive for each Enhanced Security 51–100	2.50	2.50	3.75	5	12.50	18.75
Daily Incentive for each Enhanced Security Greater Than 100	2.50	2.50	3.75	3.75	6.25	12.50

Using the same example as above, where the LMM has 30 LMM Securities, 10 of which are Enhanced ETPs, which have 2,550,000 shares of average aggregate daily auction volume in LMM Securities, the issuer would fall into the fifth column. As such, the LMM would receive an additional $37.50 for each of its first five Enhanced ETPs and an additional $25 each for Enhanced ETPs 6–10. This would result in an additional daily payment of ($37.50 * 5) + ($25 * 5) = $312.50 to the LMM.

Proposed Changes

The Exchange proposes to amend the Standard Rates and Enhanced Rates discussed above. First, the Exchange proposes to eliminate the sixth column of both the Standard Rates and Enhanced Rates so that average aggregate daily auction volume of 1,000,001 shares or more is considered the highest average aggregate daily auction volume column.

Second, the Exchange proposes to reduce the Standard Rates payments for average aggregate daily auction volume of 1,000,001 shares or more for each row of Qualified Security ranges. Specifically, the Exchange proposes to reduce the payments in the fifth column as follows: $100 Daily Incentive for each Qualified Security 1–5, $70 Daily Incentive for each Qualified Security 6–25, $50 Daily Incentive for each Qualified Security 26–50, $25 Daily Incentive for each Qualified Security 51–100, and $20 Daily Incentive for each Qualified Security greater than 100.

For instance, using the same example as above, where the LMM has 30 LMM Securities, 10 of which each have an average daily auction volume of 5,000 shares, 10 of which each have an average daily auction volume of 50,000 shares, and 10 of which each have an average daily auction volume of 200,000 shares, then the LMM would fall into the fifth column (10 * 5,000 + 10 * 50,000 + 10 * 200,000 = 2,550,000 average aggregate daily auction volume). As such, under the proposed Standard Rates the LMM would receive $100 each for Qualified ETPs 1–5, $70 each for Qualified ETPs 6–25, and $50 each for Qualified ETPs 26–30. This would result in a daily payment of ($100 * 5) + ($70 * 20) + ($50 * 5) = $2,150 to the LMM.

Third, the Exchange proposes to decrease the Enhanced Rates payments for securities with average aggregate daily auction volume over 1,000,000 shares and increase the Enhanced Rates payments for securities with average aggregate daily auction volume of 1,000,000 shares or lower. Specifically, the Exchange proposes the following Enhanced Rates:

[4] As defined in Rule 11.8(e)(1)(D), the term ''LMM Security'' means an ETP that has an LMM.

[5] As provided in footnote 14 of the Fee Schedule, a ''Qualified ETP'' is an ETP for which an LMM is a Qualified LMM.

	Average aggregate daily auction volume in LMM Securities				
	0–10,000	10,001–100,000	100,001–500,000	500,001–1,000,000	1,000,001 or greater
Daily Incentive for each Enhanced Security 1–5	$3	$7.50	$12	$15	$30
Daily Incentive for each Enhanced Security 6–25	3	7.50	7.50	9	21
Daily Incentive for each Enhanced Security 26–50	3	3	6	7.50	15
Daily Incentive for each Enhanced Security 51–100	3	3	4.50	6	7.50
Daily Incentive for each Enhanced Security Greater Than 100	3	3	4.50	4.50	6

The proposed changes are designed to encourage LMMs with average aggregate daily auction volume of 1,000,000 shares or less to meet the Standard and Enhanced Minimum Performance Standards. The proposed changes would decrease payments in LMM securities with average aggregate daily auction volume of 1,000,001 shares or greater. Using the same example above, where the LMM has 30 LMM Securities, 10 of which are Enhanced ETPs, which have 2,550,000 shares of average aggregate daily auction volume in LMM Securities, the issuer would fall into the fifth column. As such, the LMM would receive an additional $30 for each of its first five Enhanced ETPs and an additional $21 each for Enhanced ETPs 6–10. This would result in an additional daily payment of ($30 * 5) + ($21 * 5) = $255 to the LMM as opposed to the $312.50 it would receive under the current Enhanced Rates.

However, the proposed Enhanced Rates are also designed to increase payments in LMM Securities with 1,000,000 or less average aggregate daily auction volume. For example, if an LMM has 30 LMM Securities, each of which is a Qualified ETP, 10 of which each have an average daily auction volume of 500 shares, 10 of which each have an average daily auction volume of 10,000 shares, and 10 of which each have an average daily auction volume of 20,000 shares, then the LMM would fall into the third column (10 * 500 + 10 * 10,000 + 10 * 20,000 = 305,000 average aggregate daily auction volume). As such, the LMM would receive $12 each for Qualified ETPs 1–5, $7.50 each for Qualified ETPs 6–25, and $6 each for Qualified ETPs 26–30. This would result in a daily payment of ($12 * 5) + ($7.50 * 20) + ($6 * 5) = $240 to the LMM. Under the current Enhanced Rates, the LMM would receive a daily payment of ($10 * 5) + (6.25 * 20) + (5 * 5) = $200.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[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] as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that its listing business operates in a highly-competitive market in which market participants, which includes issuers of securities, LMMs, and other liquidity providers, can readily transfer their listings, opt not to participate, or direct order flow to competing venues if they deem fee levels, liquidity provision incentive programs, or any other factor at a particular venue to be insufficient or excessive. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to participate as LMMs in the Exchange's LMM Program, which the Exchange believes will enhance market quality in all securities listed on the Exchange and encourage issuers to list new products and transfer existing products to the Exchange.

The Exchange believes that the proposed changes to the Standard Rates and Enhanced Rates of the LMM Liquidity Provision Rates are consistent with the Act and represent a reasonable, equitable, and not unfairly discriminatory means to incentivize liquidity provision in ETPs listed on the Exchange. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer ETP listings. Transfers between listing venues occur frequently for numerous reasons, including market quality. This proposal is intended to help the Exchange compete as an ETP listing venue. Specifically, the Exchange believes that the proposal is reasonable because it believes that the proposed amendments will encourage LMMs with lower aggregate auction volumes to meet the Enhanced Minimum Performance Standards. The Exchange believes that incentivizing such LMMs to meet the Enhanced Minimum Performance Standards will increase market quality in lower volume BZX-listed ETPs. To the extent that market quality in any BZX-listed ETP is negatively impacted, competitive forces would generally dictate that the primary listing venue enhance their own liquidity provision programs or that the security would transfer to a different primary listing venue.

The Exchange believes that the proposal represents an equitable allocation of payments and is not unfairly discriminatory because, while the proposed payments apply only to LMMs, such LMMs must meet rigorous Minimum Performance Standards in order to receive the payments. Where an LMM does not meet the Minimum Performance Standards for the Standard and Enhanced Rates, they will not receive the applicable payment. Further, registration as an LMM is available equally to all Members and allocation of listed ETPs between LMMs is governed by Exchange Rule 11.8(e)(2). If an LMM does not meet the Minimum Performance Standards for three out of the past four months, the LMM is subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion.

Further, the proposed daily payment amounts would continue to be based specifically on the Exchange's revenue model. For ETPs with greater auction volume, the Exchange generally makes more money and, thus, is able to offer LMMs with LMM Securities that have higher average aggregate daily auction

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

volume higher payments. Specifically, the payment per Qualified ETP (and thus the total payment to an LMM) generally goes up as the CADV moves from left to right because as the average aggregate daily auction volume in LMM Securities increases, the Exchange will generate additional revenue and can thus support increased payments to LMMs. Similarly, the payments per Qualified ETP generally go down as the number of Qualified ETPs goes up in order to ensure that the daily incentive payments do not exceed the Exchange's revenue for that LMM's LMM Securities while still providing incentives for LMMs to take on additional ETPs. While the proposed changes would reduce payments to LMMs with higher average aggregate daily auction volume, such payments would still be higher than the proposed increased payments for LMMs with lower average aggregate daily auction volume. As such, the Exchange believes that the proposal is an equitable allocation of payments and is not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed change burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BZX both among Members by incentivizing Members to become LMMs in BZX-listed ETPs and as a listing venue by enhancing market quality in BZX-listed ETPs. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer ETP listings. Transfers between listing venues occur frequently for numerous reasons, including market quality. This proposal is intended to help the Exchange compete as an ETP listing venue. Accordingly, the Exchange does not believe that the proposed change will impair the ability of issuers, LMMs, or competing ETP listing venues to maintain their competitive standing. The Exchange also notes that the proposed change is intended to enhance market quality in BZX-listed ETPs, to the benefit of all investors in BZX-listed ETPs. The Exchange does not believe the proposed amendment would burden intra-market competition as it would be available to all Members uniformly. Registration as an LMM is available equally to all Members and allocation of listed ETPs between LMMs is governed by Exchange Rule 11.8(e)(2). Further, if an LMM does not meet the Minimum Performance Standards for three out of the past four months, the LMM is subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and paragraph (f) of Rule 19b–4 thereunder.[10] 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–CboeBZX–2021–004 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–2021–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2021–004 and should be submitted on or before February 2, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–00349 Filed 1–11–21; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

[11] 17 CFR 200.30–3(a)(12).

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

AGENCY: Selective Service System.

ACTION: Notice.

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS FORMS 2, 3A, 3B and 3C

Title: Selective Service System Change of Information, Correction/Change Form, and Registration Status Forms.

Purpose: To insure the accuracy and completeness of the Selective Service System registration data.

Respondents: Registrants are required to report changes or corrections in data submitted on the SSS Form 1.

Frequency: When changes in a registrant's name or address occur.

Burden: A burden of two minutes or less on the individual respondent.

Change: Registrant may now update their email address and phone number.

Copies of the above identified forms can be obtained upon written request to the Selective Service System, Operations Directorate, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of the publication of this notice to the Selective Service System, Operations Directorate, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Wadi Yakhour,

Chief of Staff.

[FR Doc. 2021–00448 Filed 1–11–21; 8:45 am]

BILLING CODE 8015–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before February 11, 2021.

ADDRESSES: Submit comments by the deadline stated in the **DATES** section above to:

- *www.reginfo.gov/public/do/PRAMain.* You can find this information collection by selecting ''Currently under Review—Open for Public Comments'' and searching by title, ''SBA Microloan Program Outcome Evaluation''; and
- Curtis Rich, *Agency Clearance Officer, curtis.rich@sba.gov;* 202–205–7030

FOR FURTHER INFORMATION CONTACT: Shay Meinzer, *Lead Program Evaluator, shay.meinzer@sba.gov;* 202–539–1429.

SUPPLEMENTARY INFORMATION: *Copies:* You may obtain a copy of the information collection and supporting documents from the Agency Clearance Officer or Lead Program Evaluator.

The SBA Microloan Program surveys and interviews will be completed by borrowers and intermediary lenders that participated in the program. Data collected on lending and technical assistance activities, business growth, revenue, job creation, and survival will be used to develop recommendations to improve the program. These data also provide an understanding of the specific ways in which SBA's micro-financing activities contribute to the growth and sustainability of small businesses.

Title: SBA Microloan Program Outcome Evaluation.

OMB Control Number: 3245–TBD (New).

Description of Respondents: Microloan program borrowers and intermediary lenders.

Estimated Annual Responses: 1,006.

Estimated Annual Hour Burden: 2,286.

The public is invited to submit comments regarding any aspect of this information collection, including the following: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden of those who are required to respond to the request for information.

Curtis Rich,

Management Analyst.

[FR Doc. 2021–00320 Filed 1–11–21; 8:45 am]

BILLING CODE 8026–03–P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from the Association of American Railroads (WB21–03—1/6/21) for permission to use data from the Board's 2019 Masked Carload Waybill Sample along with continued access to previously received datasets. A copy of this request may be obtained from the Board's website under docket no. WB21–03.

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. 2021–00433 Filed 1–11–21; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Determination Pursuant to Section 301: Italy's Digital Services Tax

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: The U.S. Trade Representative has determined that Italy's Digital Services Tax (DST) is unreasonable or discriminatory and burdens or restricts U.S. commerce and thus is actionable under Section 301.

FOR FURTHER INFORMATION CONTACT: For questions concerning the investigation, please contact Thomas Au or Patrick Childress, Assistant General Counsels at (202) 395–0380 and (202) 395–9531, respectively, Robert Tanner, Director, Services and Investment at (202) 395–6125, or Michael Rogers, Director, Europe and the Middle East at (202) 395–2684.

SUPPLEMENTARY INFORMATION:

I. Italy's DST

Based on information obtained during the investigation, USTR has prepared a comprehensive report on Italy's DST (Italy DST Report). The Italy DST Report, which is posted on the USTR website at *https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-digital-services-taxes,* includes a full description of Italy's DST. To summarize, Italy adopted the operative form of its DST on December 27, 2019. The DST applies to companies that, during the previous calendar year, generated €750 million or more in worldwide revenues and €5.5 million or more in revenues deriving from the provision of digital services in Italy. The tax applies as of January 1, 2020.

II. Proceedings in the Investigation

On June 2, 2020, the U.S. Trade Representative initiated an investigation of Italy's DST pursuant to section 302(b)(1)(A) of the Trade Act of 1974, as amended (Trade Act). 85 FR 34709 (June 5, 2020) (notice of initiation). The notice of initiation solicited written comments on, *inter alia,* the following aspects of Italy's DST: Discrimination against U.S. companies; retroactivity; and possibly unreasonable tax policy. With respect to tax policy, USTR solicited comments on, *inter alia,* whether the DST diverges from principles reflected in the U.S. and international tax systems, including extraterritoriality; taxing revenue not income; and a purpose of penalizing particular technology companies for their commercial success.

Interested persons filed over 380 written submissions in response to the notice of initiation. The public submissions are available on *www.regulations.gov* in docket number USTR–2020–0022.

Under Section 303 of the Trade Act, the U.S. Trade Representative requested consultations with the Government of Italy regarding the issues involved in the investigation. Consultations were held on November 10, 2020.

As noted, based on information obtained during the investigation, USTR has prepared and published the Italy DST Report, which includes a comprehensive discussion on whether the acts, policies, and practices under investigation are actionable under Section 301(b) of the Trade Act. The Italy DST Report supports findings that Italy's DST is unreasonable or discriminatory and burdens or restricts U.S. commerce.

III. Determination on the Act, Policy, or Practice Under Investigation

Based on the information obtained during the investigation, and taking account of public comments and the advice of the Section 301 Committee and advisory committees, the U.S. Trade Representative has made the following determination under sections 301(b) and 304(a) of the Trade Act (19 U.S.C. 2411(b) and 2414(a)): The act, policy, or practice covered in the investigation, namely Italy's DST, is unreasonable or discriminatory and burdens or restricts U.S. commerce, and thus is actionable under section 301(b) of the Trade Act. In particular:

1. Italy's DST, by its structure and operation, discriminates against U.S. digital companies, including due to the selection of covered services and the revenue thresholds.

2. Italy's DST is unreasonable because it is inconsistent with principles of international taxation, including due to application to revenue rather than income and extraterritoriality.

3. Italy's DST burdens or restricts U.S. commerce.

IV. Further Proceedings

Sections 301(b) and 304(a)(1)(B) of the Trade Act provide that if the U.S. Trade Representative determines that an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, the U.S. Trade Representative shall determine what action, if any, to take under Section 301(b). These matters will be addressed in subsequent proceedings under Section 301.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2021–00363 Filed 1–11–21; 8:45 am]

BILLING CODE 3290–F0–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Determination Pursuant to Section 301: India's Digital Services Tax

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: The U.S. Trade Representative has determined that India's Digital Services Tax (DST) is unreasonable or discriminatory and burdens or restricts U.S. commerce and thus is actionable under Section 301.

FOR FURTHER INFORMATION CONTACT: For questions concerning the investigation, please contact Thomas Au or Patrick Childress, Assistant General Counsels at (202) 395–0380 and (202) 395–9531, respectively, Robert Tanner, Director, Services and Investment at (202) 395–6125, or Brendan Lynch, Deputy Assistant U.S. Trade Representative, South and Central Asian Affairs, 202–395–2851.

SUPPLEMENTARY INFORMATION:

I. India's DST

Based on information obtained during the investigation, USTR has prepared a comprehensive report on India's DST (India DST Report). The India DST Report, which is posted on the USTR website at *https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-digital-services-taxes,* includes a full description of India's DST. To summarize, India adopted the operative form of its DST on March 27, 2020. India's DST imposes a two percent tax on revenue generated from a broad range of digital services offered in India, including digital platform services, digital content sales, digital sales of a company's own goods, data-related services, software-as-a-service, and several other categories of digital services. India's DST only applies to ''non-resident'' companies. The tax applies as of April 1, 2020.

II. Proceedings in the Investigation

On June 2, 2020, the U.S. Trade Representative initiated an investigation of India's DST pursuant to section 302(b)(1)(A) of the Trade Act of 1974, as amended (Trade Act). 85 FR 34709 (June 5, 2020) (notice of initiation). The notice of initiation solicited written comments on, *inter alia,* the following aspects of India's DST: Discrimination against U.S. companies and unreasonableness as tax policy. With respect to unreasonable tax policy, USTR solicited comments on, *inter alia,* whether the DST diverges from principles reflected in the U.S. and international tax systems, including extraterritorial application and taxing revenue rather than income.

Interested persons filed over 380 written submissions in response to the notice of initiation. The public submissions are available on *www.regulations.gov* in docket number USTR–2020–0022.

Under Section 303 of the Trade Act, the U.S. Trade Representative requested consultations with the Government of India regarding the issues involved in the investigation. Consultations were held on November 5, 2020.

As noted, based on information obtained during the investigation, USTR has prepared and published the India DST Report, which includes a comprehensive discussion on whether the acts, policies, and practices under investigation are actionable under Section 301(b) of the Trade Act. The India DST Report supports findings that India's DST is unreasonable or discriminatory and burdens or restricts U.S. commerce.

III. Determination on the Act, Policy, or Practice Under Investigation

Based on the information obtained during the investigation, and taking account of public comments and the advice of the Section 301 Committee and advisory committees, the U.S. Trade Representative has made the following determination under sections 301(b) and 304(a) of the Trade Act (19 U.S.C. 2411(b) and 2414(a)): The act, policy, or practice covered in the investigation, namely India's DST, is unreasonable or discriminatory and burdens or restricts U.S. commerce, and is thus actionable

under section 301(b) of the Trade Act. In particular:

1. India's DST, by its structure and operation, discriminates against U.S. digital companies, including due to the selection of covered services and its applicability only to non-resident companies.

2. India's DST is unreasonable because it is inconsistent with principles of international taxation, including due to its application to revenue rather than income, extraterritorial application, and failure to provide tax certainty.

3. India's DST burdens or restricts U.S. commerce.

IV. Further Proceedings

Sections 301(b) and 304(a)(1)(B) of the Trade Act provides that if the U.S. Trade Representative determines that an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, the U.S. Trade Representative shall determine what action, if any, to take under Section 301(b). These matters will be addressed in subsequent proceedings under Section 301.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2021–00362 Filed 1–11–21; 8:45 am]

BILLING CODE 3290–F0–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2019–0009]

Notice of Modification of Section 301 Action: Investigation of France's Digital Services Tax

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: The U.S. Trade Representative has determined to modify the action being taken in this investigation by suspending, until further notice, the additional duties on products of France scheduled to take effect on January 6, 2021.

DATES: The additional duties on products of France are suspended indefinitely, as of the previously scheduled effective date of 12:01 a.m. eastern standard time on January 6, 2021.

FOR FURTHER INFORMATION CONTACT: For questions concerning the investigation, please contact Thomas Au or Patrick Childress, Assistant General Counsels at (202) 395–0380 and (202) 385–9531, respectively, Robert Tanner, Director, Services and Investment at (202) 395–6125, or Michael Rogers, Director for Europe at (202) 395–2684. For specific questions on customs classification or implementation of additional duties on products, contact *traderemedy@cbp.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 10, 2019, the U.S. Trade Representative initiated the investigation of France's digital services tax (DST) pursuant to section 302(b)(1)(A) of the Trade Act of 1974, as amended (Trade Act). *See* 84 FR 34042 (July 16, 2019) (July 16, 2019 notice). The July 16, 2019 notice invited public comment on France's DST, including whether the tax would discriminate against U.S. companies, the retroactive application of the new tax, and whether France's DST diverged from norms reflected in the U.S. and international tax system. Witnesses provided testimony at an August 19, 2019 public hearing and interested persons filed written submissions.

Following a request by the U.S. Trade Representative, consultations were held with the Government of France on November 14, 2019.

On December 2, 2019, USTR published a comprehensive report on France's DST which is available at *https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-frances-digital-services-tax.* On December 6, 2019, based on the information obtained during the investigation and the advice of the Section 301 Committee, and as reflected in the December 2, 2019 report on the findings in the investigation, the U.S. Trade Representative published a determination that France's DST is unreasonable or discriminatory and burdens or restricts U.S. commerce, and therefore is actionable under sections 301(b) and 304(a) of the Trade Act (19 U.S.C. 2411(b) and 2414(a)). *See* 84 FR 66956 (December 6, 2019) (December 6, 2019 notice).

The December 6, 2019 notice proposed that appropriate action would include additional *ad valorem* duties of up to 100 percent on products of France to be drawn from a list of 63 tariff subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) included in the annex to that notice. The December 6, 2019 notice requested comments on the proposed action, as well as on other potential actions, including the imposition of fees or restrictions on services of France. Witnesses provided testimony at a January 7–8, 2020 public hearing and interested persons filed written comments. Transcripts from the August 2019 and January 2020 hearings are available on the USTR website at *https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-frances-digital-services-tax.* The written public submissions are available on *www.regulations.gov* under docket number USTR–2019–0009.

In a notice published on July 16, 2020, the U.S. Trade Representative determined to impose *ad valorem* duties of 25 percent on specified products of France. *See* 85 FR 43292 (July 16, 2020 notice). The U.S. Trade Representative also determined to suspend the additional duties for up to 180 days (that is, until January 6, 2021) to allow additional time for bilateral and multilateral discussions that could lead to a satisfactory resolution of this matter.

II. Determination To Modify Action

Section 307(a)(1) of the Trade Act authorizes the U.S. Trade Representative to modify or terminate any action, subject to the specific direction, if any, of the President with respect to such action, that is being taken under Section 301, if, inter alia, the action being taken is no longer appropriate. Pursuant to sections 301(b)–(c) and 307(a) of the Trade Act (19 U.S.C. 2417(a)), the U.S. Trade Representative has determined that the imposition of duties on the current effective date of January 6, 2021 no longer is appropriate.

Subsequent to the initiation of this investigation, the U.S. Trade Representative initiated Section 301 investigations of DSTs adopted or under consideration by Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey, and the United Kingdom. *See* 85 FR 34709 (June 5, 2020). These investigations involve similar DST measures, either in effect or under consideration, in ten additional jurisdictions. Given that these DST investigations are ongoing and have not yet reached any determinations on what, if any, trade action should be taken, the U.S. Trade Representative has determined that it is appropriate to suspend the action in the France DST investigation indefinitely.

In making this determination, the U.S. Trade Representative considered the public comments submitted in the investigation, as well as advice of advisory committees.

To give effect to the U.S. Trade Representative's determination, the additional duties set out in Annex A of the July 16, 2020 notice are suspended indefinitely, as of the scheduled

effective date of 12:01 a.m. eastern standard time on January 6, 2021. The U.S. Trade Representative will continue to monitor the developments in the France DST investigation and the additional DST investigations in considering the trade action in this investigation. If a further modification to the action is appropriate, the U.S. Trade Representative will consider the comments and testimony previously provided.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2021–00425 Filed 1–11–21; 8:45 am]

BILLING CODE 3290–F1–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Determination Pursuant to Section 301: Turkey's Digital Services Tax

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: The U.S. Trade Representative has determined that Turkey's Digital Services Tax (DST) is unreasonable or discriminatory and burdens or restricts U.S. commerce and thus is actionable under Section 301.

FOR FURTHER INFORMATION CONTACT: For questions concerning the investigation, please contact Thomas Au or Patrick Childress, Assistant General Counsels at (202) 395–0380 and (202) 395–9531, respectively, Robert Tanner, Director, Services and Investment at (202) 395–6125, or Michael Rogers, Director, Europe and the Middle East at (202) 395–2684.

SUPPLEMENTARY INFORMATION:

I. Turkey's DST

Based on information obtained during the investigation, USTR has prepared a comprehensive report on Turkey's DST (Turkey DST Report). The Turkey Report, which is posted on the USTR website at *https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-digital-services-taxes,* includes a full description of Turkey's DST. To summarize, Turkey adopted the operative form of its DST on December 7, 2019. The DST applies to companies that, during the previous calendar year, generated €750 million or more in worldwide revenues and TRY 20 million or more in revenues deriving from the provision of digital services in Turkey. The tax applies as of March 1, 2020.

II. Proceedings in the Investigation

On June 2, 2020, the U.S. Trade Representative initiated an investigation of Turkey's DST pursuant to section 302(b)(1)(A) of the Trade Act of 1974, as amended (Trade Act). 85 FR 34709 (June 5, 2020) (notice of initiation). The notice of initiation solicited written comments on, *inter alia,* the following aspects of Turkey's DST: discrimination against U.S. companies and unreasonableness as tax policy. With respect to unreasonable tax policy, USTR solicited comments on, *inter alia,* whether the DST diverges from principles reflected in the U.S. and international tax systems, including extraterritorial application and taxing revenue rather than income.

Interested persons filed over 380 written submissions in response to the notice of initiation. The public submissions are available on *www.regulations.gov* in docket number USTR–2020–0022.

Under Section 303 of the Trade Act, the U.S. Trade Representative requested consultations with the Government of Turkey regarding the issues involved in the investigation. Consultations were held on September 29, 2020.

As noted, based on information obtained during the investigation, USTR has prepared and published the Turkey DST Report, which includes a comprehensive discussion on whether the acts, policies, and practices under investigation are actionable under Section 301(b) of the Trade Act. The Turkey DST Report supports findings that Turkey's DST is unreasonable or discriminatory and burdens or restricts U.S. commerce.

III. Determination on the Act, Policy, or Practice Under Investigation

Based on the information obtained during the investigation, and taking account of public comments and the advice of the Section 301 Committee and advisory committees, the U.S. Trade Representative has made the following determination under sections 301(b) and 304(a) of the Trade Act (19 U.S.C. 2411(b) and 2414(a)): The act, policy, or practice covered in the investigation, namely Turkey's DST, is unreasonable or discriminatory and burdens or restricts U.S. commerce, and thus is actionable under section 301(b) of the Trade Act. In particular:

1. Turkey's DST, by its structure and operation, discriminates against U.S. digital companies, including due to the selection of covered services and the revenue thresholds.

2. Turkey's DST is unreasonable because it is inconsistent with principles of international taxation, including due to its application to revenue rather than income, extraterritorial application, and failure to provide tax certainty.

3. Turkey's DST burdens or restricts U.S. commerce.

IV. Further Proceedings

Sections 301(b) and 304(a)(1)(B) of the Trade Act provides that if the U.S. Trade Representative determines that an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, the U.S. Trade Representative shall determine what action, if any, to take under Section 301(b). These matters will be addressed in subsequent proceedings under Section 301.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2021–00364 Filed 1–11–21; 8:45 am]

BILLING CODE 3290–F0–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed highway project, the Santa Maria River Bridge Replacement Project on State Route 1 at postmile 0.0, in San Luis Obispo County, and north of the City of Guadalupe, in Santa Barbara County, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before June 11, 2021. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Matt Fowler, Branch Chief,

Central Region Environmental, Caltrans District 5, 50 Higuera Street, San Luis Obispo, CA 93401, 805–542–4603, *matt.c.fowler@dot.ca.gov,* Monday–Friday, 9:00 a.m.–5:00 p.m. PDT. For FHWA: David Tedrick at (916) 498–5024 or email *david.tedrick@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California:

Santa Maria River Bridge Replacement Project on State Route 1 at postmile 0.0, in the San Luis Obispo County, and north of the City of Guadalupe, Santa Barbara County. Caltrans proposes to replace the existing Santa Maria River Bridge with a new bridge structure. The replacement of the existing bridge is necessary to remove all traces of alkali-silica reactions present in the concrete components of the existing bridge. The presence of alkali-silica reaction progressively compromises the structural integrity of concrete components. The project will involve construction of a new bridge structure, roadway repaving, guardrail improvements, new pedestrian and bicycle path, vegetation removal and habitat restoration within existing Caltrans right-of-way. Temporary construction easements and permanent new State right-of-way are required for completion of the project. Federal EFIS ID 05–160000074.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (FEA) with Finding of No Significant Impact (FONSI) for the project, approved on December 9, 2020 and in other documents in Caltrans' project records. The FEA, FONSI and other project records are available by contacting Caltrans at the addresses provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4335]
2. The National Historic Preservation Act (NHPA) of 1966 [16 U.S.C. 470(f) *et seq.*]
3. Native American Grave protection and Repatriation Act (NAGPRA) [25 U.S.C. 30001–3013]
4. Clean Water Act [33 U.S.C. 1344]
5. Federal Endangered Species Act (FESA) [16 U.S.C. 1531–1543]
6. Migratory Bird Treaty Act [16 U.S.C. 760c–760g]
7. Invasive Species Executive Order 11988
8. Farmland Protection Policy Act, 7 U.S. Code 4201–4209

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: January 7, 2021.

Rodney Whitfield,

Director, Financial Services, Federal Highway Administration, California Division.

[FR Doc. 2021–00431 Filed 1–11–21; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0087]

Cybersecurity Best Practices for the Safety of Modern Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for comments.

SUMMARY: NHTSA invites public comment on the Agency's updated draft cybersecurity best practices document titled *Cybersecurity Best Practices for the Safety of Modern Vehicles.* In 2016, NHTSA issued its first edition, *Cybersecurity Best Practices for Modern Vehicles,* which described NHTSA's nonbinding guidance to the automotive industry for improving vehicle cybersecurity. With this document, NHTSA is docketing and soliciting public feedback on a draft update based on the knowledge gained through prior comments, continued research, motor vehicle cybersecurity issues discovered by researchers, and related industry activities over the past four years. To emphasize NHTSA's safety mission, recommendations in the document focus on cybersecurity best practices that have safety implications for motor vehicles and motor vehicle equipment.

DATES: Written comments are due no later than March 15, 2021.

ADDRESSES: Comments must refer to the docket number above and be submitted by one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery or Courier:* U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9322 before coming.
- Fax: 202–493–2251.

Regardless of how you submit your comments, you must include the docket number identified in the heading of this document.

Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Please see the ''Privacy Act'' heading below.

You may call the Docket Management Facility at 202–366–9322. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. To be sure someone is there to help you, please call (202) 366–9322 before coming. We will continue to file relevant information in the Docket as it becomes available.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to inform its decision-making process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

FOR FURTHER INFORMATION CONTACT: For technical issues, please contact Mr. Robert Kreeb of NHTSA's Office of Vehicle Safety Research at 202–366–0587 or *robert.kreeb@dot.gov.* For legal issues, contact Ms. Sara R. Bennett of NHTSA's Office of Chief Counsel at 202–366–2992 or *sara.bennett@dot.gov.*

SUPPLEMENTARY INFORMATION: The evolution of automotive technology has included an increasingly expanded use of electronic systems, software, and wireless connectivity. While this development began in the late 1970s, the pace of technological evolution has increased significantly over the past

decade. Automotive technology has developed to such an extent that today's vehicles are some of the most complex computerized products available to consumers. Enhanced wireless connectivity and continued innovations in electronic control systems introduce substantial benefits to highway transportation safety, mobility, and efficiency. However, with the proliferation of computer-based control systems, software, connectivity, and onboard digital data communication networks, modern vehicles need to consider additional failure modes, vulnerabilities, and threats that could jeopardize benefits if the new safety risks are not appropriately addressed.

Connectivity and safety technologies that can intervene to assist drivers with control of their vehicles (*e.g.,* automatic emergency braking) could also increase cybersecurity risks, and without proactive measures taken across the vehicle lifecycle, risks could result in negative safety outcomes. As such, motor vehicle cybersecurity remains a top priority for NHTSA. NHTSA is engaged in research and industry outreach efforts to support enhanced reliability and resiliency of vehicle electronics, software, and related vehicle control systems, not only to mitigate safety risks associated with failure or potential cyber compromise of such systems, but also to ensure that affected parties take appropriate actions and such concerns do not pose public acceptance barriers for proven safety technologies.

NHTSA's work in this area seeks to support the automotive industry's continued improvements to motor vehicle cybersecurity reliability and resiliency. The Agency also expends resources in understanding and promoting contemporary methods in software development, testing practices, and requirements management as they pertain to robust management of underlying safety hazards and risks across the vehicle life-cycle. These activities include close collaboration with industry to promote a strong risk management culture and associated organizational and systems engineering processes.

Background

In October 2016, NHTSA issued its first best practices document focusing on the cybersecurity of motor vehicles and motor vehicle equipment.[1] *Cybersecurity Best Practices for Modern Vehicles* (''2016 Best Practices'') was the culmination of years of extensive engagement with public and private stakeholders and NHTSA research on vehicle cybersecurity and methods of enhancing vehicle cybersecurity industry-wide. As explained in the accompanying **Federal Register** document, NHTSA's 2016 Best Practices was released with the goal of supporting industry-led efforts to improve the industry's cybersecurity posture and provide the Agency's views on how the automotive industry could develop and apply sound risk-based cybersecurity management processes during the vehicle's entire lifecycle.

The 2016 Best Practices leveraged existing automotive domain research as well as non-automotive and IT-focused standards such as the National Institute of Standards and Technology (NIST) Cybersecurity Framework and the Center for internet Security's Critical Security Controls framework. NHTSA considered these sources to be reasonably applicable and appropriate to augment the limited industry-specific guidance that was available at the time. At publication, NHTSA noted that the 2016 Best Practices were intended to be updated with new information, research, and other cybersecurity best practices related to the automotive industry. NHTSA invited comments from stakeholders and interested parties in response to the document.

Below is a high-level summary of comments received and how NHTSA integrated those comments into the 2020 draft *Cybersecurity Best Practices for the Safety of Modern Vehicles.*

Summary of Public Comments Received in Response to NHTSA's 2016 Best Practices

NHTSA received comments from government agencies, regulated entities, trade associations, advocacy groups and organizations, and individuals.[2] Key topic areas, and how such comments are reflected in NHTSA's revised 2020 *Cybersecurity Best Practices for the Safety of Modern Vehicles* are listed below.

- *Guidance vs. Rules.* Many commenters noted that cybersecurity is a constantly evolving discipline and that best practices may need frequent updating, and most commenters suggested that NHTSA's cyber best practices should remain non-binding and voluntary. NHTSA agrees with these commenters, and adoption of any of the provisions listed in the 2020 *Cybersecurity Best Practices for the Safety of Modern Vehicles* remains voluntary.
- *NHTSA's cyber best practices should be aligned with industry initiatives.* Commenters noted that industry initiatives were under development at the time of the 2016 Best Practices publication. NHTSA believes that the specific best practices outlined in today's 2020 revision reflect a strong linkage to key industry cybersecurity-related initiatives and efforts by organizations such as SAE International (SAE), the International Organization for Standardization (ISO), NIST, and the Automotive Information Sharing and Analysis Center (Auto-ISAC)—and are, in general, consistent with guidelines, standards, and best practices developed by these organizations.
- *Focus on Safety.* Several commenters noted that NHTSA's best practices should focus squarely on safety aspects of cybersecurity. NHTSA agrees. The best practices presented in this revision are tailored to focus on cybersecurity issues that impact the safety of motor vehicles throughout the lifecycle of design, operation, maintenance and disposal. This emphasis is reflected throughout the document, including with a title change: *Cybersecurity Best Practices for the Safety of Modern Vehicles.*
- *Consideration of cybersecurity as part of software development process.* Multiple commenters recommended greater and more formal consideration of cybersecurity as part of the software development lifecycle process. NHTSA's revised best practice outlined today reflects a need to include cybersecurity considerations along the entire software supply chain and throughout the lifecycle management processes of developing, implementing and updating software-enabled systems.
- *Additional cybersecurity terminology, definitions.* Commenters noted that the document would benefit from providing expanded definitions for certain terms to add precision and clarity to the recommended best practices. NHTSA has provided several additional definitions for key terms used throughout the document.

The comments received, combined with continued research, outreach to stakeholders, learnings from motor vehicle cybersecurity issues discovered by researchers, and related industry activities over the past four years have served as the foundation for the 2020 update. A description of other important information that guided the changes included in the 2020 *Cybersecurity Best Practices for the Safety of Modern*

[1] *Cybersecurity Best Practices for Modern Vehicles,* announced via the **Federal Register**, 81 FR 75190 (Oct. 28, 2016).

[2] Comments on the 2016 *Cybersecurity Best Practices for Modern Vehicles* can be found at *https://beta.regulations.gov/document/NHTSA-2016-0104-0001/comment.*

Vehicles is included in the following section.

2020 Update of Cybersecurity Best Practices

NHTSA is docketing a draft update to the agency's 2016 Best Practices,[3] titled *Cybersecurity Best Practices for the Safety of Modern Vehicles* (2020 Best Practices) for public comments. This update builds upon agency research and industry progress since 2016, including emerging voluntary industry standards, such as the ISO/SAE Draft International Standard (DIS) 21434, ''Road Vehicles—Cybersecurity Engineering.'' [4] In addition, the draft update references a series of industry best practice guides developed by the Auto-ISAC through its members.[5]

The 2020 Best Practices also reflect findings from NHTSA's continued research in motor vehicle cybersecurity, including over-the-air updates, encryption methods, and building our capability in cybersecurity penetration testing and diagnostics, and the new learnings obtained through researcher and stakeholder engagement. Finally, the updates included in the 2020 Best Practices incorporate insights gained from public comments received in response to the 2016 guidance and from information obtained during the annual SAE/NHTSA Vehicle Cybersecurity Workshops.

As with the 2016 Best Practices, NHTSA's updated draft, *Cybersecurity Best Practices for the Safety of Modern Vehicles,* is intended to serve as a resource for the industry as a whole and covers safety-related cybersecurity issues for all motor vehicles and motor vehicle equipment. As such, it is applicable to all individuals and organizations involved in the design, manufacture, and assembly of a motor vehicle and its electronic systems and software. These entities include, but are not limited to, small and large volume motor vehicle and motor vehicle equipment designers, suppliers, manufacturers, and modifiers. What follows is a listing of each new best practice, and an explanation of why NHTSA believes the inclusion is necessary in this update.

- *[G.6] Manufacturers should consider the risks associated with sensor vulnerabilities and potential sensor signal manipulation efforts such as GPS spoofing,[6] road sign modification,[7] Lidar/Radar jamming and spoofing,[8] camera blinding,[9] or excitation of machine learning false positives.[10]*

This best practice recommends that industry consider ''sensor vulnerabilities'' as part of their risk assessment (examples: GPS spoofing, road sign modification, Lidar/Radar jamming and spoofing, camera blinding, or excitation of machine learning false positives). NHTSA added it to reflect the new research that shows that technology behavior could be influenced via sensor spoofing, which differs from traditional software manipulation-based cyber issues.

- *[G.7] Any unreasonable risk to safety-critical systems should be removed or mitigated to acceptable levels through design, and any functionality that presents an unavoidable and unnecessary risk should be eliminated where possible.*

This best practice recommends ''removal of risk'' to be considered as part of the development process. NHTSA included this best practice to align with the National Traffic and Motor Vehicle Safety Act's prohibition of manufacturers selling motor vehicles and motor vehicle equipment that may contain unreasonable risks to safety. This is a common practice element of sound risk-based approaches. The 2016 Best Practices recommended assessing and appropriately mitigating risks to acceptable levels. While the 2016 documents implicitly included G.7 in cases where risks could not be mitigated with known tools and for a given architecture appropriately, this document makes the best practice explicit.

- *[G.9] Clear cybersecurity expectations should be specified and communicated to the suppliers that support the intended protections.*

Vehicles are produced in a complex supply chain, and cybersecurity roles and expectations need to be clarified and coordinated among involved parties to support the cybersecurity goals of the manufacturers. ISO/SAE 21434 Clause 15 discusses customer-supplier relationships and provides various recommendations for how to manage cybersecurity risks among these entities. Such recommendations extend, among other aspects, to the interactions, dependencies, and responsibilities between customers and suppliers for cybersecurity activities.

- *[G.10] Manufacturers should maintain a database of operational software components[11] [12] used in each automotive ECU, each assembled vehicle, and a history log of version updates applied over the vehicle's lifetime; and [G.11] Manufacturers should track sufficient details related to software components,[13] such that when a newly identified vulnerability is identified related to an open source or off-the-shelf software,[14] manufacturers can quickly identify what ECUs and specific vehicles would be affected by it.*

Through engagement in organized exercises, such as CyberStorm,[15] the Agency recognized that the ability to identify whether an issue with one component would affect a single or multiple makes and models is critically important to determine the potential scope of risk. Further, being able to recognize which software version is installed on individual vehicles or items of equipment and differentiate between versions is critical to respond to incidents quickly. The Food and Drug Administration and National Telecommunications and Information Administration developed detailed guidance around the same concept, and

[3] The 2016 guidance is titled *Cybersecurity Best Practices for Modern Vehicles* and is available at: *https://www.federalregister.gov/documents/2016/10/28/2016-26045/request-for-comment-on-cybersecurity-best-practices-for-modern-vehicles.* The 2020 update has a modified title that emphasizes the document's focus on, and NHTSA's commitment to, cybersecurity as an aspect of safety in motor vehicles and motor vehicle equipment.

[4] ISO/SAE 21434:2020 *Road Vehicles—Cybersecurity Engineering,* available at: *https://www.iso.org/standard/70918.html.*

[5] See *https://automotiveisac.com/best-practices/.*

[6] DefCon 23—Lin Huang and Qing Yang—*Low cost GPS Simulator: GPS Spoofing by SDR* (2015). Video of the talk available at: *https://media.defcon.org/DEF%20CON%2023/DEF%20CON%2023%20video/.*

[7] McAfee Labs, *Model Hacking ADAS to Pave Safer Roads for Autonomous Vehicles* (2020), available at: *https://www.mcafee.com/blogs/other-blogs/mcafee-labs/model-hacking-adas-to-pave-safer-roads-for-autonomous-vehicles/.*

[8] Mark Harris, IEEE Spectrum Sept 4, 2015, *Researcher Hacks Self-driving Car Sensors.*

[9] Petit, J. et al., ''Remote Attacks on Automated Vehicles Sensors: Experiments on Camera and LiDAR'' (2015), available at: *https://www.blackhat.com/docs/eu-15/materials/eu-15-Petit-Self-Driving-And-Connected-Cars-Fooling-Sensors-And-Tracking-Drivers-wp1.pdf.*

[10] Tencent Keen Security Lab, *Experimental Security Research of Tesla Autopilot* 2019, available at: *https://keenlab.tencent.com/en/whitepapers/Experimental_Security_Research_of_Tesla_Autopilot.pdf.*

[11] This is also referred to as a software bill of materials (SBOM), which is a list of components in a piece of software, including assembled open source and commercial software components.

[12] Multistakeholder Process on Promoting Software Component Transparency, 83 FR 110 (June 4, 2018).

[13] These details could include: The licenses that govern those components, the versions of the components used in the codebase, and their patch status.

[14] A good example would be the vulnerability associated with the Transport Layer Security(TLS) implementations in OpenSSL 1.0.1 before 1.0.1g in the Heartbleed vulnerability: *https://cve.mitre.org/cgi-bin/cvename.cgi?name=cve-2014-0160.*

[15] *https://www.cisa.gov/cyber-storm-securing-cyber-space.*

NHTSA believes such guidance to be of value to the automotive industry.

• *[G.12] Manufacturers should evaluate all commercial off-the-shelf and open-source software components used in vehicle ECUs against known vulnerabilities.*[16] [17]

This best practice highlights the importance of making informed decisions about using open source and off-the-shelf software with respect to documented vulnerabilities. This is a common practice in other domains. NIST established a national database to facilitate such action.[18]

• *[G.22] Best practices for secure software development should be followed, for example as outlined in NIST 8151* [19] *and ISO/SAE 21434.*[20]

This best practice provides further detailed resources for companies to consider for implementation, as appropriate. Comments received on the 2016 Cybersecurity Best Practices requested that NHTSA incorporate current industry guidance and standards.[21] Pointing to such resources is helpful for all companies, but particularly for companies with less mature cybersecurity programs.

• *[G.23] Manufacturers should actively participate in automotive industry-specific best practices and standards development activities through Auto-ISAC and other recognized standards development organizations.*

Industry standards, such as ISO/SAE 21434, are more broadly adopted when entities actively participate in their establishment and ensure their unique needs are considered and addressed. NHTSA's encouragement of industry involvement in standards development organizations is long standing.

• *[G.30] Commensurate to assessed risks, organizations should have a plan for addressing newly identified vulnerabilities on consumer-owned vehicles in the field, inventories of vehicles built but not yet distributed to dealers, vehicles delivered to dealerships but not yet sold to consumers, as well as future products and vehicles.*

During a validated incident, the ability to address the issue for the impacted population could vary for vehicles in different stages of distribution. A plan that considers these stages can facilitate a more effective organizational response. This addition also reflects Clause 7 of the ISO/SAE 21434 standard.

• *[G.40] Any connection to a third-party device should be authenticated and provided with appropriate limited access.*

During the life-cycle of a vehicle, consumer devices (*e.g.,* mobile phones, insurance dongles) or repair/maintenance tools may be connected to the vehicle systems. These systems could enable wireless connectivity to the vehicle interface and may not feature adequate cyber controls on them. For example, research on an insurance dongle inserted into the OBDII port during operation found that it did not employ techniques, such as digital signing, that would prevent a cyber attacker from reprogramming firmware.[22] A similar issue is described by Argus Cybersecurity on a connected car service.[23] Accordingly, this best practice recommends that vehicle systems should treat such devices as untrusted and control their access to safety critical systems.

• *[T.7] The use of global symmetric keys and ad-hoc cryptographic techniques for diagnostic access should be minimized.*[24]

This best practice discourages the use of global symmetric keys or unproven cryptographic techniques, which can result in a false sense of security for manufacturers and the consumer. This addition is also responsive to a comment from a diagnostic tool manufacturer to the 2016 Best Practices. Further, research shows the ineffectiveness of symmetric keys (see footnote in T.7).

• *[T.8] Vehicle and diagnostic tool manufacturers should control tools' access to vehicle systems that can perform diagnostic operations and reprogramming by providing for appropriate authentication and access control.*[25]

This best practice responds to research demonstrating the ability to leverage diagnostic tools to reverse engineer and implement vulnerabilities in vehicle systems.

• *[T.12] Such logs that can be aggregated across vehicles should be periodically reviewed to assess potential trends of cyber-attacks.*

Information aggregated across multiple vehicles in a manufacturer's fleet can highlight trends and help a manufacturer recognize a cybersecurity attack more quickly, and potentially prior to a successful breach, than focusing on only a single vehicle or compartmentalized information. This approach is common in the enterprise information technology domain,[26] and applies to the automotive realm. T.12 purposefully limits the recommendation to logs that can be aggregated.

• *[T.13] Manufacturers should treat all networks and systems external to a vehicle's wireless interfaces as untrusted and use appropriate techniques to mitigate potential threats.*

This is a common approach taken by the stakeholder community and NHTSA. Various forms of ''man-in-the-middle'' cyber attacks seen with wireless interfaces suggest that information outside the wireless interfaces of vehicles should not be trusted until appropriately authenticated for intended uses. NHTSA added this best practice to reflect learnings from demonstrated man-in-the-middle attacks.

• *[T.22] Maintain the integrity of OTA updates, update servers, the transmission mechanism and the updating process in general.*[27] [28]

OTA updates are updates to vehicle or equipment software that are pushed remotely to the vehicle. The OTA update process should not introduce cybersecurity vulnerabilities in the process, through either the update itself or through the updating process. NHTSA added this best practice to reflect learnings discussed in the

[16] MITRE Common Vulnerabilities and Exposures (CVE) may be found at: *https://cve.mitre.org/.*

[17] NIST's National Vulnerability Database may be found at: *https://nvd.nist.gov/.*

[18] *See https://nvd.nist.gov/.*

[19] Black P., Badger M., Guttman B., Fong E., NISTIR 8151 *Dramatically Reducing Software Vulnerabilities: Report to the White House Office of Science and Technology Policy.*

[20] ISO/SAE 21434 clause 10 discusses software development practices.

[21] *See* public comments in response to the 2016 Best Practices, such as NHTSA–2016–0104–0969, and NHTSA–2016–0104–0998.

[22] See *https://jalopnik.com/progressive-insurances-driver-tracking-tool-is-ridicul-1680720690.*

[23] See Argus Cyber Security, ''A remote attack on an aftermarket telematics service'' (Nov. 7, 2014), available at: *https://argus-sec.com/remote-attack-aftermarket-telematics-service/#:~:text=Zubie%20is%20a%20leading%20connected,II%20port%20of%20your%20car.*

[24] Hogan G., *Flashing ECU Firmware Updates from a Web Browser,* Talk at DefCon 27: Car Hacking Village, Las Vegas. Video of the talk may be found at: *https://media.defcon.org/DEF%20CON%2027/DEF%20CON%2027%20villages/.* Mr. Hogan describes reverse engineering enciphered firmware updates.

[25] ISO/SAE 21434 requirement [RQ–05–15] states that ''Tools that can impact the cybersecurity of an item, system or component shall be managed.''

[26] See Chapter 4: Network based intrusion detection and protection systems in NIST 800–94, available at *https://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-94.pdf.*

[27] Bar R., *Hacking into Automotive Clouds,* talk at DefCon 27 Car Hacking Village, Las Vegas 2019. Video of the talk: *https://media.defcon.org/DEF%20CON%2027/DEF%20CON%2027%20villages/.*

[28] Rodgers M., Hahaffey K., *How to Hack a Tesla Model S,* talk at DefCon 23, Las Vegas 2015. Video of the talk: *https://media.defcon.org/DEF%20CON%2023/DEF%20CON%2023%20video/.*

Agency's Cybersecurity of Firmware Updates research report.[29]

• *[T.23] Take into account, when designing security measures, the risks associated with compromised servers, insider threats, men-in-the-middle attacks, and protocol vulnerabilities.*

This best practice provides more granular recommendations with respect to risk considerations in T.22. As with T.22, NHTSA added this to reflect learnings discussed in the Agency's Cybersecurity of Firmware Updates research report.[30]

Public Comment

NHTSA is seeking public comments on the 2020 Best Practices and additional ways to improve its usefulness to stakeholders. The updated draft document is structured around five key areas: (1) General Cybersecurity Best Practices, (2) Education, (3) Aftermarket/User Owned Devices, (4) Serviceability, and (5) Technical Vehicle Cybersecurity Best Practices, and NHTSA seeks comments on all areas.

NHTSA will further update and refine this draft document over time, based on public comments received, the experience of NHTSA, manufacturers, suppliers, consumers, and others, as well as from further research findings and technological innovations. The updated draft document is available in PDF format under Docket No. NHTSA–2020–0087.

Economic Analysis for Cybersecurity Best Practices for the Safety of Modern Vehicles

NHTSA is seeking comment on its Cybersecurity Best Practices for the Safety of Modern Vehicles (2020 Best Practices), which is non-binding (*i.e.,* voluntary) guidance provided to serve as a resource for industry on safety-related cybersecurity issues for motor vehicles and motor vehicle equipment. As guidance, the document touches on a wide array of issues related to safety-related cybersecurity practices, and provides recommendations to industry on the following topics: (1) General Cybersecurity Best Practices, (2) Education, (3) Aftermarket/User Owned Devices, (4) Serviceability, and (5) Technical Vehicle Cybersecurity Best Practices.

NHTSA has made a good faith effort to assess the potential costs that companies in the automotive industry might bear if these companies decide to integrate the recommendations in the 2020 Best Practices into their business practices. The following is a summary of the considerations that NHTSA evaluated for purposes of this section.

First, although, as guidance, the 2020 Best Practices is voluntary, NHTSA expects that many entities will to conform their practices to the recommendations endorsed by NHTSA. NHTSA believes that the Cybersecurity Best Practices for the Safety of Modern Vehicles serve as means of facilitating common understanding across industry regarding best practices for cybersecurity.

Second, the diversity among the entities to which the 2020 Best Practices apply is vast. The recommendations found in Cybersecurity Best Practices for the Safety of Modern Vehicles are necessarily general and flexible enough to be applied to any industry entity, regardless of size or staffing. The recommendations contained within the best practices are intended to be applicable to all individuals and organizations involved in the design, manufacture, and assembly of a motor vehicle and its electronic systems and software. These entities include, but are not limited to, small and large volume motor vehicle and motor vehicle equipment designers, suppliers, manufacturers, and modifiers. NHTSA recognizes that there is much organizational diversity among the intended audience, resulting in a variety of approaches, organizational sizes, and staffing needs. NHTSA also expects that these entities have varying levels of organizational maturity related to cybersecurity, and varying levels of potential cybersecurity risks. These expectations, combined with NHTSA's lack of detailed knowledge of the organizational maturity and implementation of any recommendations contained within the guidance, make it difficult for NHTSA to develop a reasonable quantification of the per-organization cost of implementing the recommendations.

Third, any costs associated with applying the 2020 Best Practices would be limited to the incremental cost of applying the new recommendations included in the document (as opposed to those in the 2016 Best Practices). The updated Cybersecurity Best Practices for the Safety of Modern Vehicles document highlights a total of 65 enumerated best practices, 16 of which could be considered ''new'' relative to the first version published in 2016.

Fourth, costs could be limited by organizations who have implemented some of the recommendations prior to this request for comment. NHTSA is unaware of the extent to which various entities have already implemented NHTSA's recommendations, and determining the incremental costs associated with full implementation of the recommendations is effectively impossible without detailed insight into the organizational processes of every company.

Fifth, many of NHTSA's recommendations lean very heavily on industry standards, such as Draft International Standard SAE/ISO 21434. Three of the 16 ''new'' best practices simply reference the SAE/ISO 21434 industry standard. Since many aspects of NHTSA's recommendations are mapped to an industry standard, costs would also be limited for those companies who are adopting SAE/ISO 21434 already. Thus, it would be impossible to parse whether a company implemented SAE/ISO 21434 or whether it had decided to adopt NHTSA's voluntary recommendations. While the 2020 Best Practices have some recommendations[31] that cannot be mapped to an industry standards document at this time, most of those recommendations involve common vehicle engineering and sound business management practices, such as risk assessment and supply-chain management. For these recommendations, NHTSA's inclusion in the 2020 Cyber Best Practices serve as a reminder.

Regarding benefits, entities that do not implement appropriate cybersecurity measures, like those guided by these recommendations, or other sound controls, face a higher risk of cyberattack or increased exposure in the event of a cyberattack, potentially leading to safety concerns for the public.

Implementation of the best practices can, therefore, facilitate ''cost prevention'' in the sense that failure to adopt appropriate cybersecurity practices could result in other direct or indirect costs to companies (*i.e.,* personal injury, vehicle damage, warranty, recall, or voluntary repair/updates). A quantitative analysis would require present value estimation of future benefits, or a comparison of two similar sample groups, one of which is implementing the recommendations and the other is not. This comparison would illustrate the differences in groups in a way that would allow the benefits attributable to implementation of the

[29] *https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/cybersecurity_of_firmware_updates_oct2020.pdf*

[30] *https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/cybersecurity_of_firmware_updates_oct2020.pdf*

[31] For example, G.6 in Section 4.2.3 recommends consideration of sensor vulnerabilities as part of risk assessment; and G.9 and G.10 in Section 4.2.6 recommend tracking software components on vehicles in a manner similar to hardware components.

best practices to be calculated. However, neither is possible at this time.

The best practices outlined in this document help organizations measure their residual risks better, particularly the safety risks associated with potential cybersecurity issues in motor vehicles and motor vehicle equipment that they design and manufacture. Further, it provides a toolset of techniques they can utilize commensurate to their measured risks, and take appropriate actions to reduce or eliminate them, and in doing so lower the future liabilities these risks represent in terms of safety risks to public and business costs associated with addressing them.

In addition, quantitatively positive externalities have been shown to stem from vehicle safety and security measures (Ayres & Levitt, 1998). The high marginal cost of cybersecurity failures (crashes) extend to third parties. Widely accepted adoption of sound cybersecurity practices limits these potential costs and lessens incentives for attempts at market disruption (*i.e.,* signal manipulation, GPS spoofing, or reverse engineering).

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the docket, please include the docket number of this document in your comments. Your comments must not be more than 15 pages long (49 CFR 553.21). NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit one copy (two copies if submitting by mail or hand delivery) of your comments, including the attachments, to the docket following the instructions given above under **ADDRESSES**. Please note, if you submit comments electronically as a PDF (Adobe) file, NHTSA asks that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing the Agency to search and copy certain portions of your submissions.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Office of the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you may submit a copy (two copies if submitting by mail or hand delivery), from which you have deleted the claimed confidential business information, to the docket by one of the methods given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in NHTSA's confidential business information regulation (49 CFR part 512).

Will the Agency consider late comments?

NHTSA will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the Agency will also consider comments received after that date. Given that we intend for the guidance document to be a living document and to be developed in an iterative fashion, subsequent opportunities to comment will also be provided necessarily.

How can I read the comments submitted by other people?

You may read the comments received at the address given above under Comments. The hours of the docket are indicated above in the same location. You may also see the comments on the internet, identified by the docket number at the heading of this document, at *http://www.regulations.gov.*

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.8.

Cem Hatipoglu,

Associate Administrator for Vehicle Safety Research.

[FR Doc. 2021–00390 Filed 1–11–21; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Modifications to Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 27, 2021.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 5, 2021.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
		Special Permits Data	
3121–M	Department of Defense (Military Surface Deployment & Distribution Command).	172.101(i)	To modify the special permit to correct certain references and practices to more accurately align with current regulations and practices. (mode 1)
7765–M	Cobham Mission Systems Orchard Park Inc.	173.302a(a)(1)	To modify the special permit to remove part numbers which are now covered under a different permit and to update maximum service pressure of authorized cylinders. (modes 1, 2, 3, 4)
10631–M	Department of Defense (Military Surface Deployment & Distribution Command).	173.243, 173.244	To modify the special permit to correct certain references and practices to more accurately align with current regulations and practices. (mode 1)
10922–M	FIBA Technologies, Inc	173.302(a), 180.205, 180.207(d)(1), 172.302(c).	To modify the special permit to authorize a 10-year retest for ISO cylinders and tubes transporting certain hazardous materials. (modes 1, 2, 3, 4, 5)
12116–M	Proserv UK Ltd	173.201, 173.301(f), 173.302a, 173.304a.	To modify the special permit to authorize a new design and corrosion resistant cylinder. (modes 1, 2, 3, 4)
14782–M	Southern States, LLC	173.304a	To modify the special permit to act as an approval and to comply with the International Maritime Dangerous Goods Code. (modes 1, 2, 3, 4, 5)
15483–M	National Aeronautics and Space Administration.	173.302a	To modify the special permit to authorize a different 2.2 gas to be incorporated into the permit. (modes 1, 2, 3, 4, 5)
16074–M	Welker, Inc	173.201, 173.202, 173.203	To modify the special permit to clarify the volume capacity of the approved pressure vessels. (modes 1, 2, 3, 4)
20706–M	Southern States, LLC	172.301(c), 173.304(a)	To modify the special permit to authorize the transportation in commerce of compressed sulfur hexafluoride gas in non-DOT specification packaging in accordance with IMDG Regulations. (modes 1, 2, 3, 4)
21018–M	Packaging and Crating Technologies, LLC.	172.200, 172.300, 172.400, 172.600, 172.700(a), 173.185(b), 173.185(c), 173.185(f).	To modify the special permit to authorize four new package sizes. (modes 1, 2, 3)
21063–M	Cobham Mission Systems Orchard Park Inc.	173.302(a)(1)	To modify the special permit to decrease the test pressure. (modes 1, 2, 3, 4)

[FR Doc. 2021–00401 Filed 1–11–21; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[PHMSA–2019–0098]

Lithium Battery Air Safety Advisory Committee; Notice of Public Meeting

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Lithium Battery Air Safety Advisory Committee.

DATES: The meeting will be held virtual-only on March 3–4, 2021, from 10:00 a.m. to 5:00 p.m. Eastern Standard Time. Requests to attend the meeting must be received by February 17, 2021. Persons requesting to speak during the meeting must submit a written copy of their remarks to DOT by February 17, 2021. Requests to submit written materials to be reviewed during the meeting must be received no later than February 17, 2021.

ADDRESSES: The meeting will be held virtually. Details to access the virtual meeting will be posted on the Committee website located at: *https://www.phmsa.dot.gov/hazmat/rulemakings/lithium-battery-safety-advisory-committee.* The E-Gov website is located at *https://www.regulations.gov.* Mailed written comments intended for the committee should be sent to Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Lindsey Constantino or Steven Webb, PHMSA, U.S. Department of Transportation. Telephone: (202) 360–7044. Email: *lithiumbatteryFACA@dot.gov.* Any committee related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The Lithium Battery Air Safety Advisory Committee was created under the Federal Advisory Committee Act (FACA, Pub. L. 92–463), in accordance with Section 333(d) of the FAA Reauthorization Act of 2018 (Pub. L. 115–254).

II. Agenda

At the meeting, the agenda will cover the following topics as specifically outlined in section 333(d) of Public Law 115–254:

(a) Facilitate communication amongst manufactures of lithium batteries and products containing lithium batteries, air carriers, and the Federal government.

(b) Discuss the effectiveness, and the economic and social impacts of lithium battery transportation regulations.

(c) Provide the Secretary with information regarding new technologies and transportation safety practices.

(d) Provide a forum to discuss Departmental activities related to lithium battery transportation safety.

(e) Advise and recommend activities to improve the global enforcement of air transportation of lithium batteries, and the effectiveness of those regulations.

(f) Provide a forum for feedback on potential U.S. positions to be taken at international forums.

(g) Guide activities to increase awareness of relevant requirements.

(h) Review methods to decrease the risk posed by undeclared hazardous materials.

A final agenda will be posted on the Lithium Battery Air Safety Advisory Committee website at least one week in advance of the meeting.

III. Public Participation

The meeting will be open to the public. DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than February 17, 2021.

There will be five (5) minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, PHMSA may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to Lithium Battery Air Safety Advisory Committee members. All prepared remarks submitted on time will be accepted and considered as part of the record. Any member of the public may present a written statement to the committee at any time.

Copies of the meeting minutes, and committee presentations will be available on the Lithium Battery Air Safety Advisory Committee website. Presentations will also be posted on the E-Gov website in docket number PHMSA [PHMSA–2019–0098], within 30 days following the meeting.

Written comments: Persons who wish to submit written comments on the meetings may submit them to docket [PHMSA–2019–0098] in the following ways:

1. E-Gov website: This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

2. Mail

Instructions: Identify the docket number [PHMSA–2019–0098] at the beginning of your comments. Note that all comments received will be posted without change to the E-Gov website, including any personal information provided. Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, consider reviewing DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477), or view the Privacy Notice on the E-Gov website before submitting comments.

Docket: For docket access or to read background documents or comments, go to the E-Gov website at any time or visit the DOT dockets facility listed in the **ADDRESSES** category, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on [PHMSA–2019–0098]'' The docket clerk will date stamp the postcard prior to returning it to you via the U.S. mail.

Privacy Act Statement

DOT may solicit comments from the public regarding certain general notices. DOT posts these comments, without edit, including any personal information the commenter provides, to the E-Gov website, as described in the system of records notice (DOT/ALL–14 FDMS).

Signed in Washington, DC, on January 7, 2021.

William S. Schoonover,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2021–00440 Filed 1–11–21; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Actions on Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before February 11, 2021.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 05, 2021.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application	Applicant	Regulation(s) affected	Nature of the special permits thereof
7573–M	Department of Defense (Military Surface Deployment & Distribution Command).	172.1, 175.1	To modify the special permit to update references to the new AFMAN manual.

Application	Applicant	Regulation(s) affected	Nature of the special permits thereof
9232–M	Department of Defense (Military Surface Deployment & Distribution Command).		To modify the special permit to update references to the new AFMAN manual.
9998–M	Accumulators, Inc	173.302(a)	To modify the special permit to add three additional bladder designs.
12102–M	Haz Mat Services, Incorporated.	173.56(i)	To modify the special permit to authorize additional Class 3 and Division 4.1 explosives.
16146–M	Department of Defense (Military Surface Deployment & Distribution Command).	171.22(e), 172.101(j)	To modify the permit to reference update references to the 24 series of the Air Force regulations.
21056–N	Cummins Inc	173.185(a)(1)	To authorize the transportation in commerce of prototype lithium batteries by cargo-only aircraft.
21057–N	Spaceflight, Inc	173.185(a)(1)	To authorize authorizes the transportation in commerce of low production lithium ion batteries contained in equipment (spacecraft).
21087–N	Istanbul Genlesme Ve Hidrofor Tanklari Makine Sanayi Ve Ticaret Anonim Sirketi.	173.306(g)(1)	To authorize the manufacture, mark, sale and use of non-DOT specification water pump system tanks charged with a compressed gas that vary from the required size specified in 173.306(g).
21106–N	General Motors LLC	173.185(b)(3)(ii)	To authorize the transportation in commerce of lithium ion cells in Large Packaging by highway and rail.
21110–N	Norfolk Southern Railway Company.	174.24, 174.26	To authorize the use of electronic means to maintain and communicate on-board train consist information in lieu of paper documentation when hazardous materials are transported by rail.
21128–N	Department of Defense (Military Surface Deployment & Distribution Command).	180.207(c)	To authorize a one-time 5-year extension to the 10-year requalification date identified on FIBA ISO trailers with UN11120 cylinders.
21138–M	LG Energy Solution	173.185(f)(3)	To modify the special permit to remove the requirement of a photocopy of the SOC of the contents be on the outside of the package.
21146–N	APM Terminals Pacific LLC	172.704(c)(2)	To authorize hazmat employers, who employ maritime transportation workers and are unable to provide recurrent training consistent with the HMR due to restrictions resulting from the COVID–19 public health emergency, to delay the recurrent training for the applicable hazmat employees.
21151–N	Toyota Gazoo Racing Europe Gmbh.	172.101(j)	To authorize the transportation in commerce of prototype lithium batteries in support of the Toyota Racing Team at the World Endurance Championship.
21158–N	Ups Supply Chain Solutions, Inc.	173.217(d)	To authorize the transportation in commerce of dry ice by air in accordance with 173.217(d) when the dry ice has previously been used to refrigerate diagnostic or treatment specimens.
21166–N	Federal Cartridge Company	173.56(b)	To authorize the transportation in commerce of six primer caps that were previously approved with lead styphnate as the primer explosive to be transported with a proprietary explosive formulation that replaces the lead styphnate.
SPECIAL PERMITS DATA—Denied			
21086–N	Carmi Flavor and Fragrance Company, Inc.	173.120(a)	To authorize the transportation in commerce of flammable liquids below their flashpoint without being regulated as hazardous materials.
21150–N	Zeco, Inc.	172.203(a), 172.302(c), 173.225(h).	To authorize the transportation in commerce of Division 5.2 materials in non-authorized bulk packagings.
SPECIAL PERMITS DATA—Withdrawn			
21089–N	Procyon-alpha Squared, Inc.	172.200, 172.300, 172.600, 172.400.	To authorize the manufacture, mark, sale, and use of packaging for use with end-of-life/waste lithium ion cells, batteries and lithium ion cells and batteries contained in equipment shipped for recycling or disposal.

[FR Doc. 2021–00402 Filed 1–11–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before February 11, 2021.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 5, 2021.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
		SPECIAL PERMITS DATA	
21152–N	Halendt Solutions, LLC	180.205	To authorize transportation in commerce certain gasses in cylinders produced in accordance with specification 3A, 3AX. 3AA, 3AAX, 3T and UN–ISO cylinders made in accordance with ISO 11120, having been requalified by acoustic emission (AE) and ultrasonic examination (UE). (modes 1, 2, 3, 4, 5)
21153–N	BVI Medical, Inc	171.24(d)(2), 173.302(f)	To authorize the transportation in commerce of oxidizing gases contained in small pressure vessels via cargo-only aircraft. (mode 4)
21154–N	Erickson Incorporated	172.101(j), 172.200, 172.301(c), 172.302(c), 173.315(j)(1), 175.30.	To authorize the transportation in commerce of certain materials attached to or suspended from an aircraft in support of construction operations when no other suitable means are available or impracticable or when an aircraft is the only safe means of transportation without being subject to certain hazard communication requirements, quantity limitations, packing or loading and storage requirements. (mode 4)
21155–N	Aithre, Inc.	172.301(c), 173.302a(a)(1), 180.205.	To authorize the manufacture, mark, sale, and use non-DOT specification fully wrapped carbon-fiber reinforced aluminum lined cylinders for the transportation in commerce of UN1072 compressed oxygen. (modes 1, 2, 3).
21157–N	Innophos, Inc		To authorize the transportation in commerce of polyphosphoric acid in non-authorized specification packaging. (mode 1)
21159–N	Aithre, Inc	172.301(c), 173.302a(a)(1), 180.205.	To authorize the transportation in commerce of non-DOT specification cylinders containing oxygen. (modes 1, 2, 3)
21160–N	Alliant Techsystems Operations LLC.	173.185(a)(1)	To authorize the transportation in commerce of lithium batteries, that are not of a type proven to have passed the requirements of 38.3 in the UN Manual of Tests and Criteria, when contained in a subassembly. (modes 1, 4)
21161–N	Structure Probe, Inc	172.101(j)	To authorize the transportation in commerce of asbestos via passenger and cargo-only aircraft. (mode 4)
21162–N	Hexagon Masterworks, Inc	173.301(a)(1)	To authorize the transportation in commerce of partially filled composite cylinders with Hydrogen gas with a maximum charged pressure less than 5% of the COPV designed service/operating pressure. (modes 1, 2, 3, 4)
21163–N	United Initiators, Inc	178.345–10(b)(1)	To authorize the transportation in commerce of organic peroxides in cargo tank motor vehicles that utilize alternative pressure relief devices, specifically 4—12'' diameter rupture disks in lieu of the prescribed reclosing PRD. (mode 1)

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21165–N	North Carolina Department of Agriculture & Consumer Services.	172.400	To authorize one-time transportation by highway of certain biological and infectious substances, dilute pesticide solutions and small quantities of laboratory reference standard materials from two adjacent facilities to newly constructed facility. (mode 1)
21167–N	KULR Technology Corporation	173.185(a)(1)	To authorize the manufacture, mark, sale, and use of alternative packaging for shipments of prototype and low production lithium batteries. (modes 1, 2, 3, 4)
21168–N	Nexair, LLC	172.203(a), 180.205(c), 180.209(a), 180.209(b)(1), 180.209(b)(1)(iv).	To authorize the transportation in commerce of certain Division 2.1 and 2.2 hazardous materials in DOT Specification 3AL cylinders, cylinders manufactured under DOT–SP 12440, and ISO 7866 cylinders that are requalified every ten years rather than every five years using 100% ultrasonic examination. (modes 1, 2, 3, 4, 5)
21169–N	Americase, LLC	172.200, 172.700(a)	To authorize the manufacture, mark, sale, and use of thermal packaging for the purpose of shipping lithium batteries for recycling. Shipments are provided limited relief from the shipping papers and training required in 49 CFR Subparts C and H of Part 172 of the HMR. (modes 1, 2, 3)

[FR Doc. 2021–00400 Filed 1–11–21; 8:45 am]
BILLING CODE 4909–60–P

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Investment Securities

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, ''Investment Securities.''

DATES: You should submit written comments by March 15, 2021.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0205, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0205'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection [1] by the following method:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit''. This information collection can be located by searching by OMB control number ''1557–0205'' or ''Investment Securities.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

[1] Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each renewal of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the renewal of the collection of information set forth in this document.

Title: Investment Securities.

OMB Control No.: 1557–0205.

Description: Under 12 CFR 1.3(h)(2), a national bank may request an OCC determination that it may invest in an entity that is exempt from registration under section 3(c)(1) of the Investment

Company Act of 1940 [2] if the portfolio of the entity consists exclusively of assets that a national bank may purchase and sell for its own account. The OCC uses the information contained in the request as a basis for ensuring that the bank's investment is consistent with its investment authority under applicable law and does not pose unacceptable risk. Under 12 CFR 1.7(b), a national bank may request OCC approval to extend the five-year holding period for securities held in satisfaction of debts previously contracted for up to an additional five years. In its request, the bank must provide a clearly convincing demonstration of why the additional holding period is needed. The OCC uses the information in the request to ensure, on a case-by-case basis, that the bank's purpose in retaining the securities is not speculative and that the bank's reasons for requesting the extension are adequate. The OCC also uses the information to evaluate the risks to the bank in extending the holding period, including potential effects on the bank's safety and soundness.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 25.

Estimated Total Annual Burden: 460 hours.

Frequency of Response: On occasion. Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility; (b) The accuracy of the OCC's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Bao Nguyen,

Principal Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2021–00434 Filed 1–11–21; 8:45 am]

BILLING CODE 4810–33–P

[2] 15 U.S.C. 80a–3(c)(1).

DEPARTMENT OF THE TREASURY

Multiemployer Pension Plan Application To Reduce Benefits

AGENCY: Department of the Treasury.

ACTION: Notice of availability; request for comments.

SUMMARY: The Board of Trustees of the Roofers Local No. 88 Pension Fund, a multiemployer pension plan, has submitted an application to reduce benefits under the plan in accordance with the Multiemployer Pension Reform Act of 2014 (MPRA). The purpose of this notice is to announce that the application submitted by the Board of Trustees of the Roofers Local No. 88 Pension Fund has been published on the website of the Department of the Treasury (Treasury), and to request public comments on the application from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Roofers Local No. 88 Pension Fund.

DATES: Comments must be received by February 26, 2021.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Commenters are strongly encouraged to submit public comments electronically. Treasury 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.

Comments may be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW, Room 1224, Washington, DC 20220, Attn: Danielle Norris. Comments sent via facsimile, telephone, or email will not be accepted.

Additional Instructions. All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as your Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on *www.regulations.gov* or upon request. Comments posted on the internet can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: For information regarding the application from the Roofers Local No. 88 Pension Fund, please contact Treasury at (202) 622–1534 (not a toll-free number).

SUPPLEMENTARY INFORMATION: MPRA amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the Treasury, which must be approved or denied in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor.

On December 15, 2020, the Roofers Local No. 88 Pension Fund's Board of Trustees submitted an application for approval to reduce benefits under the plan. As required by MPRA, that application has been published on Treasury's website at *https://home.treasury.gov/services/the-multiemployer-pension-reform-act-of-2014/applications-for-benefit-suspension.* Treasury is publishing this notice in the **Federal Register**, in consultation with PBGC and the Department of Labor, to solicit public comments on all aspects of the Roofers Local No. 88 Pension Fund's application.

Comments are requested from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Roofers Local No. 88 Pension Fund. Consideration will be given to any comments that are timely received by Treasury.

David Kautter,

Assistant Secretary for Tax Policy.

[FR Doc. 2021–00392 Filed 1–11–21; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0089]

Agency Information Collection Activity Under OMB Review: Statement of Dependency of Parent(s)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of

Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0089''.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *danny.green2@va.gov* . Please refer to ''OMB Control No. 2900–0089'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Application for DIC, Death Pension, and/or Accrued Benefits; Application for Dependency and Indemnity Compensation by a Surviving Spouse or Child; Application for Dependency and Indemnity Compensation, VA Form 21P–509.

OMB Control Number: 2900–0089.

Type of Review: Extension of a currently approved collection.

Abstract: The Department of Veterans Affairs (VA), through its Veterans Benefits Administration (VBA), administers an integrated program of benefits and services, established by law, for veterans, service personnel, and their dependents and/or beneficiaries. Title 38 U.S.C. 5101(a) provides that a specific claim in the form provided by the Secretary must be filed in order for benefits to be paid to any individual under the laws administered by the Secretary. VA Form 21P–509 is the prescribed form to gather income and dependency information from claimants who are seeking payment of benefits as, or for, a dependent parent. This information is necessary to determine dependency of the parent and make determinations which affect the payment of monetary benefits. VA Form 21P–509 is used by a Veteran seeking to establish their parent(s) as dependent(s), and by a surviving parent seeking death compensation. Without this information, determination of entitlement would not be possible. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 85 FR 213 on November 3, 2020, page 69696.

Affected Public: Individuals or Households.

Estimated Annual Burden: 4,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 8,000.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2021–00373 Filed 1–11–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board, Amended Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Federal Advisory Committee Act, 5 U.S.C. App.2, that a meeting of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board (JBL/CS SMRB) will be held Wednesday, January 6, 2021, via WebEx. The meeting will begin at 3:00 p.m. and end at 5:00 p.m. Eastern daylight time. The meeting will have an open session from 3:00 p.m. until 3:30 p.m. and a closed session from 3:30 p.m. until 5:00 p.m.

The purpose of the open session is to meet with the JBL/CS Service Directors to discuss the overall policies and process for scientific review, as well as disseminate information among the Board members regarding the VA research priorities.

The purpose of the closed session is to provide recommendations on the scientific quality, budget, safety and mission relevance of investigator-initiated research applications submitted for VA merit review evaluation. Applications submitted for review include various medical specialties within the general areas of biomedical, behavioral and clinical science research. The JBL/CS SMRB meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal research applications, which involve reference to staff and consultant critiques of research applications. Discussions will deal with scientific merit of each application and qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research applications. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing the subcommittee meetings is in accordance with Title 5 U.S.C. 552b(c) (6) and (9)(B).

Members of the public who wish to attend the open JBL/CS SMRB meeting should join via WebEx at: Meeting number (access code) 199 877 4715, meeting password: 5WDkEZaG?48. *https://veteransaffairs.webex.com/webappng/sites/veteransaffairs/meeting/download/28f6da1fcb6a4eb9b65f249b841ff391?siteurl=veteransaffairs&MTID=md9552f12d41ecc3645d2e9a6258fdd61.* Those who would like to obtain a copy of the minutes from the closed subcommittee meetings and rosters of the subcommittee members should contact Pauline Cilladi-Rehrer, MSBA, Designated Federal Officer, (14RD), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at 202–443–5607 or at *Pauline.Cilladi-Rehrer@va.gov.*

Dated: January 6, 2021.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2021–00335 Filed 1–11–21; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 86 Tuesday,

No. 7 January 12, 2021

Part II

Department of Housing and Urban Development

24 CFR Parts 3280, 3282 and 3285

Manufactured Home Construction and Safety Standards; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 3280, 3282, and 3285

[Docket No. FR–6149–F–02]

RIN 2502–AJ49

Manufactured Home Construction and Safety Standards

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Manufactured Home Construction and Safety Standards (the Construction and Safety Standards) by adopting recommendations made to HUD by the Manufactured Housing Consensus Committee (MHCC), as modified by HUD. The National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act) requires HUD to publish in the proposed revised Construction and Safety Standards submitted by the MHCC. The MHCC prepared and submitted to HUD its third group of recommendations to improve various aspects of the Construction and Safety Standards. HUD reviewed those recommendations and adopted some of them after making editorial revisions and some additions. This final rule further revises the Construction and Safety Standards based on HUD's review and incorporation of certain public comments.

DATES: *Effective Date:* March 15, 2021. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of March 15, 2021. The incorporation by reference of certain other publications listed in the rule was approved by the Director of the Federal Register as of August 11, 1987.

FOR FURTHER INFORMATION CONTACT: Teresa B. Payne, Administrator, Office of Manufactured Housing Programs, Office of Housing, U.S. Department of Housing and Urban Development, 451 7th Street SW, Washington DC 20410; telephone 202–402–5365 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8389 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) (the Act) authorizes HUD to establish and amend the Federal Manufactured Home Construction and Safety Standards (the Construction and Safety Standards) codified in 24 CFR part 3280. The Act was amended in 2000 by the Manufactured Housing Improvement Act of 2000 (Pub. L. 106–569, approved December 27, 2000) which established the Manufactured Housing Consensus Committee (MHCC), a consensus committee responsible for providing HUD recommendations to adopt, revise and interpret the Construction and Safety Standards. HUD's Construction and Safety Standards apply to the design, construction, and installation of new homes. Changes to the collective standards are not retroactively enforced by HUD as applicable to previously designed, built, and installed homes.

As amended, the purposes of the Act (enumerated at 42 U.S.C. 5401) are: ''(1) To protect the quality, durability, safety, and affordability of manufactured homes; (2) to facilitate the availability of affordable manufactured homes and to increase homeownership for all Americans; (3) to provide for the establishment of practical, uniform, and, to the extent possible, performance-based Federal construction standards for manufactured homes; (4) to encourage innovative and cost-effective construction techniques for manufactured homes; (5) to protect residents of manufactured homes with respect to personal injuries and the amount of insurance costs and property damages in manufactured housing consistent with the other purposes of this section; (6) to establish a balanced consensus process for the development, revision, and interpretation of Construction and Safety standards for manufactured homes and related regulations for the enforcement of such standards; (7) to ensure uniform and effective enforcement of Construction and Safety standards for manufactured homes; and (8) to ensure that the public interest in, and need for, affordable manufactured housing is duly considered in all determinations relating to the Federal standards and their enforcement.''

In addition, the amended Act generally requires HUD to establish Construction and Safety Standards that are reasonable and practical, meet high standards of protection, are performance-based, and are objectively stated. Congress specifically established the MHCC to develop proposed revisions to the Construction and Safety Standards. The Act provides specific procedures (42 U.S.C. 5403) for the MHCC process.

The MHCC held its first meeting in August 2002 and began work on reviewing possible revisions to the Construction and Safety Standards. As the MHCC proceeded, proposed revisions to the Construction and Safety Standards were divided into sets. The first set of revisions proposed by the MHCC was published as a final rule in the **Federal Register** on November 30, 2005 (70 FR 72024). The second set of revisions proposed by the MHCC was published as a final rule published in the **Federal Register** on December 9, 2013 (78 FR 73965). This final rule is based in part on the third set of MHCC proposals to revise the Construction and Safety Standards published as a proposed rule in the **Federal Register** on January 31, 2020 (85 FR 5589). The proposed rule included a MHCC proposal to revise the Construction and Safety Standards to reduce the regulatory burden by eliminating the need for manufacturers to obtain special approvals from HUD for certain construction features and options. HUD reviewed the MHCC's proposals and made editorial revisions prior to publishing the January 31, 2020, proposed rule. HUD also added proposals that complement the MHCC's recommendations.

As explained in the January 31, 2020, proposed rule, HUD decided not to include certain MHCC recommendations due to pending regulations for improving energy efficiency in manufactured homes being prepared by the U.S. Department of Energy (DOE) under the Energy Independence and Security Act (Pub. L. 110–140, approved December 19, 2007) (EISA). DOE published a Notice of Proposed Rulemaking on June 17, 2016 (81 FR 39756) and, more recently, a Notice of Data Availability, Request for Information on August 3, 2018 (83 FR 38073) regarding energy conservation standards for manufactured housing. Given this DOE rulemaking, HUD decided to postpone action on MHCC-proposed revisions to §§ 3280.502 and 3280.506(b), except for the mating wall of attached manufactured homes at § 3280.506(b)—an option that is needed to avoid a more burdensome alternative approval process (24 CFR 3282.14—Alternative construction of manufactured homes). HUD also decided not to move forward with a new proposal to add requirements for draftstopping to the Construction and Safety Standards. HUD will not include or move forward with these recommendations in this final rule.

II. Changes Made at the Final Rule Stage

In consideration of the public comments and HUD's experience

implementing the program, HUD has made certain editorial revisions to HUD's proposals made in the January 31, 2020, proposed rule. In general, the revisions adopt changes to the codified regulations that reinforce the Act's purposes, namely providing benefits to consumers, homeowners, and the broader community; promoting and improving consumer and home safety; reducing regulatory barriers and expanding consumer options; and allowing use of some for the latest building technologies and materials while creating more consistency with State-adopted residential building codes. HUD declined to adopt some standards or commenters' suggested changes in some instances based on considerations of the statutorily prescribed MHCC process, the lack of authority under the Act for HUD to regulate design and construction of certain types of housing, and consumer safety.

The final rule will revise certain sections of the Construction and Safety Standards, as well as the incorporated reference standards where indicated. The revisions described below are based on HUD's review and consideration of the public comments on the proposed rule, HUD's experience with the program, the existent Construction and Standards, and the issues raised in the proposed rule. The final rule also makes minor technical edits to the Construction and Standards.

§ 3280.5 Data Plate

HUD revised § 3280.5 by revising paragraph (d), pursuant to public comments, to streamline data entry. Paragraph (d) now reads, ''(d) This manufactured home IS designed to accommodate the additional loads imposed by the attachment of an attached accessory building or structure in accordance with the manufacturer installation instructions. The additional loads are in accordance with the design load(s) identified on this Data Plate; or This manufactured home IS NOT designed to accommodate the additional loads imposed by the attachment of an attached accessory building or structure in accordance with the manufacturer installation instructions.'' The appropriate designation may be made while still setting forth information that may be used by state and local authorities that have enforcement authority for site-built structures that are not integral to the manufactured home produced and shipped by the manufactured home manufacturer. HUD seeks to preclude a home from being taken out of compliance when an attached accessory building or structure is built and added on at the home site.

§ 3280.108 Interior Passage

HUD revised paragraph (c) in this section in accordance with the public comments by creating an exception to the requirement for doors to closets, pantries, and doors to toilet compartments in single-section homes. Single-section manufactured homes have a smaller living space when compared with a multi-section manufactured home or a typical site-built home and, thus, closet and pantry doors should not be subject to the same clear opening requirements as a multi-section manufactured home or a typical site-built home.

§ 3280.114 Stairways

HUD adjusted the rise and run dimensions based on public comment. The changes recommended by public commenters on the proposed rule will give manufacturers more flexibility when trying to balance the smaller form-factor of most homes with consumer demand for multiple stories. The edits clarify that the standards do not apply to exterior stairways that are built at the home site or stairways to basement areas that are not designed and built as part of the manufactured home.

§ 3280.209 Smoke Alarm Requirements

While HUD did not revise this section in the proposed rule, a public commenter recommended that combination smoke and carbon monoxide alarms be added as acceptable devices to parallel the International Residential Code (IRC). Furthermore, the changes to this section are intended to work in conjunction with the changes to § 3280.211.

§ 3280.211 Carbon Monoxide Detectors

''Alarms'' and ''detectors'' are different items that serve different purposes. HUD changed references from ''detector'' to ''alarm'' in response to public comment. HUD also revised this section to include specific locations where such items must be installed rather than just referencing the more general standards, such as the National Fire Protection Association Standard 720.

§ 3280.212 Factory Constructed or Site-Built Attached Garages

Public commenters suggested that the distinction between attached and self-supported structures be emphasized in this section. HUD clarified that paragraph (a) applies only to garages which are not self-supported and revised the fire separation requirements in paragraph (c), including that the garage must be separated from the home with appropriate gypsum wallboard or equivalent. HUD also added paragraph (h) as suggested by public comment to include that a site-built, self-supported garage is considered an add-on subject to § 3282.8(j)(1) and state and local authorities.

§ 3280.213 Factory Constructed or Site-Built Attached Carports

Similar to the previous section, public commenters also suggested that the distinction between attached and self-supported structures be emphasized in this section. HUD made several changes to this section based on public comment, including adding a provision in paragraph (b) that the manufacturer may provide the maximum live and dead loads, and the applied loading locations that the home is designed to resist from the carport, and other design limitations or restrictions.

§ 3280.504 Condensation Control and Installation of Vapor Retarders

Based on public comment, HUD clarified the distinction between mating walls and fire separation walls in paragraph (b), stating that the fire separation wall between each attached manufactured home must be considered to be an exterior wall pursuant to subpart K.

§ 3280.609 Water Distribution Systems

In order to better protect residents, HUD added relief pipe turndown requirements to this section based on public comment, stating that exterior relief drains shall be directed down and shall terminate between 6″ and 24″ above finished grade. This is high enough to prevent backflow, but low enough to reduce the risk of injury or accident.

§ 3280.705 Gas Piping Systems

HUD eliminated ''hard pipe'' in paragraph (I)(8)(iii), to account for a flex gas connector rather than a quick-disconnect.

§ 3280.710 Venting, Ventilation, and Combustion Air

HUD clarified that the placement restrictions apply to exhausts of fuel burning appliances and used the defined term ''habitable rooms'' in this section. This provides consistency across the regulation.

§ 3280.904 Specific Requirements for Designing the Transportations System

In addition to some language and grammatical changes, HUD added a

requirement to check weights with the home in a level position ready for transport in paragraph (b)(4)(ii), an explicit reference to the Department of Transportation's regulations at 49 CFR 393.52(d) in paragraph (b)(9)(ii) regarding stopping distance, and textual changes to paragraph (b)(9)(iii) regarding electrical brake wiring.

§ 3280.1002 Definitions

In this section, HUD edited the definition of ''Fire separation wall'' to emphasize the separation between attached manufactured homes.

§ 3280.1003 Attached Manufactured Home Unit Separation

HUD clarified this section based on public comment, particularly in paragraph (a)(1) related to fire resistance. These edits will help HUD address minimum fire separation requirements for common walls of attached manufactured housing solutions in the Standards.

III. The Public Comments

The public comment period for the January 31, 2020, proposed rule closed on March 31, 2020. HUD received forty-one (41) public comments in response to the proposed rule, from various manufactured home associations, non-profit organizations, and other interested parties. This section presents the significant issues, questions, and suggestions submitted by public commenters, and HUD's responses to these issues, questions, and suggestions.

Most commenters supported updates to the Construction and Safety Standards, and encouraged HUD to continue working on updates to, and provided specific recommendations for, certain sections of the Construction and Standards. For example, several commenters supported adding two-family or two- and three-family dwelling units to the new Subpart K, Attached Manufactured Homes and Special Construction. Some commenters also suggested deleting or removing certain changes proposed by HUD. For example, some commenters opposed or requested clarification of HUD's proposed changes to stair rise and run requirements, and suggested changes to create consistency among the Standards' landing requirements and clarify whether certain requirements apply to stairs inside, or inside and outside, the home.

The following sections summarize the comments received on the proposed rule and HUD's responses:

General Support

The majority of commenters expressed general support for the proposed changes as part of HUD's effort to update the Construction and Safety Standards. These commenters stated that the proposed changes would benefit homeowners and the broader community, promote or improve consumer and home safety, allow use of the latest building technologies and materials, create more consistency with State-adopted residential building codes for site-built housing, expand consumer amenity options (including attached garages, carports, decks and accessory buildings), help to include two-story and multifamily guidelines, and eliminate regulations that impede broad access to affordable housing. Several commenters also urged HUD to move forward with publishing the next set of proposed updates to address outstanding items.

HUD Response: HUD agreed with the commenters that the proposed changes would provide benefits to consumers, homeowners, and the broader community, and help promote the other purposes and policies of the National Manufactured Housing Construction and Safety Standards Act of 1974.

Comment: Testing requirements should be included but be accredited to ISO/IEC 17025 or 17020 by accredited testing laboratories that are signatories to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement (ILAC MRA).

One commenter stated that several parts of the proposed rule reference testing, such as American Society for Testing and Materials, Standard Test Methods for Fire Tests of Building Construction and Materials (ASTM E 119), and recommended that these laboratory tests be conducted by ISO/IEC 17025 accredited testing laboratories so as to be assured that the testing results are generated by an entity that has been found to be technically competent by an independent, accreditation body. Two commenters supported testing requirements, but recommended that these laboratory tests be accredited to ISO/IEC 17025 or 17020 by accredited testing laboratories that are signatories to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement (ILAC MRA), to assure that the testing results are generated by an entity that has been found to be technically competent by an independent accreditation body. One commenter added that this would allow HUD to focus resources on program oversight and/or research for technical advancements. The commenter provided a link to an example of effective models whereby government agencies rely on ISO/IEC 17020 accreditation programs (*https://www1.nyc.gov/site/buildings/industry/recognized-accrediting-bodies.page*).[1]

HUD Response: HUD disagreed with the commenters. HUD's regulations at 24 CFR 3280.2 require products to be listed, certified, or labeled by a nationally recognized testing laboratory, inspection agency, or other organization concerned with product evaluation that maintains periodic inspection of production of labeled equipment or materials, and by whose labeling indicates compliance with nationally recognized standards or tests to determine suitable usage in a specified manner. HUD also believed that this recommendation should be submitted for MHCC review and consideration, that it is not appropriate for HUD to integrate these changes at this final rule stage, and the commenter should make the proposal through the MHCC process through the following website: *http://mhcc.homeinnovation.com/*.[2]

Comment: HUD should adopt universal design standards.

A commenter who identified as a person with a disability recommended that HUD adopt universal design standards in manufactured home construction and encourage communities and housing agencies to do likewise.

HUD Response: HUD appreciated the commenter's perspective that HUD adopt universal design standards. While HUD is fully supportive of the need for affordable and accessible housing, it noted that universal design can be accomplished within the minimum Construction and Safety standards requirements already codified. Further, many home manufacturers currently offer homes designed and constructed to meet universal design standards without conflicting with HUD's current minimum standards.

General Opposition

Some commenters stated that the several of the provisions proposed would increase manufactured home installers' liability and responsibility if the proposed rule is advanced without significant change. The commenters stated home installers were not included in deliberations, and, as such,

[1] NYC Buildings, *Recognized Accrediting Bodies, NYC.gov, https://www1.nyc.gov/site/buildings/industry/recognized-accrediting-bodies.page* (last visited April 20, 2020).

[2] Manufactured Housing Consensus Committee, MHCC Proposed Change Form, *http://mhcc.homeinnovation.com/*.

HUD should not move forward with this rule.

HUD Response: HUD disagreed with the commenter that manufactured home installers were not included in deliberations. The MHCC membership has included and continues to include representation from at least one individual with manufactured home installer interest. The MHCC process is administered in an open format in which any member of the public, including manufactured home installers, may participate and address the Committee, as well as propose changes for MHCC review. All such meetings are published in the **Federal Register** at least 30 days in advance of meetings.

Comment: Manufacturer Documentation.

One commenter stated that the proposed rule's requirements for the manufacturer to provide documentation poses problems, because HUD does not require inspection agencies to check any of the documents the manufacturer provides in the home. The commenter stated this situation resulted from HUD's Interpretative Bulletin H–1–77,[3] which the commenter asserted complicates several proposed changes, namely those at §§ 3280.212, 3280.213, 3280.612, and 3280.709. The commenter stated that if the proposed rule becomes final, HUD should rescind Interpretive Bulletin H–1–77 to account for the installation program loophole and the failure to provide assurance that the proper documentation would be shipped with the home. Another commenter stated a concern with potential liability for installation work related to accessory buildings and other on-site installation, such as certain appliances the proposed rule states can be shipped ''loose'' to the homesite. According to the commenter, to ensure that the end buyer or resident of the home has a home that has been safely manufactured, transported, and installed, it is vital that all installation documentation is shipped with and remains with the home.

HUD Response: HUD is aware that standards for some construction features that are addressed in this rulemaking affect the installation process and therefore impact the responsibilities of home installers. All construction features included in this final rule were previously available through the Alternative Construction process and in all instances where an Alternative Construction letter had been issued, HUD required specific documentation to be provided with each affected manufactured home, including installation instructions. The same or similar documentation would continue to be required pursuant to the requirement for manufacturers to provide installation instructions in accordance with 24 CFR 3280.306(b) and 24 CFR 3285.2. Further, the home manufacturer instructions must provide minimum installation specifications so that the home is not taken out of compliance with the Construction and Standards and meets the Model Manufactured Home Installation Standards. These instructions are reviewed and approved by HUD-approved Design Approval Primary Inspection Agencies (DAPIA) and manufacturers are required to provide the instructions with each manufactured home.

HUD also disagreed with the commenter that requiring the manufacturer to provide the instructions, without requiring an inspection to verify the instructions are shipped with the home, complicates matters or otherwise poses risks to consumer health and safety. The manufacturers' installation instructions and documentation are required to be reviewed and approved by its DAPIA to help ensure conformance. Further, it is the manufacturers' responsibility to ensure that each home is provided with installation instructions and associated documentation as approved by its DAPIA. DAPIA-approved quality assurance manuals typically require manufacturer verification for the shipment of the installation instructions. It is the IPIA's responsibility to ensure the effectiveness of the quality assurance manuals. HUD may review and reconsider this matter further should evidence showing appropriate installation instructions are not being shipped with manufactured homes. The commenter(s) should submit proposed regulatory text through the MHCC process at *http://mhcc.homeinnovation.com/* so that the matter is reviewed by the MHCC.[4]

Comment: HUD should not use sub-regulatory guidance to establish Construction and Safety standards.

A commenter stated that HUD should repudiate the use of sub-regulatory ''guidance'' or ''field guidance'' memoranda and documents to establish de-facto manufactured housing ''standards.''

HUD Response: HUD is currently implementing Executive Order 13891, Promoting the Rule of Law Through Improved Agency Guidance Documents,[5] and this comment is not applicable to any aspect addressed in this rulemaking.

Comment: HUD should not provide competitive advantage to any housing type.

Another commenter expressed concern regarding any policy that may give one housing type an unwarranted competitive advantage and risks the occupants' health and safety. The commenter stated HUD should refrain from making any changes that would result in furthering the divide between the code requirements for manufactured homes and those that apply to homes that are stick-built or built using engineered building systems. The commenter urged HUD to maintain this balance and continue to facilitate consumer choice by ensuring that regulatory reform efforts do not favor manufactured homes over other residences, leading to consumer confusion and unfair marketplace competition.

HUD Response: HUD's authority to develop and implement standards is applicable only to homes meeting the statutory definition of a manufactured home. However, this rulemaking brings the Standards in closer alignment to standards imposed for other types of housing.

Comment: HUD has no authority to establish standards for structures attached to a manufactured home.

A commenter stated that HUD defined ''manufactured housing'' narrowly in § 3280.2 to mean a structure built on a permanent chassis and designed to be used as a dwelling. The commenter stated that while HUD has authority to establish requirements applicable to components within the chassis, it does not have the authority to establish standards for items outside or apart from the chassis. Rather, authority to regulate these structures rests with state and local authorities and their building code requirements and inspection protocols. ''Add-on or accessory buildings or structures'' are not built on a permanent chassis. Section 3285.903 provides conditions where add-on or attached accessory buildings or structures may be installed, but again fails to designate inspection responsibilities. The definition for ''Attached accessory building or structure'' proposed for addition to

[3] U.S. Department of Housing and Urban Development, *PIA Responsibility for Documents Required to be Provided with the Mobile Home, HUD.gov, https://www.hud.gov/sites/dfiles/OCHCO/documents/EIB-H-1-77.pdf.*

[4] Manufactured Housing Consensus Committee, MHCC Proposed Change Form, *http://mhcc.homeinnovation.com/.*

[5] 84 FR 55235 (Oct. 15, 2019).

§§ 3280.2 and 3285.5 further adds to the confusion indicating that it includes such items when they are designed for attachment and structural support from the manufactured home.

HUD Response: HUD's standards developed and implemented through this rulemaking are not intended to apply to the design and construction of site-built structures, including add-ons (in other words, the site-built garage, or the site-built carport). However, the standards and regulations established through this rulemaking do apply to the design and construction of the manufactured home, when the home is designed to have an attached accessory structure, such as the garage, carport, or similar add-on. The requirements established are to ensure that the manufactured home will continue to comply with the Construction and Safety Standards and that the residents' health and safety will be protected through means such as adequate structural load design and minimum fire separation and other requirements when applicable. The design, construction, and inspection of the attached accessory structure (site-built garage, site-built carport, or other site-built add-on) remains subject to any applicable state and or local requirements.

Subpart A, General

§ 3280.2 Definitions

One commenter opposed the definition change to ''attached accessory building or structure,'' while another commenter supported the proposed changes. Some commenters stated that proposed definition of ''Attached accessory building or structure'' fails to include stairs, which are needed for entry in almost every manufactured home.

One commenter further stated that the proposed rule would require that the ''basic manufactured home'' be designed for the attachment of these structures. This does not address the need for the manufacturers to modify their installation instructions to reflect the added weight and wind load that added structures would impose on the home's foundation.

Another commenter stated that the definition appears to open the flood gates for other additions to a manufactured home which can affect egress requirements as well as alter the electric, heating, plumbing and other systems. The commenter provided examples; awnings, porches, and ramadas typically are identified as a covered area projecting in front of an entrance, while cabanas are defined as a cabin, hut, or shelter, and garages are defined as a ''building'' for housing a motor vehicle. The commenter stated that these are totally separate structures which affect the home differently and can create safety hazards. The commenter suggested that the proposal should be rewritten, and garages should be addressed separately.

A commenter stated that the term ''basic manufactured home'' is not defined and pre-supposing that there is such a thing as a ''non-basic manufactured home.'' If this is the case, HUD should clearly indicate what they mean by these terms and how the construction and safety standards would apply. The commenter contended that regardless of HUD's differentiation in this case, the manufactured housing Construction and Safety standards should be applied consistently and any manufactured home, whether deemed ''basic'' or ''non-basic'' be clearly marketed as a manufactured home to avoid customer confusion and an expectation of the product being received.

HUD Response: HUD disagreed with commenters stating that HUD should establish requirements for stairs external to the manufactured home, which are needed for entry in most manufactured homes. HUD's established standards only govern the design and construction of the manufactured home, including all provisions addressed by this rulemaking. Requirements for external stairs that are necessary to provide entry to the homes remain subject to design and construction requirements of state and local jurisdictions as they are not intended to increase the living or storage area of the manufactured home and are dependent upon the siting and installation of each individual home which may vary by model, lot size, topography, and other aspects.

HUD agreed with the commenter stating that the proposed rule would require that the manufactured home be designed for the attachment of these site-built structures. However, HUD disagreed that the manufacturer would not be required to provide installation instructions that reflect the added weight and wind load that an added structure would impose on the home's foundation. HUD's standards, set forth at § 3285.903, require accessory structures to be structurally independent unless the attached accessory building or structure is otherwise included in the installation instructions or designed by a registered professional engineer or registered architect. Further, the changes to the Data Plate specifically identify when the home is designed for an attached accessory structure, and if so, the loads the home has been designed to accommodate (see § 3280.5).

HUD disagreed with the comment suggesting that the definition of accessory building or structure is too broad. The Construction and Safety standards address the design and construction of the manufactured home and do not address the design, construction, placement, or other standards for the design and construction of the accessory structure(s). Further, state and local authorities may verify that a home has been designed for an attached accessory structure by verifying such information available on the Data Plate. HUD agreed with the commenter that the term ''basic manufactured home'' is not defined; therefore, ''basic'' has been removed.

§ 3280.5 Data Plate

One commenter opposed the proposed rule's changes to the Data Plate language and another commenter supported the proposed changes. Some commenters agreed, however, that certain modifications to the Data Plate definition should be made: The Data Plate indicates whether the home is designed to accommodate an add on, accessory building, and the like, and the Data Plate and other documentation should document the weight, size, and other limits the manufactured home can support. Failure to require additional information will lead to confusion and result in many homes being stressed beyond their designs limits and therefore lead to structural failure. Another commenter stated that the manufacturer should be required to identify the maximum loads applied to the floor system, wall system, roof system and support system.

Another commenter suggested HUD delete the first paragraph of the applicable statement in § 3280.5(d). This and another commenter recommended HUD revise the second paragraph to include a checkbox for ''is'' or ''is not'' similar to current language for § 3280.5(g) to reduce language and clutter on home Data Plates. One commenter explained that this alternative would still capture the intent of HUD's proposal, while preserving space on the Data Plate for future statements or other required disclosures. The commenters proposed significant changes to HUD's proposed regulatory text.

HUD Response: HUD considered all comments received on the requirements for the Data Plate and made minor changes to reflect and accommodate some of the comments. Through the language on the Date Plate, HUD is trying to provide information to the

consumers, retailers, installers, and local authorities about the design and construction of the home that may help prevent a home from being taken out of compliance when an attached accessory building or structure is built and added on at the home site. Further, the Data Plate provides information that may be used by state and local authorities that have enforcement authority for site-built structures that are not integral to the manufactured home produced and shipped by the manufactured home manufacturer.

Subpart B, Planning Considerations

One commenter stated that HUD proposed to adopt a superseded MHCC recommendation concerning ventilation. HUD has proposed to authorize manufacturers' compliance with the 2010 edition of American Society of Heating, Refrigeration, and Air-Conditioning Engineers (''ASHRAE'') Standard 62.2, ''Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings,'' as an alternative to the prescriptive ventilation requirements in § 3280.103(b) and (c). The proposed rule ignores that more than four years ago, the MHCC updated its recommended acceptance of ASHRAE Standard 62.2 to refer to the 2013 version. Adopting the more recent version of the ASHRAE standard in this rulemaking would avoid the need for an additional change to the regulations later to update the reference.

HUD Response: HUD understands that the MHCC continues to provide recommendations that may be more recent than those published in proposed rules, including updates to the referenced ASHRAE Standard 62.2. Generally, HUD finalizes recommendations in the order received to avoid selective choice, minimize confusion, and so that full and complete impact analyses can be conducted specific to the various groups of recommendations provide by the MHCC.

§ 3280.103 Light and Ventilation

One commenter supported the removal of the maximum 90 cubic feet per minute fan requirement, which will allow the commenter to increase the size of homes built to accommodate larger families, which commenter stated will allow more families to live in safe, affordable homes with the modern amenities they desire.

Another commenter expressed concern that using the Standards and eliminating the alternative construction (AC) process for manufactured housing that utilizes design elements of site-built homes could affect the manufactured housing occupants' health and safety. The commenter urged HUD to keep the AC process in place for design features that could affect the manufactured home's structural integrity and safety, including attached homes (*i.e.,* zero lot line), multi-story homes, and attached carports and garages. The commenter continued that blurring the line between what is manufactured housing and what is site-built housing could mislead homebuyers, and that manufactured housing that emulates site-built elements should be held to the same inspection and building standards as site-built homes. The commenter urged HUD to require attached units to meet all state and local building codes, including higher energy standards, required for conventionally built housing.

HUD Response: HUD's minimum requirements established for attached homes (*i.e.,* zero lot line) and multi-story homes do not change the definition of a manufactured home or impact the requirement that every transportable section of a manufactured home bear a manufacturer's certification label. Through this rulemaking, HUD is codifying requirements previously set forth through Alternative Construction requirements; thereby, accounting for consumer safety. All regulatory aspects of the program, including design review and inspections, remain in place for all manufactured homes built under this federal program. HUD believes the minimum standards established and enforced for these construction options provide benefits to all segments of the industry while protecting consumers' health and safety. Further updates to the referenced ASHRAE Standard 62.2 may be addressed in future rulemaking.

§ 3280.108 Interior Passage

Several commenters agreed that clarification was needed regarding to which doors the 27-inch requirement applies. One commenter stated that closet doors (including walk-in closets) and pantry doors are less than 27-inches, typically 24-inches or less. Another commenter stated that it has several floor plans with closet and pantry openings less than 27-inches and uses 24-inches for water heater and furnace compartments and 16-inches for linen and coat closets. The commenters stated that they would need to make significant changes to floor plan designs to accommodate HUD's proposal, and one commenter explained this would add costs to the home, drive up affordable housing costs, and financially burden the commenter. One commenter suggested clarifying that the minimum clear opening requirement of 27-inches only apply to passage doors in a manufactured home.

Some commenters suggested adding exclusions for closet, pantry, coat closet, linen closet, and toilet compartment doors and other spaces where the intent is to ''reach in'' and access an item. The commenters explained that closet and pantry doors, unlike a bedroom door, are not considered passage doors. Further, single-section manufactured homes have a smaller living space when compared with a multi-section manufactured home or a typical site-built home. Given that living space is at a premium in single-section homes, closet and pantry doors should not be subject to the same clear opening requirements.

HUD Response: HUD agreed with the comments and revised the standard accordingly.

§ 3280.111 Toilet compartments

Two commenters suggested revising language in paragraph (b) to clarify the regulatory intent that the section refers to bathroom passage doors in single-section and multi-section homes. For example, the term ''single-section'' should modify ''home,'' not ''bathroom.''

HUD Response: HUD agreed with the comments and revised the standard accordingly.

§ 3280.114 Stairways

Comments: Riser Height, Tread Depth, and Consistency.

Several commenters opposed HUD's proposed changes to stair rise and run requirements. Some commenters noted that, as written, the proposal would conflict with existing state and local requirements and require manufactured home communities to replace existing inventory of prefabricated landings and stairs. Another commenter stated that the stair rise and run in HUD's proposed rule would not allow stairs to be run parallel with the width of many homes, which would eliminate many floor plan options and adversely penalize manufactured home builders.

One commenter stated that, § 3280.114(a)(2)(i), 7″ risers and 10″ treads would cause stairway openings to be larger to the point where some floor plans would no longer accommodate a stairway. Some commenters suggested HUD use 8″ or 8.25″ for the maximum rise and 9″ for the minimum tread, which are figures that thirteen states accept.[6] One commenter also suggested

[6] The states referenced by the commenter were: IL, IN, KY, ME, MD, MA, MT, NJ, ND, OH, OR, PA,

Continued

HUD change ''%'' to ''⅜ inch'' in § 3280.114(a)(2)(i), and change ''%'' to ''¾ inch'' in § 3280.114(a)(2)(ii). This commenter also suggested changing ''Y2'' to ''½ inch'' in paragraph (a)(5).

According to another commenter, the maximum riser height and minimum tread depth should be changed to 8¼ inches and 9 inches in § 3280.114 (a)(2)(i). HUD's proposed requirements would almost eliminate stairway designs that run parallel with the width of a traditional manufactured home. This commenter's rationale for the recommended change included giving manufacturers more flexibility when trying to balance the smaller form-factor of most homes with consumer demand for multiple stories.

HUD Response: Regarding riser height and tread depth, HUD reviewed several state building codes referenced in public comments and has made changes to riser height and tread depth consistent with those requirements found in many state building codes and in accordance with the comments received.

Comments: Interior and Exterior Stairs.

Several commenters stated that HUD should clarify whether the requirements apply to stairs inside, or inside and outside, the home or commented on whether the requirements should apply to these different sets of stairs. One commenter stated that requirements for stairways and related design features should focus only on stairways placed inside the manufactured home, and the section title should be changed to ''Stairways Inside the Manufactured Home.'' Another commenter stated that the proposed changes to paragraph (a)(2) addresses interior stairways and exterior stairways; the commenter suggested revising the proposal to address interior steps only. According to the commenter, states and local municipalities establish stair geometry to which first responders are already accustomed, and to require smaller riser heights and larger treads may create a hazard.

Another commenter supported the addition of language to define requirements for stairways, landings, handrails, guards, and stairway illumination, however, the commenter suggested the language should detail if it covers interior stairways, exterior stairways, or both.

Another commenter suggested striking paragraph (b)(2) in its entirety because it partially conflicts with paragraph (b)(1), or, if HUD disagreed with striking (b)(2), revising (b)(2) as follows to streamline and clarify requirements: ''A landing or floor must be located on each side of an exterior doorway and the width of each landing must not be less than the door it serves. The maximum threshold height above the floor or landing must be 1½ inches.'' Given that paragraph (b)(1) addresses interior stairways, doors, and landings (with exception for certain basement applications), the commenter assumed that paragraph (b)(2) must be intended for exterior applications, which is the basis for the suggested edits.

Two commenters suggested HUD delete paragraph (e)(2) entirely, since exterior stairs are not constructed within the building facility and more appropriately fit under the HUD Code's Model Manufactured Home Installation Standards. A commenter explained that exterior stairs would be subject to state and local building code and health-safety requirements. If HUD's exterior illumination requirements conflict with state or local requirements, it would only cause confusion within the industry and may put consumers at risk.

Comment: Guard Rails.

Some commenters also suggested, for § 3280.114(d)(1), that the proposed load requirements only apply to guards more than 42″ above the floor grade below, to prevent driving up housing costs without providing significant increased safety protection. When a manufactured home includes a porch or similar feature, once installed, it is usually between 30 and 42 inches above the lower floor, and there is no evidence of increased injury from a fall as a result of a guard failure that is 42 or fewer inches from grade. The commenters provided regulatory text edits, and stated that a 30-inch guard rail structural requirement would increase the cost of each single-section home with a modest porch by $500, or more for larger homes, which undermines HUD's efforts to preserve manufactured housing affordability.

The commenters further stated HUD should remove the language regarding the horizontal rail restriction in paragraph (d)(2), which HUD has not backed with a significant health-safety concern as justification and which would restrict designs and add unnecessary cost. This restriction is not found in the International Residential Code (IRC), which only prohibits the passage of a four-inch sphere and would result in a restriction for manufactured home builders that does not exist for site-built home builders. One commenter stated that IRC Table R301.1.5 does not require the 200 pound concentrated load to be applied with any other loads and, therefore, the word ''not'' should be added after ''this load'' in the last sentence of paragraph (d)(2)(ii). Another commenter agreed and added that this makes (d)(2)(ii) consistent with the last sentence in paragraph (c)(5).

Comment: Lighting.

For § 3280.114(e)(1), one commenter stated that HUD should delete the requirement for artificial light to be not less than one-foot-candle at the center of treads and landing and require only a light above stairways and landings because the commenter was not aware of a test method. Another commenter suggested a prescriptive method to simplify compliance with interior stair lighting. Lumens required for a 3 feet wide x 9 feet vertical stair would be 3 feet x 11.67 feet x 1 foot-candle = ~35 Lumens. One 60-watt incandescent bulb or 10-Watt A19 LED provides about 840 lumens which is more than adequate.

Another commenter recommended HUD add a prescriptive lighting standard as an alternative compliance option. The proposed illumination requirement of ''not less than one (1) foot-candle measured at the center of treads and landings'' creates a new test requirement, but it is unclear who is responsible for performing the test and assessing compliance. Without an explanation of the test parameters and how the test would be administered, the commenter was concerned this provision would be inconsistently enforced. As an alternative, the commenter recommended that HUD introduce a minimum standard for illumination.

HUD Response: Generally, HUD agreed with most comments and made changes to the standards for stairways including revisions to riser height and tread depth (§ 3280.114(a)(2), clarification of interior and exterior consideration (§§ 3280.114(a) and 3280.114(b)), provisions for landings (§ 3280.114(b)), and handrails (§ 3280.114(c)).

HUD also modified the standard in multiple places so that the text reflects HUD's regulatory authority for design and construction of the home and its lack of authority to regulate stairways that are designed by others and built at the home's site necessary for access and egress from the entry and exit points of the homes. HUD also disagreed with some commenters, as the requirements in § 3280.112 only apply to stairways integral to the manufactured home, such

WI and WY. The commenter also referenced a change to the Indiana Code; *see* Indiana Department of Homeland Security, *Proposal for Code Change* 43, *IN.gov* (May 9, 2018) (proposals 49 and 50), *https://www.in.gov/dhs/files/IRCC%27s%20Final%20Approved%20Amendments%20to%202018%20IRC%20(Part%201)%20-%20Accepted%20by%20FPBSC%202-5-19.pdf.*

as those necessary for multi-story or multi-level manufactured home floors or for stairs that are not inside the home but may be necessary for multi-level manufacturer designed and constructed porches designed and built in the home building factory as an integral feature of the manufactured home. Further, requirements for external or exterior stairs that provide entry and exit and are built at the home site are subject to state and or local authority and any such reference otherwise has been removed.

HUD modified the standards related to landings removing duplicative language, clarifying interior versus exterior provisions, and threshold height.

HUD also modified the standard regarding handrails to be consistent with requirements for handrails (removal of ladder effect restriction) identified in other building codes for other residential structures. However, HUD disagreed with comments that would have changed the load requirements for guard systems to apply only to guards above 42 inches above floor grade.

The changes effected by this rule are generally consistent with other residential codes enforced nationwide. However, the load requirement of 20 pounds per square foot is significantly less than the load required by many states for similar guard systems.

After consideration of the public comments, HUD has not changed the stairway and landing illumination requirements from the proposed rule as commented by multiple commenters. The requirements, as published, are consistent with state and local standards and compliance remains, as with all other standards, the responsibility of the home manufacturer. In section I. of the preamble to this rule, HUD clarified that all standards in this rule are not retroactive and apply only to newly constructed homes that enter the first phase or stage of production on and after the effective date of the rule. Further changes, such as those proposed by some commenters, should be proposed for review by the MHCC so that consensus review of those proposed changes is made as envisioned by the Act. It is not appropriate for HUD to integrate these changes at the final rule stage.

Subpart C, Fire Safety

§ 3280.209 Smoke Alarm Requirements

One commenter recommended HUD revise § 3280.209, a section not addressed in the proposed rule. The commenter stated that HUD should add combination smoke and carbon monoxide alarms as acceptable devices just as they are in IRC sections R314.1.1 and R314.5.

HUD Response: HUD agreed with the commenter and made the corresponding change.

§ 3280.211 Carbon Monoxide Detectors

Some commenters supported incorporating carbon monoxide requirements into the Standards to protect consumer health and safety. One commenter noted that the MHCC made this recommendation in 2009 and HUD should have adopted it some time ago.

One commenter suggested HUD should revise § 3280.211 to include specific location requirements like smoke alarms, instead of referencing the National Fire Protection Association (NFPA) Standard 720.

Some commenters stated that the proposed rule's coverage of CO alarm requirements would be insufficient under the new § 3280.211 in protecting occupants of manufactured housing because of its limited coverage. All manufactured housing should have CO alarms and not just those with fuel-fired appliances, designed for installing attached garages, or designed for installation over basements. While the new § 3280.211 would be consistent with occupancy-related installation requirements of IRC Section R315, these requirements provide no direct protection for occupants of manufactured homes except where coincident housing-related factors of installed fuel-fired appliances, designs for installing attached garages, or designs for installation over basements were relevant. Furthermore, the proposed § 3280.211 requirements would not protect occupants where other sources such as use of portable heating appliances or from misuse of charcoal grills indoors (both reflected in CO incident data) following completion of manufactured housing installation and commissioning. Occupants of ''all-electric'' homes may be particularly vulnerable during periods of electrical outage. The comment provided instances of harm caused by carbon monoxide.

One commenter commended HUD for recognizing the importance of requiring carbon monoxide detectors consistent with the IRC's requirements. Through incorporation into the Construction and Safety Standards, HUD relieves local officials from conducting additional inspections and potential re-work post installation to comply with local requirements.

Another commenter stated that HUD's proposed carbon monoxide requirements should align more closely with similar requirements in other building codes, such as the IRC's. Specifically, the commenter's suggestions include: Specifying the required locations where carbon monoxide alarms must be installed (for example, alarms should be required outside each separate sleeping area or in the immediate vicinity of any bedrooms); requiring interconnectivity between alarms, because when more than one alarm is installed in a home, the actuation of one alarm should activate all alarms; specifying how each alarm must be powered, because the home's electrical system should be the primary power source, with batteries as a secondary, reserve power source; and clarifying that the Standards would allow combination carbon monoxide and smoke alarms to keep pace with consumer demand. Another commenter (0023) also supported this change.

According to the commenter, HUD should clarify that combination alarms are acceptable to ensure the industry continues to keep pace with consumer demand. The commenter also suggested amending § 3280.209 to ensure the sections cross-reference each other.

Comment: Alarms versus Detectors.

Some commenters stated that the word ''detector'' should not be used and suggested using ''alarms'' to be consistent with other codes and striking the word ''detector'' wherever it occurs, because alarms and detectors are distinct concepts. Alarms are self-contained, single, or multi-station sensing devices that detect a given event and sound an audible or visual alarm. Detectors are sensing devices that must be connected to a separate alarm system, rather than self-contained systems. One commenter stated that standards do not include requirements for transmitting detection devices to an alarm control unit as would be necessary with detector devices. The commenter recommended removing the standard versions in specific code sections which are incorporated by reference in § 3280.4, which will allow for simplified future updates and is a common practice for incorporating building code standards into regulations and laws. The commenter recommended removing the reference to ANSI/UL 2034, which may not be readily available and incorporate location requirements within this section.

HUD Response: HUD agreed with many comments and has modified the Construction and Safety Standards to address combination alarms, integration of specific location requirements, and removal of references to ''detector.''

HUD also notes that updating specific editions of referenced standards may require notice and comment and as such, will remain for the time-being. HUD also disagreed with some commenters that proposed to require carbon monoxide alarms in all homes, regardless of whether the home as fuel-burning appliances, an attached garage, or designed for installation over a basement. HUD's standards are consistent with state and local standards for residential construction. Should the commenter wish to pursue requirements for carbon monoxide alarms in all homes, the commenter is encouraged to submit the proposed change to the MHCC for review and deliberation by the Committee. It is not appropriate for HUD to integrate these changes at the final rule stage.

Subpart C, Fire Safety, Attached Garages

§ 3280.212 Factory Constructed or Site-Built Attached Garages

One commenter noted that HUD's current policy, to not require the IPIA to inspect documents shipped with the manufactured home (under Interpretive Bulletin H–1–77), conflicts with proposed paragraph (g)—there is no assurance that the manufacturer would be including these additional instructions.

A commenter stated that the proposed rule leaves it unclear as to when a garage is to be added to the home. Another commenter stated that HUD should clarify that paragraph (a) applies only to garages which are not self-supported. One commenter supported HUD's actions to remove the issue of attached garages and carports from the costly AC process. The commenter stated that the proposed standards and regulations would effectively obviate previous sub-regulatory HUD ''guidance'' memoranda which mandated the approval of attached garage and ''add-on''-ready manufactured homes via the AC process set forth at § 3282.14.[7]

Several commenters stated that HUD should revise the proposed fire separation requirements. A commenter stated HUD should require that gypsum be added on site to meet the fire separation requirement. Installing gypsum on the exterior of a home in the factory would not be a durable enough exterior finish for storage and shipping. Another commenter agreed and stated that paragraph (c) needs to be clarified so that fire separation between the garage and the home may be completed on-site. Site-installed dormers at the garage in addition to floor-to-foundation fire separation will be required to be completed on-site and it would be advantageous to run all separation at that time to ensure proper alignment with the garage. Paragraph (c)(1) should also be clarified to allow gypsum required to meet separation to be either factory or site installed and allowance for products equivalent to ½″ gypsum should be added.

One commenter stated that in § 3280.212(g) the reference to § 3285.201 should be changed to § 3285.301. The commenter proposed that a new paragraph (h) be added because a site-built, self-supported garage is considered an add-on per § 3282.8(j)(1) and does not affect the ability of the manufactured home to comply with the Construction and Standards.

Another commenter stated the Standards should be consistent with other building codes, such as the IRC. Instead of requiring that the fire separation be continuous from beneath the floor, through the attic space, to the underside of the roof sheathing/decking, the Standards should only state that the garage must be separated from the home with appropriate gypsum wallboard or equivalent. Manufacturers can determine whether the fire separation should be continuous from the floor, through the attic space, to the roof sheathing or decking or if it is more appropriate to envelop the structure's garage side. Other building codes leave this to the builder's discretion and so should the Standards.

The commenter continued that HUD's proposed rule for factory or site construction of attached garages should emphasize the distinction between attached and self-supported structures. HUD should also revisit the fire separation requirements for attached garages. The commenter's suggested edits included clarifying that attached garages are not self-supported. Further, when a garage would be attached to and supported by the home, manufacturers should only be required to comply with the Standards' load provisions. They should not be expected to build homes that also meet the specific requirements of the various state and local jurisdictions, and confirming that a site-built, self-supported garage is considered an add-on and clarifying that add-ons do not affect a manufactured home's ability to comply with the Standards.

According to one commenter, the guidance provided in §§ 3280.212, 3280.213, 3282.8(j), and 3285.903(c) (Attached Garages, Carports and Add-Ons) appears contradictory and confusing. Sections 3280.212 and 3280.213 provide guidance on how manufactured housing should be prepared for the addition of garages and carports which is clearly within the scope of the Federal standards. These sections, along with § 3282.8, discuss load paths, providing conflicting information on where loads should be transferred. If the intent is to offer options, then the sections should be presented with an ''or'' statement to indicate they are options, as is included in the Data Plate requirements of § 3280.5. The commenter said who bears responsibility for approval and inspection of these attached accessory buildings and structures should also be clarified. According to the commenter, these structures should comply with the local building code and be inspected to that code by the local jurisdiction, given their designation as ''attached buildings or structures'' and not the extension of the manufactured home.

HUD Response: HUD agreed with most comments and has accepted all suggested textual changes to the standards that were submitted by the public. HUD modified the final Construction and Safety Standards accordingly.

HUD disagreed with the commenter that installation instructions are not required by this final rule, as it is specifically addressed through § 3280.212(g). Further, upon placing a label certification on each transportable section of a manufactured home, the manufacturer self certifies its compliance with the Construction and Safety Standards. Should the commenter seek additional changes to either manufacturer or IPIA requirements, the commenter is encouraged to submit comments through the MHCC process for consensus review and deliberation. It is not appropriate for HUD to integrate these changes at the final rule stage. HUD also notes that the added information required on the Data Plate more clearly identifies whether the home has been designed for an attached garage.

Subpart C, Fire Safety, Attached Carports

§ 3280.213 Factory Constructed or Site-Built Attached Carports

One commenter stated that the proposed rule should be modified to include attached patio covers and porch

[7] *See, e.g.,* June 12, 2014 HUD Guidance Memorandum (''Construction of On-Site installation of Add-Ons Such as an Attached Garage''); and November 10, 2014 HUD Guidance Memorandum (''Additional DAPIA Guidance for Review and Processing of Manufacturers Alternative Construction Requests for Attached Garages'').

roofs which can easily exceed the size of a carport. The commenter also stated that current HUD policy under Interpretive Bulletin H–1–77 conflicts with paragraph (f)—there is no assurance that the manufacturer would be including these additional instructions.

Another commenter requested HUD delete the following: Paragraph (b) about maximum roof slope for the carport, on the basis that carports cannot exceed the height of the home; paragraph (c) on beam designs, on the basis that beam designs would be part of the approved design by the Design Approval Primary Inspection Agency (DAPIA); and paragraph (d) on shear wall and uplift strapping design, on the basis that the carport design would not be known.

One commenter stated that paragraph (f)'s reference to § 3285.201 should be changed to § 3285.301.

Another commenter said § 3280.213 for factory or site-built attached carports should emphasize the distinction between attached and self-supported structures and that striking unnecessary or superfluous rules would also streamline the requirements. The commenter's suggested edits include: Deleting the maximum roof slope requirement from the list of design characteristics for carports, because given that the height of the carport cannot exceed the height of the home, the carport's roof slope is never a relevant factor in home design; adding a provision that, as an alternative to specifying the unique design characteristics of the carport and the home, manufacturers may provide the maximum loads that the home is designed to resist from the carport; removing the provisions specifying where splices in the host beam can be located, because narrowly defining this provision with such detailed, prescriptive requirements could have unanticipated consequences, especially if there are continued advancements in anchoring technology. According to the commenter, specific design characteristics should remain subject to review and approval by the manufacturer's DAPIA.

The commenter's recommendations continued with: Removing the shear wall requirements for homes designed for Wind Zone II and III installations in favor of manufacturers specifying anchor requirements for uplift forces in Wind Zones II and III as part of the home's DAPIA-approved design, because if the manufacturer and its DAPIA specify these requirements at the design stage, the size of any attached carport would be limited by the load capacity of the anchor system installed in the factory. This would limit the design options available to any third party responsible for installing an attached carport at the jobsite; and removing the ''cone of influence'' provision, because this requirement is dependent on the type of anchor, and should be determined by the installer. The manufacturer should not be expected to know this information without knowing exactly where a manufactured home would be sited and how it would be installed; and confirming that a site-built, self-supported carport is considered an add-on and clarifying that add-ons do not affect a manufactured home's ability to comply with the Construction and Safety Standards.

Another commenter also supported deleting paragraph (c)(1), because this paragraph was covered in paragraphs (a) and (c), and additional details on the acceptable engineering load path are not required. The commenter also suggested deleting paragraph (d) because the load path requirements should apply to all wind zones as specified in paragraphs (a) and (c). The commenter also stated that the accepted engineer anchor test protocol does not test for cone of influence and it is not defined within the Construction and Safety Standards. Therefore, it should be removed from § 3280.213(f)(1).

HUD Response: HUD did not add requirements for patio covers and porch roofs, as such specific code change text and supporting information be submitted to the MHCC for consensus review and deliberation. It is not appropriate for HUD to integrate these changes at the final rule stage. Further, HUD disagreed with comments that installation instructions are not required by the standard, as it is clearly addressed in §§ 3280.213(b) and (e). Upon placing a label certification on each transportable section of a manufactured home, the manufacturer self-certifies its compliance with the Construction and Safety Standards.

HUD notes the added information required on the Data Plate more clearly identifies whether the home has been designed for an attached carport. HUD agreed with all comments providing specific textual changes and HUD modified the standards accordingly.

Subpart D, Body and Frame Requirements

§ 3280.305 Structural Design Requirements

One commenter stated that proposed § 3280.305(h)(5) expands areas of construction that could be deferred to the job site and imposed on the installer under ''On-Site Completion Requirements.'' The commenter stated that installers were not included in deliberations on the proposed changes, and that since the On-Site Completion rule is relatively new, and given that HUD has failed to monitor or measure compliance, this provision should be deleted until the success of the ''On Site Completion'' process can be evaluated. Another commenter stated that HUD should delete the words ''connections between sections,'' after ''hinged roof sections,'' and before ''sheathing,'' in paragraph (h)(5) because connections between sections is covered as part of standard installation.

Another commenter stated that paragraph (h)(5)(iii) requires inspection at an installation site in stages but does not clarify who would provide inspections. The commenter also suggested that HUD clearly define ''inspection of the work at the installation site in stages,'' and stated that this new requirement would add costs to the home, drive up the cost of affordable housing, and would financially burden the commenter.

Two commenters stated that HUD strike §§ 3280.305(h)(5) (iii), (iv), and (v), because these proposals generally apply to onsite installation and appear to overstep Subpart D's bounds. The commenters believed these requirements, if necessary, would be more appropriate under Part 3282, Subpart M, ''On-site Completion of Construction of Manufactured Homes.''

HUD Response: HUD disagreed with the commenter that revisions to this standard expand areas of construction that can be completed on site. The changes to this standard were already implemented with the On-Site Completion of Construction Rule and these changes are conforming. Further, HUD conducted limited monitoring of procedures and approvals related to On Site Completion of Construction and has not concluded any adverse or significant findings.

HUD modified this section to address other comments received including removing any references to installation activities. HUD also modified the inspection requirements but has retained the intent that inspections occur prior to covering up additional aspects or otherwise allowing for inspection panels so that inspection can take place. This aspect is important to assure that the work completed on site conforms to the design standards, so that the home is completed in accordance with the Construction and Safety Standards, and the home is not taken out of compliance through the work done at the home site. Further,

these standards are established to work in concert with the regulations for On Site Completion of Construction and will help to ensure that appropriate designs are provided to address the work that is expected to happen in the factory, the work that is expected to happen at the home site, and the factory and or inspections at the site necessary for conformance.

§ 3280.307 Resistance to Elements and Use

A commenter stated that the expansion of field installation of exterior coverings means the requirement for the manufacturer to provide all needed materials (siding, fasteners, channels, etc.) should be added to this list. Another commenter agreed and suggested adding ''and the required materials'' after ''Complete installation instructions.'' A commenter suggested adding attached garages to the list of exemptions in paragraph (e), given the amount of onsite work required to complete the installation of an attached garage, and as long as the manufacturer is complying with HUD's list of conditions.

HUD Response: HUD reviewed and generally agreed with the comments. HUD modified the standard accordingly.

Subpart F, Thermal Protection

§ 3820.504 Condensation Control and Installation of Vapor Retarders

One commenter stated that the proposed requirements under §§ 3820.504(b) and .506(c) are not needed, and HUD should delete them. The commenter stated its mating walls are located in a conditioned area, gaskets are installed in the factory to prevent air infiltration, and the commenter has not witnessed a mating wall with damage from condensation.

Another commenter stated that mating walls are interior walls and should not be treated as exterior walls which require a vapor barrier. Furthermore, many homes have single mating walls, and this section does not define on which side the vapor barrier should be applied.

Another commenter stated that HUD should delete these proposals until certain issues are evaluated. There will be a concern if the connection between floors is not effectively sealed from allowing cold outside air to enter between the ceiling of the first floor and floor system of the upper floor. If cold air is entering this area, a vapor retarder should be applied to the ceiling on the first floor. Another concern would be if the bottom board is still required to be placed under the upper floors, this may add to additional condensation between the floors if the vapor retarder is not installed on the ceiling on the lower floor.

HUD Response: HUD disagreed with the commenters regarding the need for §§ 3280.504(b) and (c) to be deleted or amended, and that the affected walls are interior walls. These commenters may not understand that the subject standards apply to the (fire) walls separating attached manufactured homes; rather than, mating walls between two sections of the same manufactured home. Multi-story manufactured homes have been designed and built for more than two decades prior to the rulemaking and under Alternative Construction processes. These homes have been designed and built, and significantly, HUD has not received information indicating these homes, without a ceiling vapor retarder on the first floor, are not performing.

§ 3820.506 Heat Loss/Heat Gain

Two commenters suggested revising paragraph (c) by replacing ''the mating wall of each'' with ''the fire separation wall between each.'' Mating walls between two or more sections of a multi-section home are not the same as firewalls separating two or more attached, single-family manufactured homes. Mating walls are aligned at installation to create a cohesive single-family residence—they are not exterior walls. However, fire separation walls, which separate attached single-family homes, should be classified as exterior walls because they act as a health-safety barrier between distinct residential dwellings. The commenters believed these edits clarify the distinction between mating walls and fire separation walls.

HUD Response: HUD reviewed and generally agreed with the comments. HUD modified the standard to incorporate the public comment where those changes have not significantly altered the intent as proposed.

Subpart G, Plumbing Systems

A commenter suggested clarifying the definition of ''indirect waste receptor,'' a new term being introduced to the Standards. Second, in § 3280.608, strike ''Hangars'' and replace it with ''Hangers'' as in the original. Third, by incorporating additional safety considerations from the Uniform Plumbing Code, the commenter saw an opportunity to protect the general public from the risk of burn or scald. The commenter believed a home's relief drain, should it terminate outside the home, must terminate between six and twenty-four inches above the finished grade and face down at termination; high enough to prevent backflow, but low enough to reduce the risk of injury or accident.

HUD Response: HUD reviewed and generally agreed with the comments. HUD modified the standard to incorporate the public comment where those changes have not significantly altered the intent as proposed.

§ 3280.609 Water Distribution Systems

One commenter stated that the requirement that installers extend water heater relief valve piping to beyond the skirting of the home would very likely create an imminent safety hazard because it carries superheated, pressurized water, so it should be deleted. Another commenter stated that if the relief valve is directed to outside the crawl space, there would be a possibility of personal injury to those nearby. The commenter explained that water heater manufacturers do not allow additional piping to be installed directly on the pressure relief valve. They require ''air gaps'' when directing into additional piping. The commenter concluded that HUD should reject these changes.

Another commenter stated that HUD should add discharge pipe turndown requirements taken from the Uniform Plumbing Code which adds a higher level of scald protection. This revision will increase consumer safety.

Two commenters proposed changes to HUD's regulatory text.

HUD Response: HUD reviewed and generally agreed with the comments and addressed the protections to residents by accepting comments regarding relief pipe turndowns. HUD also modified the standard to incorporate the public comment where those changes have not significantly altered the intent as proposed.

§ 3280.612 Tests and Inspection

One commenter opposed the changes to this section because they would reduce the required pressure needed to perform water supply testing and, as a result, a revision of the manufacturers' installation instructions would be needed along with oversight by the IPIA agencies to assure that the proper instructions are provided with the home. Another commenter recommended that, in the last sentence, ''potable water source'' should replace ''potable source of supply.''

HUD Response: HUD generally agreed with the comments regarding wording changes to the standard. HUD modified the standard to incorporate the public comment where those changes have not

significantly altered the intent as proposed. HUD disagreed with opposition to the proposed change as the changes have been vetted by the MHCC and are consistent with many state requirements for testing potable water supply systems. While this change may require revisions to manufacturers' installation instructions, the system of design approvals will ensure the instructions conform to the revised requirements by the rule's effective date.

Subpart H, Heating, Cooling and Fuel Burning Systems

§ 3280.705 Gas Piping Systems

One commenter suggested HUD eliminate ''hard pipe'' in paragraph (i)(8)(iii), as the industry uses a flex gas connector and not a quick-disconnect.

HUD Response: HUD reviewed and generally agreed with the commenter and modified the standard to incorporate the commenter's proposed change.

§ 3280.709 Installation of Appliances

A commenter stated that §§ 3280.709(a) and 3280.711 require that manufacturers currently ship two sets of installation instructions for each appliance with every home; the MHCC voted to strike this requirement from section § 3280.709(a) by letter ballot in 2015 (Log #92).

Some commenters noted the importance of inspection but stated that it is unclear who is to perform on-site inspections and testing related to paragraph (a)(1)(ii). One commenter stated that HUD should clarify that the installation is to comply with the local building code requirements and be subject to inspection by state or local code officials. This commenter noted that the language in § 3280.709(a)(1) would allow for the installation of direct vent space heating appliances on-site following approved instructions and the installation and inspection procedures provided.

A commenter was concerned with changes to the vent system termination provisions in paragraph (d) because the commenter was unaware of any health-safety risks that would necessitate expanding the permissible range from 3 to 10 feet. The commenter stated the IRC has a similar requirement, but it only applies to the vent system of a fuel-burning appliance. Consequently, the commenter recommended adding the clarifying phrase ''of fuel-burning appliances.'' In addition, the commenter replacing the phrase ''habitable areas'' with ''habitable rooms'' because this term is defined in the Standards.

HUD Response: HUD agreed that the MHCC voted to eliminate the requirement for the home manufacturer to provide two sets of appliance manufacturers' instructions with each home. This recommended change is anticipated to be addressed in a future rulemaking. HUD also reviewed the comments concerning the site installed direct vent appliances and has made changes to clarify that testing of the home's fuel supply and electrical systems are the responsibility of the home manufacturer. HUD also reviewed the comment regarding separation of intake and exhaust vents and made changes to address the comment by clarifying that the placement restrictions apply to exhausts of fuel burning appliances and using the defined term, ''habitable rooms.''

§ 3280.710 Venting, Ventilation, and Combustion Air

One commenter stated that the new requirement at paragraph (d) is not needed and that, to follow the proposed requirement, the commenter would have vent pipes above allowable transport height. The commenter requested that HUD delete the requirement because it would be forced to have vent pipes site installed, revise vent runs, or eliminate some floor plans completely, which would drive up the cost of affordable housing and cause financial burden. Another commenter stated that HUD should clarify that § 3280.710 applies to fuel-burning combustion appliances, to be consistent with the IRC. Two commenters proposed changes to HUD's regulatory text.

HUD Response: HUD disagreed with the comment that the changes to separate intake and exhaust vents are not needed. The proposed standard was recommended by the MHCC and HUD refers the commenter to U.S. Government Accountability Office (GAO) audit report GAO–13–52, Testing and Performance Evaluation Could Better Ensure Safe Indoor Air Quality. HUD also reviewed the comment regarding separation of intake and exhaust vents and has made changes to address the comment by clarifying that the placement restrictions apply to exhausts of fuel burning appliances and using the defined term, ''habitable rooms.''

Subpart I, Electrical Systems

§ 3280.807 Fixtures and Appliances

Some commenters stated that the new requirement at paragraph (g) has no safety benefit to the consumer and HUD should delete it. The commenters explained that wiring ceiling-mounted and wall-mounted light fixtures to one switch has been standard practice for decades. A commenter stated they were unaware of any health-safety risk associated with having multiple bathroom lights controlled by the same switch, HUD has not provided any information to suggest otherwise, and consumers' preference and other building codes or standards support the commenter's position.

HUD Response: HUD disagreed with the comments. The intent of the requirement for separate switches allows an occupant to use one or both lights at their discretion. This allows potential energy consumption savings by allowing the occupant to energize one light rather than both if both are not necessary.

Subpart J, Transportation Systems

§ 3280.902 Definitions

One commenter stated that the proposed change to the ''Drawbar and coupling mechanism'' definition, by removing ''*A* frame'' and adding in its place ''rigid substructure,'' is not justified and should be discarded. Another commenter suggested deleting the parenthetical from the ''Drawbar and coupling mechanism'' definition for clarity. The commenter stated the parenthetical is unnecessary, and ''usually an A frame rigid structure'' only creates confusion where the defined term ''Frame'' also uses the phrase ''rigid structure'' in its definition.

HUD Response: HUD disagreed with these comments. The added term is consistent with the same use in other definitions and is intended to reflect the structure to which the coupling mechanism is mounted.

§ 3280.903 General Requirements for Designing the Structure To Withstand Transportation Shock and Vibration

One commenter suggested that HUD reject the proposed changes to paragraph (a). The commenter stated that to remove ''during its intended life'' is unacceptable. To alter the language to ''function after set-up'' now establishes a ''time frame'' on how long chassis have to last and many manufactured homes will no longer be ''transportable'' which is required under 3280.2. The commenter did not suggest where HUD should reinclude the phrase ''during its intended life'' if HUD kept its proposed changes to § 3280.903.

For paragraph (b)(1), commenters stated that HUD should provide more guidance on the road test requirements and clarify what constitutes an effective

road test. One commenter suggested that HUD clearly define the minimum miles to travel, the type of roadways to travel, and what a failure is. Other commenters supported the requirement for road tests to be witnessed by experts who are in the best position to provide such services—an independent registered professional engineer or architect, or by a recognized testing organization. One commenter recommended that the testing laboratory be accredited to ISO/IEC 17025 or 17020. Two commenters stated that in paragraph (b)(1), the manufacturer's Production Inspection Primary Inspection Agency should be added to the list of independent third parties who can witness and certify the road test, and included regulatory text changes. These commenters stated that paragraphs A and B appear to be a carryover from Interpretive Bulletin J–1–76 and should be updated to the applicable (1) and (2) paragraph numbering format to clarify that the equation requires the sum of the Dead Load and Floor Load calculations.

HUD Response: HUD disagreed with the comment that the changed language alters the intended life of the chassis. The terminology refers to the structural, plumbing, mechanical and electrical systems and requires that those systems remain operational/functional after transportation.

HUD reviewed the comments and proposed changes that would add several specific requirements within the road test requirements. These suggestions should be put forth for MHCC review and consideration, as it is not appropriate for HUD to integrate these changes at the final rule stage.

Upon review of public comment, HUD added that Primary Inspection Agencies may also witness and certify road tests. HUD also reviewed comments that include specific changes to the formula included in § 3280.903(b)(3) and edited the formula accordingly.

§ 3280.904 Specific Requirements for Designing the Transportations System

A commenter suggested that ''to insure'' should be replaced with ''ensuring'' to correct a minor grammatical error. Some commenters suggested that in paragraph (b)(4)(i) the word ''static'' should be added to ''gross dead weight,'' such that the text should read ''gross static dead weight,'' to maintain consistency with the ''static tongue weight'' variable.

For paragraph (b)(4)(ii), one commenter suggested HUD add a requirement to check weights with the home in a level position ready for transport.

For paragraph (b)(9)(ii), several commenters stated HUD should maintain the current 40-foot stopping distance. One commenter stated HUD should utilize Interpretive Bulletin J–1–76. Requiring new brake tests would pose financial burdens. Another commenter stated it could not find a federal Department of Transportation (DOT) requirement that would reduce the braking distance to 35 feet from 40 feet. The proposal would eliminate acceptable brake tests qualified under the current standards, adding undue burden and cost, without justification, to homes with years of satisfactory braking experience which would need to be re-tested. Another commenter believed keeping the stopping distance at 40 feet is consistent with DOT regulations.

For the same paragraph (b)(9)(ii), a commenter stated the parenthetical should be deleted. The transportation of manufactured homes more appropriately falls under Category B(3), ''All other property-carrying vehicles and combinations of property-carrying vehicles,'' of the DOT Vehicle Brake Performance Table.[8] Given that the weight of a home can easily exceed 25,000 pounds—with some 16-foot-wide, full-length models approaching 40,000 pounds—home transportation is more closely related to the movement of heavy equipment, such as excavators and dump trucks. While the process of transporting a home is considered driveaway-towaway operations under DOT regulations, the DOT also recognizes that these homes require special consideration.[9]

Two commenters suggested in paragraph (b)(6)(i), the word ''nationally'' should be deleted. There are several reputable programs and testing agencies that do not yet have national accreditation, but they have regional, state, or local approval. These programs or agencies should not be excluded, especially when state standards are often more stringent. Another commenter recommended that, for paragraph (b)(6)(i), that the nationally recognized testing agency be accredited to ISO/IEC 17025 or 17020.

Some commenters suggested in paragraph (b)(8)(ii), the phrase ''or equivalent'' should follow ''tread wear indicator'' to ensure consistency with how the phrase is applied to other similar provisions throughout the Standards.

For paragraph (b)(9)(iii), a commenter stated that HUD's proposed requirement is not practical because there is no way to check actual voltage unless the truck is hooked up to the brakes. The commenter asked if the intent is to perform this test on every home that ships and requested that HUD delete the requirement as it would drive up the cost of affordable housing and pose financial burden on the commenter.

Another commenter suggested replacing the first two sentences of paragraph (b)(9)(iii) with the following: ''Brake wiring must be provided for each brake. The brake wire must not be less than the value specified in the brake manufacturer's instructions.'' Manufacturers should not be responsible for evaluating each transportation company's tractors and equipment or for assessing each company's quality assurance program. They should only be responsible for ensuring that the provided brake wiring meets or exceeds the minimum required specifications as provided by the brake manufacturer.

HUD Response: HUD accepted the comment regarding changing ''insuring'' to ''to ensure'' within § 3280.904(b)(3). HUD also accepted the comment to add ''static'' within §§ 3280.904(b)(4) and 3280.904(b)(6). HUD also accepted the comment to check weights with the home in a level position (see revised § 3280.904(b)(4)(ii)).

HUD disagreed with the comment to revise the stopping distance from 35 to 40 feet. HUD revised the reference for the braking performance stopping distance, aligning HUD's standards with DOT (at 49 CFR 393.52(d)) and clarified the classification of manufactured home to best align with DOT's previously designated classification.

HUD disagreed with the comment to remove ''nationally'' from the qualifier on testing agencies that may accept recycled axle programs (§ 3280.904(b)(6)(i)). This terminology has been in use for decades and its use is consistent with historical use. HUD also disagreed with the comment that suggests adding a specific accreditation for testing agencies. HUD has found the work of nationally recognized testing agencies, having various qualifications, does not impede health and safety protection.

HUD also reviewed comments requesting the addition of equivalent tread wear indicators but has not received specific means of determining equivalence and has therefore decided not to include such language in the final rule. These suggestions should be put forth for MHCC review and consideration, as it is not appropriate for HUD to integrate these changes at the final rule stage.

[8] *See* 49 CFR 393.52(d).

[9] *See, e.g.,* 49 CFR 393.75(h).

HUD reviewed public comment and specific comments that included textual changes to § 3280.904(b)(9)(iii) regarding electrical brake wiring. HUD accepted these changes.

Subpart K, Attached Manufactured Homes and Special Construction

Several commenters supported adding two-family, or two- and three-family, dwelling units to Subpart K. These commenters supported duplexes and triplexes as more practical and affordable solutions in urban and suburban applications because of, for example, zoning restrictions. One commenter suggested less restrictive fire separation requirements and amending §§ 3280.1002 and .1004 and adding a new § 3280.1003(a). Another commenter also suggested less restrictive fire separation requirements and offered several recommended changes to regulatory text. These proposed changes to regulatory text included separating § 3280.1003 into two paragraphs—paragraph (a) for ''two attached manufactured homes'' and paragraph (b) for ''three or more attached manufactured homes.'' Some commenters supported reevaluating Subpart K for a single structure with two dwellings but did not propose alternative regulatory text. One commenter stated that duplexes have simpler requirements than ''town homes,'' and the demand for duplexes will far outpace any other type of attached manufactured home.

Another commenter, while expressing general support for HUD's proposed changes, questioned HUD's focus on adopting standards for multi-story manufactured homes and attached manufactured homes, while MHCC recommended standards for multi-family manufactured homes are not included in the proposed rule and have yet to be proposed for adoption. The commenter noted the absence of an explanation in the proposed rule for HUD's prioritization of the included standards for multi-story and ''zero-lot-line'' attached manufactured homes, as contrasted with broader and potentially much more economically-significant and beneficial proposed standards for multi-unit/multi-family manufactured homes. The commenter stated that instead of promoting affordable manufactured housing for all Americans as required by law, HUD appears to be abusing its regulatory authority to support Fannie Mae and Freddie Mac in order to benefit a narrow industry segment, while smaller manufacturers are kept waiting endlessly for proposed multi-unit/multi-family standard. The commenter stated that HUD gave no indication in the proposed rule of when or even if multi-unit/multi-family manufactured homes will be addressed by promulgating new standards that are clearly and uncontrovertibly within the scope of present federal law. The commenter concluded that HUD should include MHCC recommended standards for multi-unit/multi-family manufactured homes in any final rule under the present docket.

Another commenter stated that much of the proposed language in the new Subpart K duplicates nearly verbatim the language contained in IRC sections R302.2 and R302.4 without observing and protecting the rights of the ICC as its copyright holder. The commenter stated that if HUD wishes to publish any part of the IRC in its rules or future rulemaking proceeding, HUD must seek to comply with OMB Circular A–119 and Incorporation by Reference procedures.

HUD Response: HUD reviewed comments that include specific text changes and has integrated those comments to the maximum extent deemed necessary to effect the appropriate changes where those changes have not significantly altered the intent as proposed.

HUD decided not to eliminate structural independence for attached homes, as each home shall be designed to be structurally independent and each home must perform on its own. HUD accepted changes to wording regarding fire separation walls but has not accepted the use of exceptions. The exceptions should be submitted as proposed changes to the MHCC, and any exceptions shall be handled through the Alternative Construction process. It is not appropriate for HUD to integrate these changes at the final rule stage.

Further, this standards change was not intended to address multi-dwelling unit manufactured homes (multiple single-family residences in one manufactured home structure). The MHCC recommendations for multi-unit manufactured homes are contained in the fourth set of its recommendations for changes to the Standards. The attached manufactured homes are each designed as individual single-family residential structures by the home manufacturers and each such attached home is to comply with the requirements set forth in 24 CFR 3280 and as such meet all such requirements to be labeled as manufactured homes to be installed in accordance with accompanying installation instructions that also meet HUD's Model Manufactured Home Installation Standards.

HUD has reviewed the public comment regarding integration of requirements that are generally consistent with provisions of the International Residential Code (IRC). HUD has acted on proposed standards received from the public and as reviewed, modified and recommended by the MHCC. While some language may be consistent between the IRC, state and local codes, and the requirements published in this rule, there are differences that remain and justify establishment of unique provisions rather than incorporating the IRC or any given state or local code in their entirety. HUD believes the standards will allow use of some of the latest building technologies and materials, creating more consistency with multiple State-adopted residential building codes for site-built housing (some of which may incorporate or amend standards including, but not limited to, the International Residential Code), and expand consumer choice.

Comments: Preemption and Opportunity Zones.

A commenter asserted that in the preamble HUD overtly intends to preempt the authority of state and local jurisdictions through Subpart K. The commenter cited reasons as to why such requirements are within the domain of state and local authorities. Adjacent and attached manufactured homes may be manufactured by different companies and installed at different times resulting in potential interactions that have not been addressed within either manufactured home, but which could be within the proposed rule's requirements. The proposed rule provides no requirements that attached manufactured homes be manufactured by the same manufacturer or installed at the same time.

A commenter stated that HUD should have provided more detail and justification for the following statement made in the Proposed Rule, which was used as a blanket justification for the new subpart K: ''Subpart K would enable manufacturers to design and construct homes similar to townhomes, which may be useful to address affordable housing needs in Opportunity Zones and urban or other areas.''

According to the commenter, HUD makes no attempt to quantify the benefit against potential costs even though the qualifier ''may'' is used to describe the policy change's potential benefit. For instance, HUD did not consider how many fewer code inspectors might there be in the country if this policy change were to allow the manufactured housing industry to become a dominant force in

the housing sector. Further, HUD also failed to provide any evidence that a consumer market even exists for townhome-style developments made out of manufactured homes. Additionally, HUD also failed to describe any interest that would validate the above statement for the type of developments that are considered by this new provision on the part of the Opportunity Zone funds, or their managers, or even those local officials representing the Opportunity Zone areas.

The commenter was also concerned about the number of state and local authorities that the proposed rule would preempt, if finalized in its current form. The commenter stated there are at least four major preemptions that should be considered more fully through a Federalism Consultation, consistent with Executive Order 13132. The commenter believed that the authority granted to manufactured housing producers under this provision should have triggered a proper consultation process, irrespective of the additional preemptions provided by the proposed rule for building code-related authorities affecting stairways, landings, handrails, guards and stairway illumination, siting of and installation standards for carbon monoxide alarms, and indoor ventilation requirements. The commenter suggested that prior to finalizing the rule, HUD should pause to complete a Federalism Consultation and more robust cost-benefit analysis, especially as it relates to disaster preparedness and recovery.

HUD Response: HUD reviewed the public comment regarding the justification for this new Subpart. In response, HUD found that the standards promulgated in this Final Rule are within the scope and authority provided by the Manufactured Home Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000. Further, HUD believes that the future design, construction and installation of attached manufactured homes may create affordable housing opportunities and may allow manufactured homes to be placed in more urban areas where land and space restrictions have historically limited the use of manufactured housing and because the design and construction of such homes historically required specific HUD approvals creating a more burdensome and costly oversight process. These areas may include locations within Opportunity Zones. HUD is aware of a nationwide trend that recognizes increased focus on efficient land use in many areas. HUD's Construction and Safety Standards allow for the industry to provide safe, decent, sanitary, and affordable housing, as the need develops.

HUD also noted that the aspects of installation would still be subject to state and local authority, as is the same for all other manufactured home installations, provided manufacturer installation instructions and state and local requirements at a minimum comply with HUD's Model Manufactured Home Installation Standards. However, HUD's Construction and Safety Standards as promulgated through this Final Rule would preempt state and local requirements for the same aspects of construction, the same as for all other manufactured homes.

§ 3280.1002 Definitions

Two commenters suggested changes to HUD's proposed regulatory text. Another commenter stated that HUD should reject the proposed changes to § 3280.1002. Manufactured homes are designed to be transportable during the intended life of the home and allowing multi-family manufactured homes to be constructed and installed affects homeownership and the adjacent home.

Another commenter opposed the proposed rule due to its unwarranted intrusion into the modular housing construction sector. Subpart K would allow ''(t)wo or more adjacent manufactured homes that are structurally independent from foundation to roof and with open space on at least two sides. . .'' (definition of Attached manufactured home at § 3280.1002). In addition to federal preemption and safety risks associated with manufactured housing, the commenter asserted that HUD has not considered additional factors that make modular homebuilding preferable to manufactured housing, including: Durability, resiliency, long-term value and resale market, access to conventional financing without the limits FHA places on manufactured home loans, and fewer zoning restrictions.

HUD Response: HUD reviewed comments that include specific text changes and has integrated those comments to the maximum extent deemed necessary to effect the appropriate changes. HUD has changed the definition for ''fire separation wall'' by removing the language that the walls be structurally independent as that requirement is already included in the definition of ''attached manufactured home.'' Further, HUD reviewed the comments suggesting intrusion into the modular housing sector and disagreed with the comments. These standards apply to manufactured housing and contain many of the same or similar requirements as other similar structures or similar design features and considerations.

§ 3280.1003 Attached Manufactured Home Unit Separation

Two commenters provided a significant number of suggested changes to HUD's proposed regulatory text. The commenters suggested several editorial and substantive changes to the unit separation requirements and have suggested exceptions to the requirements under certain conditions. Some commentors have also suggested substantive changes to requirements for fire separation wall penetrations.

HUD Response: HUD reviewed comments that include specific text changes and has integrated those comments to the maximum extent deemed necessary to effect the appropriate changes that remain in line with the MHCC's recommendations. The changes made by HUD within this standard remove reference to ''two attached manufactured homes'' and more generically requires unit separation between any attached manufactured homes. HUD has also modified the requirement that 1 hour fire-resistive rating be based on testing in accordance with ASTM E 119–05, without including language stating ''with exposure from both sides on each attached manufactured home unit.'' HUD has not integrated substantive changes to include new exceptions and HUD has not accepted substantive changes to fire separation penetrations. HUD will consider exceptions through the Alternative Construction process, should a manufacturer be unable to meet the requirements of the standards and be able to demonstrate an equivalent level of safety. Further changes, such as those proposed by some commenters, should be proposed for review by the MHCC so that consensus review of those proposed changes is made as envisioned by the Act. It is not appropriate for HUD to integrate these changes at the final rule stage.

§ 3280.1004 Exterior Walls

Two commenters proposed that in paragraph (b), ''or separation wall'' should be added after ''fire separation wall'' and before ''on each manufactured home.''

HUD Response: HUD reviewed comments that include specific text changes and has decided not to incorporate the change to ensure all exterior walls contain insulation.

Comments: Changes to the Manufactured Home Procedural and Enforcement Regulations (24 CFR Part 3282).

A commenter stated that high winds caused by tornadoes and hurricanes have caused significant damage to manufactured housing units, as compared to site-built houses, as evidenced by the Federal Emergency Management Agency (FEMA) in multiple post-disaster assessment reports. The commenter explained that structural add-ons to manufactured homes present a clear safety risk to life and property, and the broad authority given to manufactured housing manufacturers regarding attachments, including car ports, garages, awnings, decks and porches, at the newly proposed 24 CFR part 3282, as well as through the proposed subpart K, should be reconsidered and reevaluated. HUD should reevaluate the proposed revisions in consultation with FEMA and the U.S. Global Change Research Program.

Another commenter recommended that HUD keep in mind that, on January 14, 2020, several important amendments to Subpart M were advanced by the MHCC's Regulatory Enforcement Subcommittee. While the commenter did not suggest that HUD delay updates to Subpart M, HUD should be aware that substantial changes will likely be approved by the MHCC at its next meeting. The commenter also looked forward to the prompt implementation of the MHCC's recommended revisions to Subpart M, which the commenter believed will streamline the administrative process.

HUD Response: HUD reviewed these general comments. HUD is regulating design of the manufactured home, not the design and construction of site-built attachments. These aspects remain under the purview of the local authorities having jurisdiction.

Changes to the Model Manufactured Home Installation Standards (24 CFR Part 3285)

General Comments

A commenter stated the proposed rule would have a significant impact on the role of manufactured home installers, including potential liability for installation work related to accessory buildings and other on-site installation, such as certain appliances the proposal states can be shipped ''loose'' to the homesite. To ensure that the end buyer or resident of the home has a home that has been safely manufactured, transported, and installed, it is vital that all installation documentation is shipped with and remains with the home.

HUD Response: HUD reviewed the comment and addressed similar comments in this final rule. Concerns regarding verification of current installation documentation requirements should be put forth for MHCC review and consideration, as it is not appropriate for HUD to integrate changes on these requirements at the final rule stage.

§ 3285.5 Definitions

One commenter suggested that the ''attached accessory building or structure'' definition in § 3285.5 be updated to ensure it matches how the term is defined elsewhere in the Standards. Specifically, the word ''the'' should be inserted between ''which'' and ''attachment,'' to promote consistency in the Standards for the new term ''attached accessory building or structure.''

HUD Response: HUD reviewed comments that included specific text changes and integrated those comments to the maximum extent deemed necessary to effect the appropriate changes.

Continued Updates to the Standards and MHCC Recommendations Not Addressed in the Proposed Rule

General Comments

Several commenters supported regular updates to the Standards and HUD's backing of manufactured housing. Commenters also recommended that HUD develop and implement a streamlined process for Standards updates going forward, so revisions are introduced on a more consistent timeline.

Many commenters supported recommendations and technical changes made by the national association representing the industry at the federal level, the Manufactured Housing Institute (MHI), that further enhance the proposed rule. The commenters believed MHI's recommendations should be incorporated into HUD's final updates and represent critical progress in clearing out the backlog of items that have been approved by the MHCC. These changes were recommended by the MHCC but have not yet been incorporated into the Standards, and the commenters encouraged HUD to quickly finalize the proposed rule with MHI's recommended changes.

A commenter believed updates are delayed because the Office of Manufactured Housing Programs is a ''low priority'' within HUD's organizational hierarchy. HUD has repeatedly said it is committed to both housing innovation and streamlining the administrative and regulatory processes that hurt manufactured housing, and this rulemaking galvanizes HUD's commitment to the manufactured housing industry. Because HUD is the standard-setting body for the nation's manufactured home construction and safety standards, updates must follow a distinct administrative path and must be prioritized separately from unrelated policy matters. Such an approach was recommended by the Government Accountability Office in 2014 and in 2019 by HUD's own Office of Policy Development and Research.[10]

These commenters also urged HUD to move forward with the subsequent sets of Standards updates that have been passed by the MHCC but are still pending HUD action. Such sets of updates include several critical industry recommendations such as roll-in showers and tankless water heaters within the Standards. The commenters also urged HUD to move forward with subsequent proposals to update the Federal Construction and Safety Standards that have been considered and recommended by the Consensus Committee—yet have not been acted upon by the Department. One commenter stated it is unacceptable that HUD continues to neglect its obligations to ensure timely updates to the Standards. HUD's delays have real-world consequences for families moving into manufactured homes and for the environment and public health. It is critical that HUD address each of the revisions already recommended by the MHCC and act on future MHCC recommendations within the timeframe allowed by Congress, ''not later than 12 months after the date on which a standard is submitted to the Secretary by the MHCC.''

Comments: The Department of Energy and Energy Efficiency.

One commenter stated that one of the proposed rule's notable failures is HUD's decision ''not to include in this proposed rule certain MHCC recommendations due to pending regulations for improving energy efficiency in manufactured homes being prepared by the U.S. Department of Energy'' (DOE). DOE in November 2019 agreed to a settlement to take final action on energy efficiency no later than February 2022. This offers HUD a reasonable opportunity to implement

[10] U.S. Gov't Accountability Office, GAO–14–410, Manufactured Housing: Efforts Needed to Enhance Program Effectiveness and Ensure Funding Stability (July 2, 2014). *See also* HUD's ''Report to Congress on the On-Site Completion of Construction for Manufactured Homes'' (June 18, 2019).

the MHCC's recommendations in the current rulemaking and HUD's delay further risks the health and financial well-being of new manufactured home residents.

Another commenter continued that HUD states that ''[g]iven this DOE rulemaking,'' it ''has decided to postpone action'' on certain MHCC recommendations affecting §§ 3280.502 and 3280.506(b). The proposed rule cites no legal authority for this postponement, nor is HUD's proposed action one of the three outcomes permitted by the statutory text: [11] The adoption, modification, or rejection of the proposed revisions recommended by the MHCC. Moreover, the proposed rule does not fulfill HUD's obligation to publish for public comment the proposed revised standards recommended by the MHCC. Because HUD has failed to identify the specific changes to the Standards that it is postponing, HUD denies the public an opportunity to meaningfully comment on this aspect of the proposed rule. Even if DOE's standards for energy efficiency would ultimately supersede the MHCC's approved recommendations, HUD has ample time to implement the MHCC's recommended energy efficiency improvements before compliance with any conflicting DOE standards would be required.

Another commenter recognized the valuable role energy efficiency requirements play in reducing the energy burden of households (particularly low-and moderate-income households) and supporting affordability across the life cycle of homeownership and rental. DOE's delay does not absolve HUD of its obligation to provide manufactured homeowners with energy efficient homes. The commenter recommended HUD incorporate provisions of the International Energy Conservation Code appropriate for manufactured homes into the federal standards. HUD should also work diligently with DOE to assure the implementation of the requirements in 42 U.S.C. 17071.

HUD Response: HUD reviewed the comments and intends to move forward with more recent MHCC recommendations. HUD will continue to collaborate and cooperate with other federal agencies, including DOE, as needed and necessary.

IV. Incorporation by Reference

The reference standards proposed for incorporation are approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these standards may be obtained from the organization that developed the standard. As described in § 3280.4, these standards are also available for inspection at HUD's Office of Manufactured Housing Programs and the National Archives and Records Administration.

This final rule incorporates by reference the following six consensus standards for Manufactured Housing:

1. *ANSI/ASHRAE 62.2–2010, Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings.* This standard defines the roles of and minimum requirements for mechanical and natural ventilation systems and the building envelope intended to provide acceptable indoor air quality in low-rise residential buildings. It is ASHRAE's Indoor Air Quality standard for residential buildings. It applies to spaces intended for human occupancy within single-family houses and multi-family structures of three stories or fewer above grade, including manufactured and modular houses. This standard is available online for review via read-only, electronic access at *http://ibr.ansi.org/Standards/.*

2. *ANSI/UL 2034–2016. Standard for Single and Multiple Station Carbon Monoxide Alarms.* These requirements cover electrically operated single and multiple station carbon monoxide (CO) alarms intended for protection in ordinary indoor locations of dwelling units, including recreational vehicles, mobile homes, and recreational boats with enclosed accommodation spaces and cockpit areas. The carbon monoxide alarms covered by these requirements are intended to respond to the presence of carbon monoxide from sources such as, but not limited to, exhaust from internal-combustion engines, abnormal operation of fuel-fired appliances, and fireplaces. Carbon monoxide alarms are intended to alarm at carbon monoxide levels below those that cause a loss of ability to react to the dangers of carbon monoxide exposure. Carbon monoxide alarms covered by this standard are not intended to alarm when exposed to long-term, low-level carbon monoxide exposures or slightly higher short-term transient carbon monoxide exposures, possibly caused by air pollution or properly installed and maintained fuel-fired appliances and fireplaces. This standard is available online for review via read-only, electronic access at *http://ibr.ansi.org/Standard.*

3. *ASTM E 119–05. Standard Test Methods for Fire Tests of Building Construction and Materials.* This standard is used to measure and describe the response of materials, products, or assemblies to heat and flame under controlled conditions, but does not by itself incorporate all factors required for fire hazard or fire risk assessment of the materials, products, or assemblies under actual fire conditions. This standard is available online for review via read-only, electronic access at *http://www.ASTM.org/READING LIBRARY.*

4. *NFPA 70–2005. National Electrical Code, Article 550.17.* The provisions of this article cover the electrical conductors and equipment installed within or on mobile and manufactured homes, the conductors that connect mobile and manufactured homes to a supply of electricity, and the installation of electrical wiring, luminaires (fixtures), equipment, and appurtenances related to electrical installations within a mobile home park up to the mobile home service-entrance conductors or, if none, the mobile home service equipment. More specifically, Article 550.17 provides that the wiring of each mobile home be subjected to a 1-minute, 900-volt, dielectric strength test (with all switches closed) between live parts (including neutral) and the mobile home ground. Alternatively, the standard allows a test to be performed at 1080 volts for 1 second. This test shall be performed after branch circuits are complete and after luminaires (fixtures) or appliances are installed. This standard is available online for review via read-only, electronic access at *http://ibr.ansi.org/Standards.*

5. *NFPA 720. Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment.* This document does not attempt to cover all equipment, methods, and requirements that might be necessary or advantageous for the protection of lives from carbon monoxide exposure. The effects of exposure to carbon monoxide vary significantly among different people. Infants, pregnant women, and people with physical conditions that limit their bodies' ability to use oxygen can be affected by low concentrations of carbon monoxide. These conditions include, but are not limited to, emphysema, asthma, and heart disease, all of which are usually indicated by a shortness of breath upon mild exercise. People in need of warning about low levels of carbon monoxide should explore the use of specially calibrated units or other alternatives. This standard is primarily concerned with life safety, not with protection of property. It covers the selection, design, application, installation, location, performance, inspection, testing, and maintenance of

[11] *See* 42 U.S.C. 5403(a)(5).

carbon monoxide detection and warning equipment in buildings and structures. This standard is available online for review via read-only, electronic access at *http://ibr.ansi.org/Standards.*

6. UL 217. Single and Multiple Station Smoke Alarms. This document provides requirements that cover electrically operated single and multiple station smoke alarms intended for open area protection in indoor locations. This standard is available online for review via read-only, electronic access at *http://ibr.ansi.org/Standard.*

The sections of the Construction and Safety Standards that would be amended by each reference modification and the impact of each reference is shown in the chart below.

Standard	Edition	Title	Section	Comment
ANSI/UL 2034	Third	Single and Multiple Station Carbon Monoxide Alarms.	§ 3280.211(a)	Only required for homes that incorporate a gas burning appliance and then preempts state and local requirements already established in 38 states.
ANSI/ASHRAE 62.2	2010	Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings.	§ 3280.103(d)	Provides an option to ventilation requirements established at § 3280.103(b) and (c).
NFPA No.70 Article 550.17	2005	National Electrical Code	§ 3280.810(b)	Provides for a referenced standard to conduct polarity checks as an option to visual polarity checks.
NFPA 720	2015	Standard for the Installation Carbon Monoxide Detection Equipment.	§ 3280.211(b)	Only required for homes that incorporate a gas burning appliance or an attached garage and then preempts state and local requirements already established in 38 states.
ASTM E 119	2005	Standard Test Method for Fire Tests of Building Construction and Materials.	§ 3280.1003(a)	Allows for a manufacturer to design and construct attached housing that is otherwise only permitted through an AC review and approval.
UL 217	Fifth	Single and Multiple Station Smoke Alarms.	§ 3280.211(a)	Provides for a referenced standard for manufacturers to use combination carbon monoxide and smoke alarms. This standard addresses smoke alarm operation of the combination alarms.

In addition to reviewing these standards on-line, copies of the standards may be obtained from the organization that developed the standard as follows:

ANSI—American National Standards Institute, 11 West 42nd Street, New York, NY 10036, 212–642–4900, fax 212–398–0023, *www.ansi.org.*

ASHRAE—American Society of Heating, Refrigeration, and Air Conditioning Engineers, 1791 Tullie Circle NE, Atlanta, GA 30329, 404–636–8400, fax 404–321–5478.

ASTM—ASTM, Int'l, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428, 610–832–9500, fax 610–832–9555, *www.astm.org.*

NFPA—National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269, 617–770–3000, fax 617–770–0700, *www.nfpa.org.*

UL—Underwriters Laboratories, 333 Pfingsten Road, Northbrook, Illinois 60062, 847–272–8800, fax 847–509–6257, *www.ul.com.*

This final rule also references ASTM D781–1968 (Reapproved 1973), which has already been approved for incorporation by reference. No changes are being proposed to this IBR.

V. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

This rule was determined to be a ''significant regulatory action'' as defined in section 3(f) of the Executive order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive order).

Executive Order 13771

Executive Order 13771, entitled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017. This rule is expected to be an Executive Order 13771 regulatory action. Details on the estimated cost savings of this final rule can be found below in the Summary of Benefits and Costs, and in the rule's Regulatory Impact Analysis.

Summary of Benefits and Costs of Rule

As discussed, this final rule would amend the Federal Manufactured Home Construction and Safety Standards by adopting recommendations made to HUD by the MHCC. In this regard, this final rule revises various standards that reflect current construction practices used by the manufacturing housing industry and the home construction industry in general. For example, when a manufacturer chooses to install a carbon monoxide alarm, the manufacturer will use an alarm that has been listed in accordance with requirements of ANSI/UL 2034 and the manufacturer will install the alarm in accordance with the product's installation instructions that meet the requirements of NFPA 720. Similarly, standards proposed that are applicable to interior door widths as well as those provisions for multi-story and attached manufactured homes are based on current construction practices that have largely been established due to pre-existing requirements of state and local jurisdictions for other housing products (*i.e.,* site-built or modular). Other standards recommended by the MHCC and proposed by HUD, such as those that would define requirements for stairways, landings, handrails, guards

and stairway illumination, would free manufacturers from having to follow various state and local requirements that vary from jurisdiction to jurisdiction and bring uniformity to manufactured home construction nation-wide. The rule would also incorporate five new reference standards that are already standards used in the design, listing, and evaluation of the respective materials or components.

In addition, HUD has concluded that this rule provides manufacturers more flexibility in the ability to pursue design options and, more importantly, cost savings as the result of eliminating the need to obtain HUD approval through the Alternative Construction (AC) process (see § 3282.14). More specifically, manufacturers need to engage the AC process to design and construct manufactured homes that incorporate innovations that have not yet been codified in HUD's Construction and Safety Standards. For example, addressing the design and construction of multi-story homes, attached homes, or homes that are designed to accommodate an attached garage or carport that is not factory constructed but added to the home during the home installation process, may create regulatory confusion between state, local, and Federal authorities and may sometimes require HUD approval through the AC process prior to the manufacturer being able to incorporate these design features. After review of an AC request, HUD establishes specific terms and conditions for use of the design through an AC letter. While the AC process serves a useful purpose, including encouraging the use of new technology in the construction of manufactured homes, HUD believes that codification of certain design features that already were reviewed can provide cost savings for manufacturers and consumers, and reduce regulatory confusion when directly addressed within the code. In fact, HUD's final rule is based primarily on the MHCC's recommendations and integrates some aspects of specific AC letters that have been issued in the past. Specifically, regulatory costs that are currently borne by the manufactured home manufacturer associated with preparing an AC request and maintaining the AC approvals include:

1. Manufacturers' engineers' preparation of designs, calculations, or tests for aspects that do not conform with outdated building standards for past innovations that have become more commonplace but have not yet been incorporated into the Construction and Safety Standards;

2. DAPIA review and approval of the designs, calculations, and or tests to be submitted on behalf of the manufacturers requesting HUD's approval;

3. Preparation of a submission package for the AC request, including all designs, calculations, and tests to be sent to HUD for approval;

4. Lost opportunity costs and actual manufacturer and DAPIA staff time to respond to HUD throughout the review and approval process, which, depending on the specific AC request, may take as few as 30 days or as long as 6 months;

5. Time and travel associated with third-party inspections at each affected home's site for manufactured homes built under an AC that requires a site inspection be conducted in order to verify conformance with specific terms and conditions of the AC approval; and

6. Maintaining and providing copies of AC-specific production reports, inspection reports, and other administrative burdens required to maintain the AC approval.

This rule would also require that carbon monoxide detectors be installed in homes with fuel burning appliances or designed by the home manufacturer for an attached garage. These provisions are intended to be consistent with other single-family dwelling construction requirements and are intended to provide early warning alerts to occupants of the presence of carbon monoxide within the living space of the manufactured home. Specifically, this rule would require that carbon monoxide alarms be installed in accordance with the Standard for the Installation of Carbon Monoxide Detection Equipment, NFPA 720–2015, and be listed and conform to the requirements of Single and Multiple Station Carbon Monoxide Alarms, ANSI/UL 2034–2016 edition.

In sum, the one-time annual costs of this proposed rule range from $2.19 million to $4.122 million. Total valued benefits range from $8.515 million to $12.517 million. Unvalued benefits include reduced home damage and injuries from piping water heater relief valves to outside of the home and from the avoided delay during the AC review. The total estimated annual costs and benefits are described in the chart below.

	3 percent		7 percent	
	Estimate: low	Estimate: high	Estimate: low	Estimate: high
Total Annual Costs (See Figure 3):				
Carbon Monoxide Detector Requirement	$258,000	$1,032,000	$258,000	$1,032,000
Water heater relief valves	1,352,400	1,932,000	1,352,400	1,932,000
Wet-vented drains	483,000	772,800	483,000	772,800
Separate Bathroom Light Switches	96,600	425,040	96,600	425,040
Total	2,190,000	4,161,840	2,190,000	4,161,840
Present Value of Benefits				
Carbon Monoxide Detector Requirement (See Figure 4):				
Value of Injuries Prevented	166,818	166,818	142,688	142,688
Value of Deaths Prevented	8,908,186	8,908,186	7,619,651	7,619,651
Wet-vented drains (See Figure 7)	483,000	772,800	483,000	772,800
Separate Bathroom Light Switches (See Figure 5)	326,796	2,614,366	214,929	1,719,434
Deregulatory (See Figure 6):				
Whole-House Ventilation	3,540	3,540	3,540	3,540
2-Story Homes	12,640	12,640	12,640	12,640
Attached Garages	38,836	38,836	38,836	38,836
Total	9,939,816	12,517,187	8,515,285	10,309,589

A fuller discussion of the costs and benefits of this rule is available in the rule's Regulatory Impact Analysis, which is part of this docket.

Finally, any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–0500.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been approved by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0253. HUD expects to make changes to the existing recordkeeping items consistent with changes in this final rule and believes that the changes will result in a decrease of burden. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The burden of information collection addressed in this final rule is estimated as follows for those aspects that would continue to require AC requests and does not include burdens for past AC requests related to carport-ready homes, garage-ready homes, homes that exceed 2,571 square feet (whole house ventilation), and two-story homes:

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hours per response	Annual burden hours	Hourly cost per response	Annual cost
Manufacturers Records:							
§ 3282.14 Alternative Construction Submissions	135	0.75	101	2.5	253	$33.57	$8,493.21
IPIA Records:							
§ 3282.14 Alternative Construction Submission Concurrence Records and Reporting	12	14	168	2.0	336	33.57	11,279.52
DAPIA Records:							
§ 3282.203/361/364 Design Review Records and Reporting	6	28	168	1.0	168	33.57	5,639.76
Total	153		569		757		25,412.49

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This rule will not impose any Federal mandates on any state, local, or tribal government or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–0500. The Finding of No Significant Impact will also be available for review in the docket for this rule on *Regulations.gov.*

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. It is HUD's position that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would regulate establishments primarily engaged in making manufactured homes (NAICS 32991). The U.S. Small Business Administration's size standards define an establishment primarily engaged in making manufactured homes as small if it does not exceed 1,250 employees. Of the 222 firms included under this NAICS definition, approximately 35 produce manufactured homes subject to HUD's Manufactured Housing Construction and Safety Standards. Other entities covered by this NAICS code build non-HUD Code prefabricated buildings. Of the 35 manufacturers subject to HUD's Manufactured Housing Construction and Safety Standards, 31 are considered to be small businesses based on the threshold of 1,250 employees or less. The final rule applies to all the manufacturers and thus would affect a substantial number of small entities.

Small entities have the ability and capability to offer the same type of housing products with the same or similar options, features, and appliances as larger manufacturers. However, smaller manufacturers have more difficulty spreading regulatory costs over the higher production of homes like that of a large, higher producing manufacturer. Small manufacturers would need to bear the costs, reducing profit margins accordingly or passing-through the costs over lower production amounts. This may disproportionally increase the cost of housing products for small manufacturers considering the same or similar options, features, and appliances. This rule, however, would provide small manufacturers greater flexibility to pursue design options and, more importantly, obtain cost savings resulting from the elimination of the need to obtain HUD approval through the AC process (see § 3282.14). More specifically, small manufacturers are more likely to engage engineering consultants and other non-staff

resources in order to provide data and information needed for the AC process. Consequently, small manufacturers would benefit most from this rule's provisions that eliminate the AC process for design and construction of manufactured homes that incorporate innovations that have not yet been codified in HUD's Construction and Safety Standards. Additionally, the elimination of these current regulatory costs may provide small manufacturers the opportunity to pursue design and construction innovations that absent the rule would have been too costly to pursue.

For the reasons stated, a substantial number of small manufacturers with fewer than 1,250 employees will be affected by this rule. Nevertheless, HUD anticipates that the rule will not have a significant economic impact on them. Accordingly, the undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive order are met. 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.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Manufactured Housing Construction and Safety Standards is 14.171.

List of Subjects

24 CFR Part 3280

Fire prevention, Housing standards, Incorporation by reference.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements, Warranties.

24 CFR Part 3285

Housing standards, Manufactured homes.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 3280, 3282, and 3285 to read as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

■ 1. The authority citation for part 3280 continues to read as follows:

Authority: 15 U.S.C. 2697, 42 U.S.C. 3535(d), 5403, and 5424.

■ 2. In § 3280.2, add in alphabetical order a definition for ''Attached accessory building or structure'' to read as follows:

§ 3280.2 Definitions.

* * * * *

Attached accessory building or structure means any awning, cabana, deck, ramada, storage cabinet, carport, windbreak, garage or porch for which the attachment of such is designed by the home manufacturer to be structurally supported by the manufactured home.

* * * * *

■ 3. Revise § 3280.3 to read as follows:

§ 3280.3 Manufactured home procedural and enforcement regulations, and consumer manual requirements.

(a) A manufacturer must comply with the requirements of this part, part 3282 of this chapter, and 42 U.S.C. 5416.

(b) Consumer manuals must be in accordance with § 3282.207 of this chapter.

■ 4. Amend § 3280.4 as follows:

■ a. Revise paragraph (a);

■ b. Add paragraph (m)(2);

■ c. In the introductory text to paragraph (p), remove the words ''American Society for Testing and Materials'' and add, in their place, ''ASTM, International'';

■ d. Redesignate paragraphs (p)(27) through (34) as paragraphs (p)(28) through (35), respectively, and add new paragraph (p)(27);

■ e. Redesignate paragraphs (aa)(4)(xvi) through (xix) as paragraphs (aa)(4)(xvii) through (xx), respectively, and add new paragraph (aa)(4)(xvi); and

■ f. Add paragraph (aa)(9);

■ g. In paragraph (hh)(9), remove ''§ 3280.208(a)'' and add, in its place, ''§§ 3280.208(a) and 3280.211(a)''; and

■ h. Add paragraph (hh)(23).

The revision and additions read as follows:

§ 3280.4 Incorporation by reference.

(a) The specifications, standards, and codes of the following organizations are incorporated by reference in 24 CFR part 3280 (this Standard) pursuant to 5 U.S.C. 552(a) and 1 CFR part 51 as though set forth in full. The incorporation by reference of these standards has been approved by the Director of the Federal Register. If a later edition is to be enforced, the Department will publish a notification of change in the **Federal Register**. These incorporated standards are available for purchase from the organization that developed the standard at the corresponding addresses noted below. Incorporated standards are available for inspection at the Office of Manufactured Housing Program, Manufactured Housing and Construction Standards Division, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room B–133, Washington, DC 20410, email *mhs@hud.gov.* Copies of incorporated standards that are not available from their producer organizations may be obtained from the Office of Manufactured Housing Programs. These standards are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

(m) * * *

(2) ANSI/ASHRAE 62.2–2010, Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings, copyright 2010 IBR approved for § 3280.103(d).

* * * * *

(p) * * *

(27) ASTM E 119–05, Standard Test Methods for Fire Tests of Building Construction and Materials, approved September 15, 2005, IBR approved for § 3280.1003(a).

* * * * *

(aa) * * *

(4) * * *

(xvi) Article 550.17, IBR approved for § 3280.810(b).

* * * * *

(9) NFPA 720, Standard for Installation of Carbon Monoxide (CO) Detection and Warning Equipment, 2015 Edition, Copyright 2014, IBR approved for § 3280.211(b).

* * * * *

(hh) * * *

(23) ANSI/UL 2034–2016, Standard for Single and Multiple Station Carbon Monoxide Alarms, Third Edition, dated February 28, 2008 (including revisions through May 11, 2016), IBR approved for § 3280.211(a).

* * * * *

■ 5. In § 3280.5, redesignate paragraphs (d) through (i) as paragraphs (e) through

(j), respectively, and add new paragraph (d) to read as follows:

§ 3280.5 Data plate.

* * * * *

(d) The applicable statement:

This manufactured home IS designed to accommodate the additional loads imposed by the attachment of an attached accessory building or structure in accordance with the manufacturer installation instructions. The additional loads are in accordance with the design load(s) identified on this Data Plate; or

This manufactured home IS NOT designed to accommodate the additional loads imposed by the attachment of an attached accessory building or structure in accordance with the manufacturer installation instructions.

* * * * *

■ 6. In § 3280.11, revise paragraph (d) to read as follows:

§ 3280.11 Certification label.

* * * * *

(d) The label must be located at the taillight end of each transportable section of the manufactured home approximately 1 foot up from the floor and 1 foot in from the road side, or as near that location on a permanent part of the exterior of the manufactured home section as practicable. The road side is the right side of the manufactured home when one views the manufactured home from the tow bar end of the manufactured home. If locating the label on the taillight end of a transportable section will prevent the label from being visible after the manufactured home section is installed at the installation site, the label must be installed on a permanent part of the exterior of the manufactured home section, in a visible location as specified in the approved design.

■ 7. In § 3280.103, revise paragraph (b) introductory text and add paragraph (d) to read as follows:

§ 3280.103 Light and ventilation.

* * * * *

(b) *Whole-house ventilation.* Each manufactured home must be provided with whole-house ventilation having a minimum capacity of 0.035 $ft^3/min/ft^2$ of interior floor space or its hourly average equivalent. This ventilation capacity must be in addition to any openable window area. In no case shall the installed ventilation capacity of the system be less than 50 cfm. The following criteria must be adhered to:

* * * * *

(d) *Optional ventilation provisions.* As an option to complying with the provisions of paragraphs (b) and (c) of this section, ventilation systems complying with ANSI/ASHRAE Standard 62.2 (incorporated by reference, see § 3280.4) may be used.

■ 8. In § 3280.108, add paragraph (c) to read as follows:

§ 3280.108 Interior passage.

* * * * *

(c) All interior swinging doors must have a minimum clear opening of 27 inches except doors to toilet compartments in single-section homes (see § 3280.111(b)), and doors to closets and pantries.

■ 9. Revise § 3280.111 to read as follows:

§ 3280.111 Toilet compartments.

(a) Each toilet compartment must be a minimum of 30 inches wide, except, when the toilet is located adjacent to the short dimension of the tub, the distance from the tub, to the center line of the toilet must not be less than 12 inches. At least 21 inches of clear space must be provided in front of each toilet.

(b) All bathroom passage doors in single-section homes must have a minimum clear opening width of 23 inches, and bathroom passage doors in multi-section homes must have a minimum clear opening width of 27 inches.

■ 10. In § 3280.113, redesignate paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively, and add paragraph (b) to read as follows:

§ 3280.113 Glass and glazed openings.

* * * * *

(b) Required glazed openings shall be permitted to face into a roofed porch where the porch abuts a street, yard, or court and the longer side of the porch is at least 65 percent open and unobstructed and the ceiling height is not less than 7 feet.

* * * * *

■ 11. Add § 3280.114 to read as follows:

§ 3280.114 Stairways.

(a) *Stairways*—(1) *General.* These minimum standards apply to stairways that are designed and constructed as part of the factory-completed transportable section(s) of a manufactured home, such as interior stairways for multi-level or multi-story homes or external stairways for multi-level construction features that are designed and constructed in the factory on a transportable section and integral to the access and egress needs within the transportable section(s) of a home. These standards do not apply to exterior stairways that are built at the home site or stairways to basement areas that are not designed and built as part of a transportable section of a manufactured home.

(2) *Width.* Stairways must not be less than 36 inches in clear width at all points above permitted handrail height and below the required headroom height. Handrails must not project more than 4½ inches on either side of the stairway and the minimum clear width of the stairway at and below the handrail height, including treads and landings, must not be less than 31½ inches where a handrail is installed on one side and 27 inches where handrails are provided on both sides.

(3) *Stair treads and risers*—(i) *Riser height and tread depth.* The maximum riser height must not exceed 8¼ inches and the minimum tread depth must not be less than 9 inches. The riser height must be measured vertically between leading edges of the adjacent treads. The tread depth must be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The walking surface of treads and landings of a stairway must be sloped no steeper than one unit vertical in 48 units horizontal (a 2-percent slope). The greatest riser height within any flight of stairs must not exceed the smallest by more than ⅜ inch. The greatest tread depth within any flight of stairs must not exceed the smallest by more than ⅜ inch.

(ii) *Profile.* The radius of curvature at the leading edge of the tread must not be greater than 9/16 inch. A nosing not less than ¾ inch but not more than 1¼ inches shall be provided on stairways with solid risers. The greatest nosing projection must not exceed the smallest nosing projection by more than ¾ inch between two stories, including the nosing at the level of floors and landings. Beveling of nosing must not exceed ½ inch. Risers must be vertical or sloped from the underside of the leading edge of the tread above at an angle not more than 30 degrees from the vertical. Open risers are permitted, provided that the opening between treads does not permit the passage of a 4-inch diameter sphere. A nosing is not required where the tread depth is a minimum of 11 inches. The opening between adjacent treads is not limited on stairs with a total rise of 30 inches or less.

(4) *Headroom.* The minimum headroom in all parts of the stairway must not be less than 6 feet 8 inches, measured vertically from the sloped plane adjoining the tread nosing or from the floor surface of the landing or platform.

(5) *Winders (winding stairways).* Winders are permitted, provided that the width of the tread at a point not more than 12 inches from the side where the treads are narrower is not less than 10 inches and the minimum width of any tread is not less than 6 inches. Within any flight of stairs, the greatest winder tread depth at the 12-inch walk line must not exceed the smallest by more than ⅜ inch. The continuous handrail required by paragraph (c)(3) of this section must be located on the side where the tread is narrower.

(6) *Spiral stairways.* Spiral stairways are permitted provided the minimum width is a minimum 26 inches with each tread having 7½ inch minimum tread width at 12 inches from the narrow edge. All treads must be identical, and the rise must be no more than 9½ inches. Minimum headroom of 6 feet, 6 inches must be provided.

(7) *Circular stairways.* Circular stairways must have a tread depth at a point not more than 12 inches from the side where the treads are narrower of not less than 11 inches and the minimum depth of any tread must not be less than 6 inches. Tread depth at any walking line, measured a consistent distance from a side of the stairway, must be uniform as specified in paragraph (a)(2)(i) of this section.

(b) *Landings.* Every landing must have a minimum dimension of 36 inches measured in the direction of travel. Landings must be located as follows:

(1) There must be a floor or landing at the top and bottom of each stairway, except at the top of an interior flight of basement stairs, provided a door does not swing over the stairs.

(2) A landing or floor must be located on each side of an interior doorway and exterior doorway, to the extent the external stairway is designed by the home manufacturer and constructed in the factory, and the width of each landing must not be less than the door it serves. The maximum threshold height above the floor or landing must be 1½-inches.

(c) *Handrails*—(1) *General.* A minimum of one handrail meeting the requirements of this section must be installed on all stairways consisting of four or more risers. Handrails must be securely attached to structural framing members. A minimum space of 1½ inches must be provided between the adjoining wall surface and the handrail.

(2) *Handrail height.* Handrails must be installed between 34 inches and 38 inches measured vertically from the leading edge of the stairway treads except that handrails installed up to 42 inches high must be permitted if serving as the upper rails of guards required by paragraph (d) of this section.

(3) *Continuity.* Required handrails must be continuous from a point directly above the leading edge of the lowest stair tread to a point directly above the leading edge of the landing or floor surface at the top of the stairway. If the handrail is extended at the top of the stairway flight, the extension must parallel the floor or landing surface and must be at the same height as the handrail above the leading edges of the treads. If the handrail is extended at the base of the stair, it must continue to slope parallel to the stair flight for a distance of one tread depth, measured horizontally, before being terminated or returned or extended horizontally. The ends of handrails must return into a wall or terminate in a safety terminal or newel post.

(4) *Graspability.* Required handrails must, if circular in cross section, have a minimum 1¼-inch and a maximum 2-inch diameter dimension. Handrails with a noncircular cross section must have a perimeter dimension of at least 4 inches and not more than 6¼ inches (with a maximum cross-section dimension of not more than 2¼ inches). The handgrip portion of the handrail must have a smooth surface. Edges must have a minimum ⅛-inch radius. Handrails must be continuously graspable along their entire length except that brackets or balusters are not considered obstructions to graspability if they do not project horizontally beyond the sides of the handrail within 1½ inches of the bottom of the handrail.

(5) *Required resistance of handrails.* Handrails must be designed to resist a load of 20 lb./ft applied in any direction at the top and to transfer this load through the supports to the structure. All handrails must be able to resist a single concentrated load of 200 lbs., applied in any direction at any point along the top, and have attachment devices and supporting structures to transfer this loading to appropriate structural elements of the building. This load is not required to be assumed to act concurrently with the loads specified in this section.

(d) *Guards.* (1) Porches, balconies, or raised floor surfaces located more than 30 inches above the floor or grade below must have guards not less than 36 inches in height. Open sides of stairs with a total rise of more than 30 inches above the floor or grade below must have guards not less than 34 inches in height measured vertically from the nosing of the treads. Balconies and porches on the second floor or higher must have guards a minimum of 42 inches in height.

(2) Required guards on open sides of stairways, raised floor areas, balconies, and porches must have intermediate rails or ornamental closures that do not allow passage of a sphere 4 inches in diameter.

(i) The triangular openings formed by the riser, tread and bottom rail of a guard at the open side of the stairway must be of such a size that a sphere of 6 inches cannot pass through.

(ii) Guard systems must be designed to resist a load of 20 lb./ft applied in any direction at the top and to transfer this load through the supports to the structure. All guard systems must be able to resist a single concentrated load of 200 lb., applied in any direction at any point along the top and have attachment devices and supporting structures to transfer this loading to appropriate structural elements of the building. This load is not required to be assumed to act concurrently with the loads specified in this section.

(e) *Stairway illumination.* All interior and exterior stairways must be provided with a means to illuminate the stairways, including the landings and treads.

(1) Interior stairways must be provided with an artificial light source located in the immediate vicinity of each landing of the stairway. For interior stairs, the artificial light sources must be capable of illuminating treads and landings to levels not less than one (1) foot-candle measured at the center of treads and landings. The control and activation of the required interior stairway lighting must be accessible at the top and bottom of each stairway without traversing any steps.

(2) Exterior stairways designed by the home manufacturer and constructed in the factory must be provided with an artificial light source located in the immediate vicinity of the top landing of the stairway. An artificial light source is not required at the top and bottom landing, provided an artificial light source is located directly over each stairway section. The illumination of exterior stairways must be controlled from inside the home.

■ 12. Amend § 3280.209 by
■ a. Revising paragraph (a);
■ b. Redesignating paragraphs (b) through (f) as paragraphs (c) through (g); and
■ c. Adding a new paragraph (b).

The addition and revision read as follows:

§ 3280.209 Smoke Alarm Requirements.

(a) *Labeling.* Each smoke alarm required under paragraph (b) of this section must conform with the requirements of UL 217 (incorporated

by reference, see § 3280.4), or ANSI/UL 268 (incorporated by reference, see § 3280.4), and must bear a label to evidence conformance. Combination smoke and carbon monoxide alarms shall be listed and must bear a label to evidence conformance with UL 217 and ANSI/UL 2034.

(b) *Combination alarms.* Combination smoke and carbon monoxide alarms shall be permitted to be used in lieu of smoke alarms. If installed, such alarms must meet location requirements for both smoke alarms and carbon monoxide alarms.

* * * * *

■ 13. Add § 3280.211 to read as follows:

§ 3280.211 Carbon monoxide alarm requirements.

(a) *Labeling.* Carbon monoxide alarms shall be listed and must bear a label to evidence conformance with ANSI/UL 2034 (incorporated by reference, see § 3280.4). Combination carbon monoxide and smoke alarms shall be listed and must bear a label to evidence conformance with ANSI/UL 2034 and UL 217 (incorporated by reference, see § 3280.4).

(b) *Required carbon monoxide alarm locations.* Carbon monoxide alarms must be installed in each home containing either a fuel burning appliance or designed by the home manufacturer to include an attached garage. Carbon monoxide alarms must be installed outside of each separate sleeping area in the immediate vicinity of the bedrooms and in accordance with the alarm manufacturer's installation instructions. Where a fuel-burning appliance is located within a bedroom or its attached bathroom, a carbon monoxide alarm must be installed within the bedroom and in accordance with the manufacturer's installation instructions. Carbon monoxide alarms must be installed in conformance with NFPA 720 (incorporated by reference, see § 3280.4).

(c) *Interconnectivity.* Where more than one carbon monoxide alarm is required to be installed, the alarm devices shall be interconnected in such a manner that the actuation of one alarm will activate all the alarms installed.

(d) *Connection to power source.* Each carbon monoxide alarm must be powered from the electrical system of the home as the primary power source and a battery as a secondary power source.

(e) *Combination alarms.* Combination carbon monoxide and smoke alarms shall be permitted to be used in lieu of carbon monoxide alarms. When combination carbon monoxide and smoke alarms are used, they shall be installed to also comply with § 3280.209.

(f) *Basement applications.* For each home designed to be placed over a basement, the manufacturer must provide a carbon monoxide alarm for the basement and must install the electrical junction box for the installation of this carbon monoxide alarm for its interconnection with other alarms required by this section.

(g) *Testing.* Each required carbon monoxide alarm installed at the factory must be operationally tested, after conducting the dielectric test specified in § 3280.810(a), in accordance with the alarm manufacturer's instructions. A carbon monoxide alarm that does not function as designed during the test and is not satisfactorily repaired so that it functions properly in the next retest must be replaced. Any replacement carbon monoxide alarm must be successfully tested in accordance with this section.

■ 14. Add § 3280.212 to read as follows:

§ 3280.212 Factory constructed or site-built attached garages.

(a) When a manufactured home is designed for factory construction with an attached garage or is designed for construction of an attached site-built garage that is not self-supported, the manufacturer must design the manufactured home to accommodate all appropriate live and dead loads from the attached garage structure that will be transferred through the manufactured home structure to the home's support and anchoring systems.

(b) The design must specify the following home and garage characteristics including maximum width, maximum sidewall height, maximum roof slope, live and dead loads, and other design limitations or restrictions using loads provided by this Code.

(c) When a manufactured home is factory constructed with an attached garage or is constructed for the attachment of a site-built garage, provisions must be made to provide fire separation between the garage and the manufactured home.

(1) The garage must be separated from the manufactured home and its attic by not less than ½-inch gypsum board or equivalent applied to the garage side of the manufactured home, separation shall be from the underside of the floor to the underside of the roof deck and may be provided on-site as part of an On Site Completion of Construction approval. Garages beneath habitable rooms must be separated from all habitable rooms by ⅝-inch, Type X gypsum board or equivalent. Where the separation is a floor ceiling assembly, the structure supporting the separation must also be protected by not less than ½-inch gypsum board or equivalent. The design approval and the manufacturer's installation instructions must also include provision for equivalent vertical or horizontal separation between the garage and the manufactured home as appropriate.

(2) [Reserved]

(d) Openings from a garage directly into a room designated for sleeping purposes are not permitted.

(e) Other openings between the garage and the manufactured home must:

(1) Be equipped with solid wood doors not less than 1⅜ inch in thickness, or solid or honeycomb steel doors not less than 1⅜ inch in thickness, or 20-minute fire-rated doors, and all doors shall be of the self-closing type; and

(2) Be in addition to the two exterior doors required by § 3280.105.

(f) Ducts penetrating the walls or ceilings separating the manufactured home from the garage must be constructed of a minimum No. 26 gauge steel or other approved material and must have no openings into the garage.

(g) Installation instructions shall be provided by the home manufacturer that, in addition to addressing the fire separation as required in this section, shall identify acceptable attachment locations, indicate design limitations for the attachment of the garage including acceptable live and dead loads for which the home has been designed to accommodate, and provide support and anchorage designs as necessary to transfer all imposed loads to the ground in accordance with §§ 3285.301 and 3285.401 of this chapter.

(h) A site-built, self-supported garage is considered an add-on, per 3282.8(j)(1), that does not affect the ability of the manufactured home to comply with the Construction and Safety Standards. The design and construction of the garage is subject to state and or local authorities having jurisdiction.

■ 15. Add § 3280.213 to read as follows:

§ 3280.213 Factory constructed or site-built attached carports.

(a) When a manufactured home is designed for factory construction with an attached carport or is designed for construction of an attached site-built carport, the manufacturer must design the manufactured home to accommodate all appropriate live and dead loads from the attached carport structure that will be transferred through the manufactured home

structure to the home's support and anchoring systems.

(b) The design, including the home's installation instructions, must specify the following home and carport characteristics including maximum width, maximum sidewall height, live and dead loads, and other design limitations or restrictions.

(1) Alternatively, the manufacturer may provide, by design and home installation instructions, the maximum live and dead loads, and the applied loading locations, that the home is designed to resist from the carport, and other design limitations or restrictions.

(2) [Reserved].

(c) Homes may be designed with a factory-installed host beam (*i.e.,* ledger board) or specific roof truss rail for the attachment of the carport to the exterior wall of the home. The host beam (*i.e.,* ledger board) must be designed to transmit the appropriate live and dead loads at the interface between the carport and the manufactured home. In cases where the carport is designed to be supported by the roof truss overhang, the roof trusses must be designed to support the additional live and dead loads from the carport.

(1) Any portion of the host beam (*i.e.,* ledger board) and all fasteners exposed to the weather shall be protected in accordance with § 3280.307.

(2) [Reserved].

(d) To ensure that the attachment of the carport does not interfere with roof or attic ventilation, the manufacturer must provide specific instructions to ensure continued compliance with the manufactured home roof or attic ventilation requirements in accordance with § 3280.504(d).

(e) Installation instructions shall be provided by the home manufacturer that identify acceptable attachment locations, indicate design limitations for the attachment of the carport including acceptable live and dead loads for which the home has been designed to accommodate, and provide support and anchorage designs as necessary to transfer all imposed loads to the ground in accordance with §§ 3285.301 and 3285.401 of this chapter.

(1) The manufacturer must ensure that any anchoring system designs incorporating anchorage to resist combined shear wall and carport uplift loads are evaluated for adequacy to resist the combined loads, taking into consideration the limitations of the ground anchor test and certification.

(2) [Reserved].

(f) A site-built, self-supported carport is considered an add-on, as provided by § 3282.8(j)(1), that does not affect the ability of the manufactured home to comply with the standards. The design and construction of the carport is subject to state and or local authorities having jurisdiction.

■ 16. In § 3280.305, revise paragraphs (a), (e)(1), (g)(6), and (h)(5) to read as follows:

§ 3280.305 Structural design requirements.

(a) *General.* Each manufactured home must be designed and constructed as a completely integrated structure capable of sustaining the design load requirements of this part and must be capable of transmitting these loads to stabilizing devices without exceeding the allowable stresses or deflections. Roof framing must be securely fastened to wall framing, walls to floor structure, and floor structure to chassis to secure and maintain continuity between the floor and chassis, so as to resist wind overturning, uplift, and sliding as imposed by design loads in this part. In multistory construction, each story must be securely fastened to the story above and/or below to provide continuity and resist design loads in this part. Uncompressed finished flooring greater than ⅛ inch in thickness must not extend beneath load-bearing walls that are fastened to the floor structure.

* * * * *

(e) * * *

(1) Roof framing must be securely fastened to wall framing, walls to floor structure, and floor structure to chassis, to secure and maintain continuity between the floor and chassis in order to resist wind overturning, uplift, and sliding, and to provide continuous load paths for these forces to the foundation or anchorage system. The number and type of fasteners used must be capable of transferring all forces between elements being joined. In multistory construction, each story must be securely fastened to the story above and/or below to provide continuity and resist design loads in this section.

* * * * *

(g) * * *

(6) Bottom board material (with or without patches) must meet or exceed the level of 48 inch-pounds of puncture resistance as tested by the Beach Puncture Test in accordance with Standard Test Methods for Puncture and Stiffness of Paperboard, and Corrugated and Solid Fiberboard, ASTM D781–1968 (Reapproved 1973) (incorporated by reference, see § 3280.4). The material must be suitable for patches and the patch life must be equivalent to the material life. Patch installation instruction must be included in the manufactured home manufacturer's instructions. The bottom board material must be tight fitted against all penetrations.

(h) * * *

(5) Portions of roof assemblies, including, but not limited to, dormers, gables, crickets, hinged roof sections, sheathing, roof coverings, underlayments, flashings, and eaves and overhangs are permitted to be assembled and installed on site in accordance with 24 CFR part 3282, subpart M, provided that the requirements in paragraphs (h)(5)(i) through (v) of this section are met.

(i) Approved installation instructions must be provided that include requirements for the following items:

(A) Materials, installation, and structural connections complying with this section;

(B) Installation and fastening of sheathing and roof coverings;

(C) Installation of appliance vent systems in accordance with § 3280.710;

(D) Installation of plumbing vents as required by § 3280.611; and

(E) Installation of attic ventilation in accordance with § 3280.504(c).

(ii) The installation instructions specified in paragraph (h)(5)(i) of this section must include drawings, details, and instructions as necessary to assure that the on-site work complies with the approved design.

(iii) The installation instructions specified in paragraph (h)(5)(i) of this section must provide for inspection of the work at the installation site. As necessary to ensure conformance, inspection panels may be required, or inspections may need to occur in stages that assure inspections are performed before any work is concealed. Such inspection procedures shall be addressed in the approved installation instructions.

(iv) Temporary weather protection must be provided per § 3280.307(e).

* * * * *

■ 17. Amend § 3280.307 by adding paragraph (e) to read as follows:

§ 3280.307 Resistance to elements and use.

* * * * *

(e) Multi-section and attached manufactured homes (see subpart K of this part) are not required to comply with the factory installation of weather-resistant exterior finishes for those areas left open for field connection of the sections provided the following conditions are satisfied:

(1) Temporary weather protection for exposed, unprotected construction is provided in accordance with methods to be included in the approved design.

(2) Methods for on-site completion and finishing of these elements are included in the approved design.

(3) Complete installation instructions and the required materials for finishing these elements are provided.

■ 18. In § 3280.504, add paragraph (a)(3) and revise paragraph (b) introductory text to read as follows:

§ 3280.504 Condensation control and installation of vapor retarders.

(a) * * *

(3) In multi-story manufactured homes, the ceiling vapor retarder is permitted to be omitted when the story directly above is part of the same manufactured home.

(b) *Exterior walls.* Exterior walls must be provided with a system or method to manage moisture and vapor accumulation with one of the elements in paragraphs (b)(1) through (4) of this section. For purposes of the requirement in this paragraph (b), the fire separation wall between each attached manufactured home must be considered to be an exterior wall. See subpart K of this part

* * * * *

■ 19. Amend § 3280.506 as follows:

■ a. Redesignate paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d), respectively;

■ b. Designate the introductory text as paragraph (a);

■ c. In newly designated paragraph (a):

■ i. Remove ''of this subpart;''

■ ii. Remove ''figure 506'' and add ''figure 1 to this paragraph (a)'' in its place; and

■ iii. Add a heading for the figure.

■ d. In newly redesignated paragraph (b):

■ i. Remove the heading;

■ ii. Add a comma between ''ventilation'' and ''and;''

■ iii. Remove ''below'' and add ''in the table to this paragraph (b)'' in its place; and

■ iv. Add a heading for the table; and

■ e. Revise newly redesignated paragraph (c).

The revisions and additions to read as follows:

§ 3280.506 Heat loss/heat gain.

(a) * * *

Figure 1 to Paragraph (a)

(b) * * *

Table 1 to Paragraph (b)

* * * * *

(c) To assure uniform heat transmission in manufactured homes, cavities in exterior walls, floors, and ceilings must be provided with thermal insulation. For insulation purposes, the fire separation wall between each single family attached manufactured home shall be considered an exterior wall (see subpart K of this part).

* * * * *

■ 20. In § 3280.602, add alphabetically the definition for ''Indirect waste receptor'' to read as follows:

§ 3280.602 Definitions.

* * * * *

Indirect waste receptor means a receptor that receives a discharge waste pipe that is not directly connected to a receptor but maintains a suitable air gap between the end of the pipe and the top of the drain.

* * * * *

■ 21. In § 3280.608, revise paragraph (b) to read as follows:

§ 3280.608 Hangers and supports.

* * * * *

(b) *Piping supports.* Piping must be secured at sufficiently close intervals to keep the pipe in alignment and carry the weight of the pipe and contents. Unless otherwise stated in the standards incorporated by reference for specific materials at § 3280.604(a), or unless specified by the pipe manufacturer, horizontal plastic drainage piping must be supported at intervals not to exceed 4 feet and horizontal plastic water piping must be supported at intervals not to exceed 3 feet. Vertical drainage and water piping must be supported at each story height.

* * * * *

■ 22. In § 3280.609, revise paragraph (c)(1)(iii) and add paragraph (c)(1)(iv) to read as follows:

§ 3280.609 Water distribution systems.

* * * * *

(c) * * *

(1) * * *

(iii) Relief valves must be provided with full-sized drains, with cross sectional areas equivalent to that of the relief valve outlet. The outlet of a pressure relief valve, temperature relief valve, or combination thereof, must not be directly connected to the drainage system. The discharge from the relief valve must be piped full size separately to the exterior of the manufactured home, not underneath the home, or to an indirect waste receptor located inside the manufactured home. Exterior relief drains shall be directed down and shall terminate between 6″ and 24″ above finished grade. Drain lines must be of a material listed for hot water distribution and must drain fully by gravity, must not be trapped, and must not have their outlets threaded, and the end of the drain must be visible for inspection.

(iv) Relief valve piping designed to be located underneath the manufactured home is not required to be installed at the factory provided the manufacturer designs the system for site assembly and also provides all materials and components including piping, fittings, cement, supports, and instructions for proper site installation.

* * * * *

■ 23. In § 3280.610, add headings to paragraphs (c)(1) and (4) and revise paragraph (c)(5) to read as follows:

§ 3280.610 Drainage systems.

* * * * *

(c) * * * (1) *General.* * * *

* * * * *

(4) *Size Requirement.* * * *

(5) *Preassembly of drain lines.* Section(s) of the drain system, designed to be located underneath the manufactured home or between stories of the manufactured home, are not required to be factory installed when the manufacturer designs the system for site assembly and also provides all materials and components, including piping, fittings, cement, supports, and instructions necessary for proper site installation.

* * * * *

■ 24. Amend § 3280.611 as follows:

■ a. Remove the comma at the end of paragraph (c)(1)(i) and add a semicolon in its place; and

■ b. Revise paragraph (c)(1)(ii).

The revisions to read as follows:

§ 3280.611 Vents and venting.

* * * * *

(c) * * *

(1) * * *

(ii) A 1½-inch diameter (min.) continuous vent or equivalent, indirectly connected to the toilet drain piping within the distance allowed in paragraph (c)(5) of this section for 3 inch trap arms through a 2-inch wet vented drain that carries the waste of not more than one fixture. Sections of the wet vented drain that are 3 inches in diameter are permitted to carry the waste of an unlimited number of fixtures; or

* * * * *

■ 25. In § 3280.612, amend paragraph (a) to read as follows:

§ 3280.612 Tests and inspection.

(a) *Water system.* All water piping in the water distribution system must be subjected to a pressure test. The test must be made by subjecting the system to air or water at 80 psi + or − 5 psi for 15 minutes without loss of pressure.

The water used for the test must be obtained from a potable water source.

* * * * *

■ 26. Amend § 3280.705 by:

■ a. Revising paragraph (c)(1);

■ b. In paragraph (j), removing ''shall'' and add in its place ''must'' wherever it appears;

■ c. Revising paragraphs (k), (l)(7), and (l)(8)(i); and

■ d. Adding paragraph (l)(8)(iii).

The revisions and addition to read as follows:

§ 3280.705 Gas piping systems.

* * * * *

(c) * * *

(1) All points of crossover beneath the transportable sections must be readily accessible from the exterior of the home. In multi-story manufactured homes, the interconnections between stories must be accessible through a panel on the exterior or interior of the manufactured home.

* * * * *

(k) *Identification of gas supply connections.* Each manufactured home must have permanently affixed to the exterior skin at or near each gas supply connection or the end of the pipe, a tag of 3 inches by 1¾ inches minimum size, made of etched, metal-stamped or embossed brass, stainless steel, anodized or alcalde aluminum not less than 0.020 inch thick, or other approved material [*e.g.,* 0.005 inch plastic laminates], with the information shown in Figure 1 to this paragraph (k). The connector capacity indicated on this tag must be equal to or greater than the total Btu/hr rating of all intended gas appliances.

FIGURE 1 to §3280.705(k) -- Gas Supply Connection Identification Tag Information

COMBINATION LP-GAS AND NATURAL GAS SYSTEM

This gas piping system is designed for use of either liquefied petroleum gas or natural gas.

NOTICE: BEFORE TURNING ON GAS BE CERTAIN APPLIANCES ARE DESIGNED FOR THE GAS CONNECTED AND ARE EQUIPPED WITH CORRECT ORIFICES. SECURELY CAP THIS INLET WHEN NOT CONNECTED FOR USE.

When connecting to lot outlet, use a listed gas supply connector for manufactured homes rated at
□ 100,000 Btu/hr or more;
□ 250,000 Btu/hr or more.

Before turning on gas, make certain that all gas connections have been made tight, all appliance valves are turned off, and any unconnected outlets are capped.

After turning on gas, test gas piping and connections to appliances for leakage with soapy water or bubble solution, and light all pilots.

(l) * * *

(7) *Hangers and supports.* All horizontal gas piping must be adequately supported by galvanized or equivalently protected metal straps or hangers at intervals of not more than 4 feet, except where adequate support and protection is provided by structural members. Vertical gas piping in multi-story dwelling units must be supported at intervals of not more than 6 feet. Solid iron-pipe connection(s) must be rigidly anchored to a structural member within 6 inches of the supply connection(s).

(8) * * * (i) Before appliances are connected, piping systems must stand a pressure of three ± 0.2 psi gauge for a period of not less than ten minutes without showing any drop in pressure. Pressure must be measured with a mercury manometer or slope gauge calibrated so as to be read in increments of not greater than one-tenth pound, or an equivalent device. The source of normal operating pressure must be isolated before the pressure tests are made. Before a test is begun, the temperature of the ambient air and of the piping must be approximately the same, and constant air temperature must be maintained throughout the test.

* * * * *

(iii) Where gas piping between transportable sections must be made on site, the installation instructions must contain provisions for onsite testing for leakage consistent with the provisions in paragraph (l)(8)(i) of this section.

■ 27. In § 3280.708, revise paragraph (a)(1) introductory text to read as follows:

§ 3280.708 Exhaust duct system and provisions for the future installation of a clothes dryer.

(a) * * * (1) All gas and electric clothes dryers must be exhausted to the outside by a moisture/lint exhaust duct and termination fitting. When the manufacturer supplies the clothes dryer, the exhaust duct and termination fittings must be completely installed by the manufacturer. If the exhaust duct system is subject to damage during transportation, or a field connection between transportable sections is required, complete factory installation

of the exhaust duct system is not required when the following apply:

* * * * *

■ 28. In § 3280.709, revise paragraph (a) to read as follows:

§ 3280.709 Installation of appliances.

(a) The installation of each appliance must conform to the terms of its listing and the manufacturer's instructions. The manufactured home manufacturer must leave the appliance manufacturer's instructions attached to the appliance. Every appliance must be secured in place to avoid displacement. For the purpose of servicing and replacement, each appliance must be both accessible and removable.

(1) A direct vent space heating appliance is permitted to be shipped loose for on-site installation in a basement provided the following:

(i) The heating appliance is listed for the installation.

(ii) Approved installation instructions are provided that include requirements for completion of all gas and electrical connections and provide for the manufacturer's inspection and/or testing of all connections.

(iii) Approved instructions are provided to assure connection of the vent and combustion air systems in accordance with § 3280.710(b), and to provide for the manufacturer's inspection of the systems for compliance.

(iv) Approved installation and the manufacturer's inspection procedures are provided for the connection of the site-installed heating appliance to the factory-installed circulation air system and return air systems.

(2) The procedures must include revisions to assure compliance of the installed systems with § 3280.715.

* * * * *

■ 29. In § 3280.710, revise paragraph (d) to read as follows:

§ 3280.710 Venting, ventilation, and combustion air.

* * * * *

(d) Venting systems of fuel-burning appliances must terminate at least three feet above any motor-driven air intake discharging into habitable rooms when located within ten feet of the air intake.

* * * * *

■ 30. Amend § 3280.802 by:

■ a. Redesignating paragraphs (a)(4) through (41) as paragraphs (a)(5) through (42);

■ b. Adding a new paragraph (a)(4); and

■ c. Adding and reserving paragraph (b).

The additions read as follows:

§ 3280.802 Definitions.

* * * * *

(a) * * *

(4) *Attached accessory building or structure* means any awning, cabana, deck, ramada, storage cabinet, carport, windbreak, garage, or porch for which the attachment of such is designed by the home manufacturer to be structurally supported by the manufactured home.

* * * * *

(b) [Reserved]

■ 31. In § 3280.807, add paragraph (g) to read as follows:

§ 3280.807 Fixtures and appliances.

* * * * *

(g) In bathrooms, ceiling-mounted lighting fixtures and wall-mounted lighting fixtures must not be controlled by the same switch.

■ 32. In § 3280.810, revise paragraph (b) to read as follows:

§ 3280.810 Electrical testing.

* * * * *

(b) *Additional testing.* Each manufactured home must be subjected to the following tests:

(1) An electrical continuity test to assure that metallic parts are effectively bonded;

(2) An operational test of all devices and utilization equipment, except water heaters, electric ranges, electric furnaces, dishwashers, clothes washers/dryers, and portable appliances, to demonstrate they are connected and in working order; and

(3) Electrical polarity checks to determine that connections have been made in accordance with applicable provisions of these standards and Article 550.17 of NFPA 70–2005 (incorporated by reference, see § 3280.4). Visual verification is an acceptable electrical polarity check.

§ 3280.902 [Amended]

■ 33. In § 3280.902(b), remove ''an *A* frame'' and add in its place ''a rigid substructure.''

■ 34. Revise § 3280.903 to read as follows:

§ 3280.903 General requirements for designing the structure to withstand transportation shock and vibration.

(a) *General.* The manufactured home and its transportation system (as defined in § 3280.902(f)) must withstand the effects of highway movement such that the home is capable of being transported safely and installed as a habitable structure. Structural, plumbing, mechanical, and electrical systems must be designed to function after set-up. The home must remain weather protected during the transportation sequence to prevent internal damage.

(b) *Testing or analysis requirements.* Suitability of the transportation system and home structure to withstand the effects of transportation must be permitted to be determined by testing, or engineering analysis, or a combination of the two as required by paragraphs (b)(1) and (2) of this section.

(1) *Road tests.* Tests must be witnessed by an independent registered professional engineer or architect, manufacturer's IPIA or DAPIA, or by a recognized testing organization. Such testing procedures must be part of the manufacturer's approved design.

(2) *Engineering analysis.* Engineering analysis methods based on the principles of mechanics and/or structural engineering may be used to substantiate the adequacy of the transportation system to withstand in-transit loading conditions. As transportation loadings are typically critical in the longitudinal direction, analysis should, in particular, provide emphasis on design of longitudinal structural components of the manufactured home (*e.g.,* main chassis girder beams, sidewalls, and rim joists, etc.). Notwithstanding, all structural elements necessary to the structural integrity of the manufactured home during in-transit loading are also to be evaluated (*e.g.,* transverse chassis members and floor framing members, etc.).

(i)(A) The summation of the design loads in paragraphs (b)(2)(i)(A)(*1*) through (*3*) of this section may be used to determine the adequacy of the chassis in conjunction with the manufactured home structure to resist in-transit loading:

(*1*) Dead load, the vertical load due to the weight of all structural and non-structural components of the manufactured home at the time of shipment.

(*2*) Floor load, a minimum of 3 pounds per square foot.

(*3*) Dynamic loading factor, (0.25)[(b2iA) + (b2iB)].

(B) However, the in-transit design loading need not exceed twice the dead load of the manufactured home.

(ii) To determine the adequacy of individual longitudinal structural components to resist the in-transit design loading, a load distribution based on the relative flexural rigidity and shear stiffness of each component may be utilized. For the purpose of loading distribution, the sidewall may be considered to be acting as a ''deep beam'' in conjunction with other load carrying elements in determining the

relative stiffness of the integrated structure. Further, by proper pre-cambering of the chassis assembly, additional loading may be distributed to the chassis, and the remaining loading may be distributed to each of the load carrying members by the relative stiffness principle.

(iii) The analysis is also to include consideration for:

(A) Location of openings in the sidewall during transport and, when appropriate,

provisions for reinforcement of the structure and/or chassis at the opening.

(B) Sidewall component member sizing and joint-splice analysis (*i.e.,* top and bottom plates, etc.), and connections between load carrying elements.

■ 35. In § 3280.904, revise paragraphs (a), (b)(1) through (6) and (8) through (10) to read as follows:

§ 3280.904 Specific requirements for designing the transportations system.

(a) *General.* The transportation system must be designed and constructed as an integrated unit which is safe and suitable for its specified use. In operation, the transportation system must effectively respond to the control of the towing vehicle tracking and braking, while traveling at applicable highway speeds and in normal highway traffic conditions.

(b) *Specific requirements*—(1) *Drawbar.* The drawbar must be constructed of sufficient strength, rigidity, and durability to safely withstand those dynamic forces experienced during highway transportation. It must be securely fastened to the manufactured home substructure.

(2) *Coupling mechanism.* The coupling mechanism (which is usually of the socket type) must be securely fastened to the drawbar in such a manner as to assure safe and effective transfer of the maximum loads, including dynamic loads, between the manufactured home structure and the hitch-assembly of the towing vehicle. The coupling must be equipped with a manually operated mechanism so adapted as to prevent disengagement of the unit while in operation. The coupling must be so designed that it can be disconnected regardless of the angle of the manufactured home to the towing vehicle.

(3) *Chassis.* The chassis, in conjunction with the manufactured home structure, must be constructed to effectively sustain the design loads. The integrated structure must be capable of ensuring the integrity of the complete manufactured home and ensuring against excessive deformation of structural or finish members.

(4) *Running gear assembly*—(i) *Design criteria.* The design load used to size running gear components must be the gross static dead weight minus the static tongue weight supported by the drawbar. Running gear must be designed to accept shock and vibration, both from the highway and the towing vehicle and effectively dampen these forces so as to protect the manufactured home structure from damage and fatigue. Its components must be designed to facilitate routine maintenance, inspection, and replacement.

(ii) *Location.* Location of the running gear assembly must be determined by documented engineering analysis, taking into account the gross weight (including all contents), total length of the manufactured home, the necessary coupling hitch weight, span distance, and turning radius. Weights shall be checked with the home in a level position ready for transport. The coupling weight must be not less than 12 percent nor more than 25 percent of the gross weight.

(5) *Spring assemblies.* Spring assemblies (springs, hangers, shackles, bushings, and mounting bolts) must be capable of supporting the running gear design loads, without exceeding maximum allowable stresses for design spring assembly life as recommended by the spring assembly manufacturer. The capacity of the spring system must ensure that under maximum operating load conditions, sufficient clearance is maintained between the tire and manufactured home's frame or structure to permit unimpeded wheel movement and for changing tires.

(6) *Axles.* Axles, and their connecting hardware, must be capable of supporting the static running gear design loads, without exceeding maximum allowable design axle loads as recommended by the axle manufacturer. The number and load capacity necessary to provide a safe tow must not be less than those required to support the design load.

(i) *Recycled axles.* Before reuse, all axles, including all component parts, must be reconditioned as required pursuant to a program accepted by a nationally recognized testing agency. The recycling program must be approved, and the axles must be labeled by a nationally recognized testing agency. Recycled axles and their components must utilize compatible components and be of the same size and rating as the original equipment.

(ii) [Reserved].

* * * * *

(8) *Tires, wheels, and rims.* Tires, wheels, and rims must be selected, sized, and fitted to axles so that static dead load supported by the running gear does not exceed the load capacity of the tires. Tires must not be loaded beyond the load rating marked on the sidewall of the tire or, in the absence of such a marking, the load rating specified in any of the publications of any of the organizations listed in Federal Motor Vehicle Safety Standard (FMVSS) No. 119 in 49 CFR 571.119, S5.1(b). Wheels and rims must be sized in accordance with the tire manufacturer's recommendations as suitable for use with the tires selected.

(i) *Inflation pressure.* The load and cold inflation pressure imposed on the rim or wheel must not exceed the rim and wheel manufacturer's instructions even if the tire has been approved for a higher load or inflation. Tire cold inflation pressure limitations and the inflation pressure measurement correction for heat must be as specified in 49 CFR 393.75(h).

(ii) *Used tires.* Whenever the tread depth is at least 1/16 inch as determined by a tread wear indicator, used tires are permitted to be sized in accordance with 49 CFR 571.119. The determination as to whether a used tire is acceptable must also include a visual inspection for thermal and structural defects (*e.g.,* dry rotting, excessive tire sidewall splitting, etc.). Used tires with such structural defects must not be installed on manufactured homes.

(9) *Brake assemblies*—(i) *Braking axles.* The number, type, size, and design of brake assemblies required to assist the towing vehicle in providing effective control and stopping of the manufactured home must be determined and documented by engineering analysis. Those alternatives listed in § 3280.903(c) may be accepted in place of such an analysis. Unless substantiated in the design to the satisfaction of the approval agency by either engineering analysis in accordance with § 3280.903(a)(1) or tests in accordance with paragraph (b)(9)(ii) of this section, there must be a minimum of two axles equipped with brake assemblies on each manufactured home transportable section.

(ii) *Stopping distance.* Brakes on the towing vehicle and the manufactured home (a drive-away/tow-away) must be capable of ensuring that the maximum stopping distance from an initial speed of 20 miles per hour does not exceed 35 feet in accordance with 49 CFR 393.52(d) for 2 or fewer vehicles in drive away or tow away operation.

(iii) *Electrical brake wiring.* Brake wiring must be provided for each brake.

The brake wire must not be less than the value specified in the brake manufacturer's instructions. Aluminum wire, when used, must be provided with suitable termination that is protected against corrosion.

(10) *Lamps and associated wiring.* Stop lamps, turn signal/lamps, and associated wiring must meet the appropriate sections of FMVSS No. 108 in 49 CFR 571.108, which specify the performance and location of these lamps and their wiring. The manufacturer may meet these requirements by utilizing a temporary light/wiring harness, which has components that meet the FMVSS No. 108. The temporary harness is permitted to be provided by the manufactured home transportation carrier.

■ 36. Add subpart K to read as follows:

Subpart K—Attached Manufactured Homes and Special Construction Considerations

Sec.
3280.1001 Scope.
3280.1002 Definitions.
3280.1003 Attached manufactured home unit separation.
3280.1004 Exterior walls.
3280.1005 Electrical service.
3280.1006 Water service.

§ 3280.1001 Scope.

This subpart covers the requirements for attached manufactured homes and other related construction associated with manufactured homes not addressed elsewhere within this part.

§ 3280.1002 Definitions.

The following definitions are applicable to this subpart only:

Attached manufactured home. Two or more adjacent manufactured homes that are structurally independent from foundation to roof and with open space on at least two sides, but which have the appearance of a physical connection (*i.e.,* zero lot line).

Fire separation wall. An adjoining wall of a manufactured home that separates attached manufactured homes with a fire separation distance of less than three feet.

§ 3280.1003 Attached manufactured home unit separation.

(a) *Separation requirements.* (1) Attached manufactured homes shall be separated from each other by a fire separation wall of not less than 1-hour fire-resistive rating with exposure from both sides on each attached manufactured home unit when rated based on tests in accordance with ASTM E119–05 (incorporated by reference, see § 3280.4).

(2) Fire-resistance-rated floor/ceiling and wall assemblies shall extend to and be tight against the exterior wall, and wall assemblies shall extend from the foundation to the underside of the roof sheathing.

(b) *Fire separation penetrations.* (1) Fire rated fire separation walls must not contain through penetrations or openings.

(2) Membrane penetrations for electrical boxes are permitted on the living side of the wall under the following conditions:

(i) Steel electrical boxes not exceeding 16 square inches may be installed provided that the total area of such boxes does not exceed 100 square inches in any 100 square feet wall area. Steel electrical boxes in adjacent fire separation walls must be separated by a horizontal distance of not less than 24 inches.

(ii) Listed 2-hour fire-resistant nonmetallic electrical boxes are installed in accordance with the listings.

(iii) No other membrane penetrations are allowed.

(c) *Continuity of walls.* The fire separation walls for single-family attached dwelling units must be continuous from the foundation to the underside of the roof sheathing, deck, or slab and must extend the full length of the fire separation walls.

(d) *Parapets.* (1) Parapets constructed in accordance with paragraph (d)(2) of this section must be provided for attached manufactured homes as an extension of fire separation walls in accordance with the following:

(i) Where roof surfaces adjacent to the fire separation walls are at the same elevation, the parapet must extend not less than 30 inches above the roof surfaces.

(ii) Where roof surfaces adjacent to the wall or walls are at different elevations and the higher roof is not more than 30 inches above the lower roof surface, the parapet must not extend less than 30 inches above the lower roof surface.

(A) Parapets must be provided unless roofs are of a Class C roof covering and the roof decking or sheathing is of noncombustible materials or approved fire-retardant-treated wood for a distance of four feet on each side of the common fire separation walls; or one layer of 5/8 inch Type X gypsum board or equivalent is installed directly beneath the roof decking or sheathing for a distance of four feet on each side of the fire separation walls.

(B) A parapet must not be required where roof surfaces adjacent to the common walls are at different elevations and the higher roof is more than 30 inches above the lower roof. The fire separation wall construction from the lower roof to the underside of the higher roof deck must not have less than a 1-hour fire-resistive rating. The wall must be rated for exposure from both sides.

(2) Parapets must have the same fire resistance rating as that required for the supporting wall or walls. On any side adjacent to a roof surface, the parapet must have noncombustible faces for the uppermost 18 inches, to include counter flashing and coping materials. Where the roof slopes toward a parapet at slopes greater than 2/12 (16.7 percent slope), the parapet must extend to the same height as any portion of the roof within a distance of three feet, but in no case will the height be less than 30 inches.

§ 3280.1004 Exterior walls.

(a) The requirements of § 3280.504 for condensation control and vapor retarder installation are required to be provided on each fire separation wall of each attached manufactured home.

(b) The requirements of § 3280.506 for heat loss/gain insulation apply to the fire separation wall on each attached manufactured home.

§ 3280.1005 Electrical service.

(a) Each attached manufactured home must be supplied by only one service.

(b) Service conductors supplying one manufactured home must not pass through the interior of another manufactured home.

§ 3280.1006 Water service.

(a) Each manufactured home must have an individual water supply that will service only that unit.

(b) Each manufactured home must have a hot water supply system that will service only that unit.

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

■ 37. The authority citation for part 3282 is revised to read as follows:

Authority: 15 U.S.C. 2697, 28 U.S.C. 2461 note, 42 U.S.C. 3535(d), 5403, and 5424.

■ 38. In § 3282.7, redesignate paragraphs (d) through (nn) as (e) through (oo) and add new paragraph (d) to read as follows:

§ 3282.7 Definitions.

* * * * *

(d) *Attached accessory building or structure* means any awning, cabana, deck, ramada, storage cabinet, carport, windbreak, garage, or porch for which the attachment of such is designed by the home manufacturer to be

structurally supported by the manufactured home.

* * * * *

■ 39. In § 3282.8, revise paragraph (j) to read as follows:

§ 3282.8 Applicability.

* * * * *

(j) *Add-on.* An add-on including an attached accessory building or structure added by the retailer or some party other than the manufacturer (except where the manufacturer acts as a retailer) as part of a simultaneous transaction involving the sale of a new manufactured home, is not governed by the standards and is not subject to the regulations in this part except as identified in this section and part 3280 of this chapter. The addition of any add-on or attached accessory building or structure must not affect the ability of the manufactured home to comply with the standards. If the addition of an add-on or attached accessory building or structure causes the manufactured home to fail to conform to the standards, then sale, lease, and offer for sale or lease of the home are prohibited until the manufactured home is brought into conformance with the standards.

(1) With the exception of attached accessory buildings or structures, add-ons must be structurally independent and any attachment between the home and the add-on must be for weatherproofing or cosmetic purposes only.

(2) If an attached accessory building or structure is not structurally independent all the following must be met for attachment to the manufactured home:

(i) Manufactured home must be designed and constructed to accommodate all imposed loads, including any loads imposed on the home by the attached accessory building or structure, in accordance with part 3280 of this chapter.

(ii) Data plate must indicate that home has been designed to accommodate the additional loads imposed by the attachment of the attached accessory buildings or structures and must identify the design loads.

(iii) Installation instructions shall be provided by the home manufacturer which identifies acceptable attachment locations, indicates design limitations for the attached accessory building or structure including acceptable live and dead loads for which the home has been designed to accommodate and provide support and anchorage designs as necessary to transfer all imposed loads to the ground in accordance with part 3285 of this chapter.

* * * * *

■ 40. In § 3282.14, revise paragraph (a) introductory text to read as follows:

§ 3282.14 Alternative construction of manufactured homes.

(a) *Policy.* In order to promote the purposes of the Act, the Department will permit the sale or lease of one or more manufactured homes not in compliance with the standards under circumstances wherein no affirmative action is needed to protect the public interest. An add-on, including an attached accessory building or structure which does not affect the performance and ability of the manufactured home to comply with the standards in accordance with § 3282.8(j), is not governed by this section. The Department encourages innovation and the use of new technology in manufactured homes. Accordingly, HUD will permit manufacturers to utilize new designs or techniques not in compliance with the standards in cases:

* * * * *

■ 41. In § 3282.601, add paragraph (c) to read as follows:

§ 3282.601 Purpose and applicability.

* * * * *

(c) *Exception.* An add-on or attached accessory building or structure which does not affect the performance and ability of the manufactured home to comply with the standards in accordance with § 3282.8(j) is not governed by this section.

■ 42. In § 3282.602, revise paragraph (a)(2) to read as follows:

§ 3282.602 Construction qualifying for on-site completion.

(a) * * *

(2) Any work required by the home design that cannot be completed in the factory, or when the manufacturer authorizes the retailer to provide an add-on to the home during installation, when that work would take the home out of conformance with the construction and safety standards and then bring it back into conformance;

* * * * *

PART 3285—MODEL MANUFACTURED HOME INSTALLATION STANDARDS

■ 43. The authority citation for part 3285 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5403, 5404, and 5424.

■ 44. In § 3285.5, add alphabetically the definition for ''Attached accessory building or structure'' to read as follows:

§ 3285.5 Definitions.

* * * * *

Attached accessory building or structure means any awning, cabana, deck, ramada, storage cabinet, carport, windbreak, garage, or porch for which the attachment of such is designed by the home manufacturer to be structurally supported by the manufactured home.

* * * * *

■ 45. In § 3285.903, revise paragraph (c) to read as follows:

§ 3285.903 Permits, alterations, and on-site structures.

* * * * *

(c) *Installation of an add-on or attached accessory building or structure.* Each attached accessory building or structure or add-on is designed to support all of its own live and dead loads, unless the attached accessory building or structure is otherwise included in the installation instructions or designed by a registered professional engineer or registered architect in accordance with this part.

Dana T. Wade,

Assistant Secretary for Housing Federal Housing Commissioner.

[FR Doc. 2020–28227 Filed 1–11–21; 8:45 am]

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To designate the Department of Veterans Affairs community-based outpatient clinic in Gilbert, Arizona, as the "Staff Sergeant Alexander W. Conrad Veterans Affairs Health Care Clinic". (Jan. 5, 2021; 134 Stat. 4900)

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To name the Department of Veterans Affairs community-based outpatient clinic in Youngstown, Ohio, as the "Carl Nunziato VA Clinic". (Jan. 5, 2021; 134 Stat. 4903)

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H.R. 7898/P.L. 116–321
To amend the Health Information Technology for Economic and Clinical Health Act to require the Secretary of Health and Human Services to consider certain recognized security practices of covered entities and business associates when making certain determinations, and for other purposes. (Jan. 5, 2021; 134 Stat. 5072)

H.R. 8611/P.L. 116–322
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