FEDERAL REGISTER

Vol. 83 Thursday,
No. 17 January 25, 2018

Pages 3401–3562

OFFICE OF THE FEDERAL REGISTER

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Rules and Regulations

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0052]

Drawbridge Operation Regulation; Chambers Creek, Steilacoom, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Chambers Bay railroad lift bridge (Chambers Bay Bridge) across Chambers Bay, mile 0.01, near Steilacoom in Pierce County, WA. The deviation allows the Chambers Bay Bridge to operate without a duty bridge operator during the late evening and early morning hours over the relevant dates. During these hours the Chambers Bay Bridge will remain in the closed-to-navigation position.

DATES: This deviation is effective without actual notice from January 25, 2018 through 6 a.m. on May 19, 2018. For the purposes of enforcement, actual notice will be used from January 25, 2018 until 10 p.m. May 19, 2018.

ADDRESSES: The docket for this deviation, USCG–2018–0052 is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: Burlington Northern Santa Fe (BNSF) Railway Company owns and operates the vertical lift Chambers Bay Bridge. BNSF requested the Chambers Bay Bridge, across Chambers Bay, mile 0.01, near Steilacoom in Pierce County, WA, be authorized to operate without a bridge operator on duty between the hours of 10 p.m. and 6 a.m. The subject bridge operates in accordance with 33 CFR 117.5. Chambers Bay Bridge has a vertical clearance of 10 ft in the closed-to-navigation position, and 50 ft of vertical clearance in the open-to-navigation position (reference MHW elevation of 12.2 feet). Between the hours of 10 p.m. and 6 a.m., the Chambers Bay Bridge will be able to open on signal if such requests are received with at least 4 hours notice.

Waterway usage on Chambers Bay is recreational pleasure craft including cabin cruisers and sailing vessels. Vessels able to pass under the bridge in the closed-to-navigation position may do so at anytime. The bridge will be able to open for emergencies during this closure period, and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 19, 2018.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2018–01382 Filed 1–24–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0060]

RIN 1625–AA00

Safety Zone; Upper Mississippi River, Thebes, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing an emergency temporary safety zone for all navigable waters of the Upper Mississippi River between mile marker (MM) 40 and MM 45. This emergency safety zone is needed to protect life, vessels, and the marine environment from potential hazards associated with lightering operations of a grounded barge. Entry of down-bound vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

DATES: This rule is effective without actual notice from January 25, 2018 until January 26, 2018, or, until the lightering operations cease, whichever occurs first. For the purposes of enforcement, actual notice will be used from January 19, 2018 until January 25, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0060 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Daniel Parker, Marine Safety Unit Paducah, U.S. Coast Guard; telephone 270–442–1621, email *Daniel.M.Parker@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Ohio Valley
DHS Department of Homeland Security
FR Federal Register
MM Mile Marker
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary

to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a Notice of Proposed Rulemaking (NPRM) with respect to this rule because it is impracticable. The safety zone must be established immediately to protect people and vessels during the lightering operation of a grounded barge and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. It is also contrary to the public interest because following the NPRM process and delaying the effective date of this temporary rule would be detrimental to the immediate need to ensure the safety of life and property.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to protect personnel, vessels, and the marine environment from potential hazards created by lightering operations of a grounded barge.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. This safety zone is established because the Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with lightering operations of a grounded barge on the Upper Mississippi River between Mile Marker (MM) 40 and MM 45. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the hazards associated with lightering operations of a grounded barge are present.

IV. Discussion of the Rule

The Coast Guard is establishing a temporary emergency safety zone for all navigable waters on the Upper Mississippi River between MM 40 and 45. Transit into and through this area is prohibited for down-bound traffic beginning at 7 a.m. on January 19, 2018 through 5 p.m. on January 26, 2018. The COTP will terminate the enforcement of this safety zone before January 26, 2018 if the lightering operations are completed before that date. Entry into this safety zone is prohibited unless specifically authorized by the COTP or his designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Ohio Valley.

Requests for entry will be considered and reviewed on a case-by-case basis. The COTP may be contacted by telephone at 502–779–5422 or can be reached by VHF–FM channel 16. Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. This safety zone will restrict down-bound vessel traffic from entering or transiting within a five mile area of navigable waterways on the Upper Mississippi River between MM 40 and MM 45. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the 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. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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 $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves an emergency safety zone lasting less than one week that will prohibit entry and transiting between MM 40 and MM 45 on the Upper Mississippi River during lightering operations of a grounded barge. It is categorically excluded from further review under paragraph L60(c) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. Because this safety zone is established in response to an emergency situation and is less than one week in duration, a Record of Environmental Consideration (REC) is not required. Should this emergency situation require a safety zone lasting longer than one week, a REC will be made available as indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0053 to read as follows:

§ 165.T08–0053 Safety Zone; Upper Mississippi River, Thebes, IL.

(a) *Location.* The following area is a safety zone: All navigable waters of the Upper Mississippi River from Mile Marker (MM) 40 to MM 45, extending the entire width of the river.

(b) *Enforcement period.* This section will be enforced from 7 a.m. on January 19, 2018 through 5 p.m. on January 26 2018, or until the lightering operations cease, whichever occurs first.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of down-bound vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Ohio Valley.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. To seek entry into the safety zone, contact the COTP or the COTP's representative by telephone at 270–217–0959 or on VHF–FM channel 16.

(3) Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners of any changes in the planned schedule.

Dated: January 19, 2018

M.B. Zamperini,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2018–01336 Filed 1–24–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 101206604–1758–02]

RIN 0648–XF970

Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; 2017–2018 Commercial Trip Limit Reduction for Spanish Mackerel in the Atlantic Southern Zone

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

ACTION: Temporary rule; trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit of Atlantic migratory group Spanish mackerel in or from the exclusive economic zone (EEZ) in the Atlantic southern zone to 1,500 lb (680 kg), in round or gutted weight, per day. This commercial trip limit reduction is necessary to maximize the socioeconomic benefits of the quota.

DATES: Effective 6 a.m., local time, on January 27, 2018, until 12:01 a.m., local time, March 1, 2018.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish includes king mackerel, Spanish mackerel, and cobia, and is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights for Atlantic Spanish mackerel below apply as either round or gutted weight.

Framework Amendment 1 to the FMP (79 FR 69058, November 20, 2014) implemented a commercial annual catch limit (equal to the commercial quota) of 3.33 million lb (1.51 million kg) for the Atlantic migratory group of Spanish mackerel (Atlantic Spanish mackerel). Atlantic Spanish mackerel are divided into a northern and southern zone for management purposes. The southern zone consists of Federal waters off South Carolina,

Georgia, and Florida. The southern zone boundaries for Atlantic Spanish mackerel extend from the border of North Carolina and South Carolina, which is a line extending in a direction of 135°34′55″ from true north beginning at 33°51′07.9″ N lat. and 78°32′32.6″ W long., and proceed south to the intersection point with the outward boundary of the EEZ, at 25°20′24″ N lat., which is a line directly east from the border of Miami-Dade and Monroe Counties, Florida.

The southern zone commercial quota for Atlantic Spanish mackerel is 2,667,330 lb (1,209,881 kg). Seasonally variable trip limits are based on an adjusted commercial quota of 2,417,330 lb (1,096,482 kg). The adjusted commercial quota is calculated to allow continued harvest in the southern zone at a set rate for the remainder of the current fishing year, through February 28, 2018, in accordance with 50 CFR 622.385(b)(2). Regulations at 50 CFR 622.384(c)(2)(iii) allow for quota transfers between the northern and southern zones with NMFS approval. On October 30, 2017, the State of Florida sent a letter to NMFS, requesting a transfer of 100,000 lb (45,359 kg) of the 2017–2018 Spanish mackerel commercial quota from the southern zone to the northern zone, as per the requirements of 50 CFR 622.384(c)(2)(iii). On November 1, 2017, NMFS notified the respective states that the quota transfer was approved. Accordingly, the revised commercial quota for the 2017–2018 fishing year for the Atlantic Spanish mackerel northern zone is 762,670 lb (345,941 kg) and the revised commercial quota for the southern zone is 2,567,330 lb (1,164,521 kg).

As specified at 50 CFR 622.385(b)(1)(ii)(B), after 75 percent of the adjusted commercial quota of Atlantic Spanish mackerel is reached or projected to be reached, Spanish mackerel in or from the EEZ in the southern zone may not be possessed onboard or landed from a permitted vessel in amounts exceeding 1,500 lb (680 kg) per day.

NMFS has determined that 75 percent of the adjusted commercial quota for Atlantic Spanish mackerel has been reached. Accordingly, the commercial trip limit of 1,500 lb (680 kg) per day applies to Atlantic Spanish mackerel in or from the EEZ in the southern zone effective 6 a.m., local time, on January 27, 2018, until 12:01 a.m., local time, March 1, 2018, unless changed by subsequent notification in the **Federal Register**.

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of Atlantic Spanish mackerel and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.385(b)(1)(ii)(B) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act, because the temporary rule is issued without opportunity for prior notice and opportunity for comment.

This action responds to the best scientific information available. The NOAA Assistant Administrator for Fisheries (AA) finds that the need to immediately reduce the trip limit for the commercial sector for Atlantic Spanish mackerel constitutes good cause to waive the requirements to provide prior notice and the opportunity for public comment pursuant to 5 U.S.C. 553(b)(B) as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rules implementing the quotas and trip limits have already been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction.

Prior notice and opportunity for public comment is contrary to the public interest, because any delay in the trip limit reduction of the commercial harvest could result in the commercial quota being exceeded. There is a need to immediately implement this action to protect the Atlantic Spanish mackerel resource, because the capacity of the fishing fleet allows for rapid harvest of the commercial quota. Prior notice and opportunity for public comment would require additional time and could potentially result in a harvest well in excess of the established commercial quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: January 22, 2018.

Samuel D. Rauch, III,

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

[FR Doc. 2018–01385 Filed 1–24–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120919470–3513–02]

RIN 0648–XF965

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery off the Southern Atlantic States; Closure of the Penaeid Shrimp Fishery off Georgia

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the exclusive economic zone (EEZ) off Georgia in the South Atlantic to trawling for penaeid shrimp, *i.e.,* brown, pink, and white shrimp. This closure is necessary to protect the spawning stock of white shrimp that has been subject to unusually cold weather conditions where state water temperatures have been 9 °C (48 °F), or less, for at least 7 consecutive days.

DATES: The closure is effective January 24, 2018, until the effective date of a notification of opening which NOAA will publish in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Frank Helies, 727–824–5305; email: *Frank.Helies@noaa.gov.*

SUPPLEMENTARY INFORMATION: The penaeid shrimp fishery of the South Atlantic is managed under the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Amendment 9 to the FMP revised the criteria and procedures by which a South Atlantic state may request a concurrent closure of the EEZ to the harvest of penaeid shrimp when state waters close as a result of severe winter weather (78 FR 35571, June 13, 2013). Under 50 CFR 622.206(a), NMFS may close the EEZ adjacent to South Atlantic states that have closed their waters to the harvest of brown, pink, and white shrimp to protect the white shrimp spawning stock that has been severely depleted by cold weather or when applicable state water temperatures are 9 °C (48 °F), or less, for at least 7 consecutive days. Consistent with those

procedures and criteria, the state of Georgia has determined that unusually cold temperatures have occurred and that state water temperatures have been 9 °C (48 °F), or less, for at least 7 consecutive days and that these cold weather conditions pose a risk to the condition and vulnerability of overwintering white shrimp populations in its state waters. Georgia closed its waters on January 15, 2018, to the harvest of brown, pink, and white shrimp, and has requested that NMFS implement a concurrent closure of the EEZ off Georgia. In accordance with the procedures described in the FMP, the state of Georgia submitted a letter to the NMFS Regional Administrator (RA) on January 17, 2018, requesting that NMFS close the EEZ adjacent to Georgia to penaeid shrimp harvest as a result of severe cold weather conditions.

NMFS has determined that the recommended Federal closure conforms with the procedures and criteria specified in the FMP and the Magnuson-Stevens Act, and, therefore, implements the Federal closure effective January 24, 2018. The closure will be effective until the ending date of the closure in Georgia state waters, but may be ended earlier based on a request from the state. NMFS will terminate the closure of the EEZ by filing a notification to that effect with the Office of the Federal Register.

During the closure, as specified in 50 CFR 622.206(a)(2), no person may: (1) Trawl for brown, pink, or white shrimp in the EEZ off Georgia; (2) possess on board a fishing vessel brown, pink, or white shrimp in or from the EEZ off Georgia unless the vessel is in transit through the area and all nets with a mesh size of less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut, are stowed below deck; or (3) for a vessel trawling within 25 nautical miles of the baseline from which the territorial sea is measured, use or have on board a trawl net with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut.

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of the spawning stock of white shrimp off Georgia and is consistent with the FMP, the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.206(a) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the EEZ off Georgia to trawling for penaeid shrimp constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure.

Providing prior notice and opportunity for public comment also is contrary to the public interest because of the need to immediately implement this action to protect the spawning stock of white shrimp off Georgia. Prior notice and opportunity for public comment would require time and would potentially further harm the spawning stock that has been impacted due to cold weather.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: January 22, 2018.

Samuel D. Rauch III,

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

[FR Doc. 2018–01386 Filed 1–24–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 161017970–6999–02]

RIN 0648–XF937

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfers

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

ACTION: Temporary rule; quota transfers.

SUMMARY: NMFS announces two retroactive commercial summer flounder quota transfers for the 2017 fishing year. The State of New York is transferring a portion of its quota to the State of New Jersey, and the State of North Carolina is transferring quota to the Commonwealth of Virginia. These quota adjustments are necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised 2017 commercial quotas for New York, New Jersey, North Carolina, and Virginia.

DATES: Effective January 24, 2018, through December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Cynthia Hanson, Fishery Management Specialist, (978) 281–9180.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.110. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102, and the initial 2017 allocations were published on December 22, 2016 (81 FR 93842).

The final rule implementing Amendment 5 to the Summer Flounder Fishery Management Plan, as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i)(A) through (C) in the evaluation of requests for quota transfers or combinations.

This action includes two transfers of fishing year 2017 summer flounder commercial quota: New York is transferring 384 lb (174 kg) of quota to New Jersey; North Carolina is transferring 11,902 lb (5,399 kg) of quota to Virginia. Both of these transfers were requested to repay landings made in the receiving states under a safe harbor agreement. The revised summer flounder quotas for calendar year 2017 are now: New York, 435,380 lb (197,485 kg); New Jersey, 946,516 lb (429,332 kg); North Carolina, 1,524,791 lb (691,634 kg); and Virginia, 1,228,191 lb (557,098 kg); based on the initial quotas published in the 2017 Summer Flounder, Scup, and Black Sea Bass Specifications and subsequent transfers.

The 2017 fishing year ended December 31, 2017. The revised 2017

quotas will be used by NMFS in the ongoing quota accounting that is finalized in late 2018. These transfers were requested as a result of unforeseeable late-season events. Specifically, two landing events where vessels were granted safe harbor too late in the year to publish notice in 2017.

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: January 19, 2018.

Emily H. Menashes,

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

[FR Doc. 2018–01376 Filed 1–24–18; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 17
Thursday, January 25, 2018

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

[NRC–2017–0026]

RIN 3150–AJ95

Revision of Fee Schedules; Fee Recovery for Fiscal Year 2018

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, special project, and annual fees charged to its applicants and licensees. These proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990, as amended (OBRA–90), which requires the NRC to recover approximately 90 percent of its annual budget through fees; amounts appropriated for Waste Incidental to Reprocessing (WIR), generic homeland security activities, and Inspector General (IG) services for the Defense Nuclear Facilities Safety Board, as well as any amounts appropriated from the Nuclear Waste Fund, are excluded from this fee-recovery requirement. The NRC is issuing the fiscal year (FY) 2018 proposed fee rule based on the FY 2018 budget request since full-year appropriations have not yet been enacted for FY 2018. The NRC is using $967.0 million for the total budget authority in the proposed fee rule because it has included an adjustment to account for funding of $15.0 million for the Integrated University Program, which was not included in the budget request, but has historically been included by Congress in the final appropriations bill. Based on that total budget authority, the NRC is proposing to collect $826.7 million in fees in FY 2018. If the NRC receives an appropriation providing a different total budget authority, the final fee rule will reflect the final appropriation.

DATES: Submit comments by February 26, 2018. 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 before this date. Because OBRA–90 requires the NRC to collect the FY 2018 fees by September 30, 2018, the NRC will not grant any requests for an extension of the comment period.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0026. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

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: Michele Kaplan, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–5256; email: *Michele.Kaplan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0026 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 *http://www.regulations.gov* and search for Docket ID NRC–2017–0026.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then 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 or 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. For the convenience of the reader, the ADAMS accession numbers are also provided in a table in the ''Availability of Documents'' section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2017–0026 in the subject line of your comment submission in order to ensure that the NRC is able to make your comment submission publicly available in this docket.

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 posts all comment submissions at *http://www.regulations.gov* as well as entering 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 submissions. 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 submissions into ADAMS.

II. Background; Statutory Authority

The NRC's fee regulations are primarily governed by two laws: (1) The Independent Offices Appropriation Act, 1952 (IOAA) (31 U.S.C. 9701), and (2) OBRA–90 (42 U.S.C. 2214). The IOAA generally authorizes and encourages Federal regulatory agencies to recover—to the fullest extent possible—costs attributable to services provided to identifiable recipients. The OBRA–90 requires the NRC to recover approximately 90 percent of its budget authority for the fiscal year through fees; amounts appropriated for WIR, generic homeland security activities, and IG services for the Defense Nuclear Facilities Safety Board, as well as any amounts appropriated from the Nuclear Waste Fund, are excluded from this fee-recovery requirement. The OBRA–90 first requires the NRC to use its IOAA authority to collect service fees for NRC work that provides specific benefits to identifiable applicants and licensees (such as licensing work, inspections, and special projects). The regulations at part 170 of title 10 of the *Code of Federal Regulations* (10 CFR) authorize these fees. But, because the NRC's fee recovery under the IOAA (10 CFR part 170) does not equal 90 percent of the NRC's budget authority for the fiscal year, the NRC also assesses ''annual fees'' under 10 CFR part 171 to recover the remaining amount necessary to meet OBRA–90's fee-recovery requirement. These annual fees recover costs that are not otherwise collected through 10 CFR part 170.

III. Discussion

FY 2018 Fee Collection—Overview

The NRC is issuing the FY 2018 proposed fee rule based on the FY 2018 budget request as further described in the NRC's FY 2018 Congressional Budget Justification (CBJ) (NUREG–1100, Volume 33, ADAMS Accession No. ML17137A246), as adjusted, because full-year appropriations have not yet been enacted for FY 2018. The total budget requested for the NRC in FY 2018 is $952.0 million. The amount used for total budget authority in the proposed fee rule ($967.0 million) includes an adjustment for an additional $15.0 million for the NRC's Integrated University Program, which was not included in the budget request, but has historically been included by Congress in the final appropriations bill. The total budget authority used in the proposed fee rule represents an increase of $49.9 million from FY 2017 of which $30.0 million is from the Nuclear Waste Fund. As explained previously, certain portions of the NRC's total budget are excluded from OBRA–90's fee-recovery requirement. Based on the FY 2018 budget request, these exclusions total to $47.6 million, consisting of $30.0 million from the Nuclear Waste Fund, $1.3 million for WIR activities, $1.1 million for IG services for the Defense Nuclear Facilities Safety Board, and $15.2 million for generic homeland security activities. Additionally, OBRA–90 requires the NRC to recover only approximately 90 percent of the remaining budget authority for the fiscal year—10 percent of the remaining budget authority is not recovered through fees. The NRC refers to the activities included in this 10-percent as ''fee-relief'' activities. After accounting for the fee-recovery exclusions, the fee-relief activities, and net billing adjustments (*i.e.,* the sum of unpaid current year invoices (estimated) minus payments for prior year invoices), the NRC must bill approximately $826.7 million in fees in FY 2018. Of this amount, the NRC estimates that $289.4 million will be recovered through 10 CFR part 170 service fees; that leaves approximately $537.3 million to be recovered through 10 CFR part 171 annual fees. Table I summarizes the fee-recovery amounts for the FY 2018 proposed fee rule using the adjusted CBJ amounts, and taking into account excluded activities, fee-relief activities, and net billing adjustments. For all information presented in the following tables, individual values may not sum to totals due to rounding. Please see the work papers (ADAMS Accession No. ML17348A377) for actual amounts.

The FY 2018 proposed fee rule is based on the FY 2018 budget request, as adjusted. In accordance with OBRA–90, the final fee rule will be based on the NRC's actual appropriation rather than the budget request, and so the NRC will update the final fee schedule as appropriate. If the NRC receives a year-long continuing resolution, then the final fee schedule may look similar to the FY 2017 final fee rule.

TABLE I—BUDGET AND FEE RECOVERY AMOUNTS

[Dollars in millions]

	FY 2017 final rule	FY 2018 proposed rule	Percentage change
Total Budget Authority	$917.1	$967.0	5.4
Less Excluded Fee Items	−23.1	−47.6	106.0
Balance	894.0	919.4	2.8
Fee Recovery Percent	90	90	0.0
Total Amount to be Recovered:	804.6	827.5	2.8
10 CFR part 171 Billing Adjustments:			
Unpaid Current Year Invoices (estimated)	6.2	6.5	4.6
Less Prior Year Billing Credit for Transportation Fee Class	0.0	0.0	0.0
Less Payments Received in Current Year for Previous Year Invoices (estimated)	−4.9	−7.3	32.8
Subtotal	1.3	−0.8	−161.5
Amount to be Recovered through 10 CFR parts 170 and 171 Fees	805.9	826.7	2.5
Less Estimated 10 CFR part 170 Fees	−297.3	−289.4	−2.7

TABLE I—BUDGET AND FEE RECOVERY AMOUNTS—Continued

[Dollars in millions]

	FY 2017 final rule	FY 2018 proposed rule	Percentage change
10 CFR part 171 Fee Collections Required	508.6	537.3	5.6

FY 2018 Fee Collection—Professional Hourly Rate

The NRC uses a professional hourly rate to assess fees for specific services provided by the NRC under 10 CFR part 170. The professional hourly rate also helps determine flat fees (which are used for the review of certain types of license applications). This rate would be applicable to all activities for which fees are assessed under §§ 170.21 and 170.31.

The NRC's professional hourly rate is derived by adding budgeted resources for: (1) Mission-direct program salaries and benefits; (2) mission-indirect program support; and (3) agency support (corporate support and the IG), and then subtracting certain offsetting receipts, and then dividing this total by the mission-direct full-time equivalents (FTE) converted to hours. The NRC is proposing to add the definitions for ''mission-direct program salaries and benefits,'' ''mission-indirect program support,'' and ''agency support (corporate support and the IG)'' to 10 CFR 170.3, ''Definitions.'' The mission-direct FTE converted to hours is the product of the mission-direct FTE multiplied by the estimated annual mission-direct FTE productive hours. The only budgeted resources excluded from the professional hourly rate are those for mission-direct contract resources, which are generally billed to licensees separately. The following shows the professional hourly rate calculation:

$$\frac{\text{Budgeted Resources}^{1}}{\text{Mission-Direct FTE Converted to Hours}} = \text{Professional Hourly Rate} \qquad \frac{\$790.3 \text{ million}}{1{,}938 \times 1{,}510} = \$270$$

For FY 2018, the NRC is proposing to increase the professional hourly rate from $263 to $270. The 2.6 percent increase in the FY 2018 professional hourly rate is due to the decline in the number of mission-direct FTE compared to FY 2017, primarily due to reduced Fukushima-related work and combined license review work, offset by the small increase in annual mission-direct FTE productive hours. For additional information about the decline in the number of mission-direct FTE, see the Operating Power Reactors section of this rule. The FY 2018 estimated annual mission-direct FTE productive hours is 1,510 hours, up from 1,500 hours in FY 2017. This estimate, also referred to as the productive hours assumption, reflects the average number of hours that a mission-direct employee spends on mission-direct work in a given year. This excludes hours charged to annual leave, sick leave, holidays, training and general administration tasks. Table II shows the professional hourly rate calculation methodology. The FY 2017 amounts are provided for comparison purposes.

TABLE II—PROFESSIONAL HOURLY RATE CALCULATION

[Dollars in millions, except as noted]

	FY 2017 final rule	FY 2018 proposed rule	Percentage change
Mission-Direct Program Salaries & Benefits	$340.6	$341.2	0.2
Mission-Indirect Program Support	137.3	136.1	−0.9
Agency Support (Corporate Support and the IG)	309.6	313.1	1.1
Subtotal	787.5	790.3	0.4
Less Offsetting Receipts[2]	−0.1	0.0	0.0
Total Budgeted Resources Included in Professional Hourly Rate	787.4	790.3	0.4
Mission-Direct FTE (Whole numbers)	1,996	1,938	−3.0
Annual Mission-Direct FTE Productive Hours (Whole numbers)	1,500	1,510	0.7
Mission-Direct FTE Converted to Hours (Mission-Direct FTE multiplied by Annual Mission-Direct FTE Productive Hours) (In Millions)	3.0	2.9	−3.4
Professional Hourly Rate (Total Budgeted Resources Included in Professional Hourly Rate Divided by Mission-Direct FTE Converted to Hours) (Whole Numbers)	263	270	2.6

[1] Does not include mission-direct contract resources.

[2] The fees collected by the NRC for Freedom of Information Act (FOIA) services and indemnity (financial protection required of licensees for public liability claims at 10 CFR part 140) are subtracted from the budgeted resources amount when calculating the 10 CFR part 170 professional hourly rate, per the guidance in Office of Management and Budget (OMB) Circular A–25, User Charges. The budgeted resources for FOIA activities are allocated under the product for Information Services within the Corporate Support business line. The indemnity activities are allocated under the Licensing Actions and the Research & Test Reactors products within the Operating Reactors business line.

FY 2018 Fee Collection—Flat Application Fee Changes

The NRC proposes to amend the flat application fees that it charges to applicants for import and export licenses, applicants for materials licenses and other regulatory services, and holders of materials, import, and export licenses in its schedule of fees in §§ 170.21 and 170.31 to reflect the revised professional hourly rate of $270. The NRC calculates these flat fees by multiplying the average professional staff hours needed to process the licensing actions by the proposed professional hourly rate for FY 2018. The NRC analyzes the actual hours spent performing licensing actions and then estimates the average professional staff hours that are needed to process licensing actions as part of its biennial review of fees, which is required by Section 205(a) of the Chief Financial Officers Act of 1990 (31 U.S.C. 902(a)(8)). The NRC performed this review in FY 2017 and will perform this review again in FY 2019. The higher professional hourly rate of $270 is the primary reason for the increase in application fees. Please see the work papers for more detail.

The NRC rounds these flat fees in such a way that ensures both convenience for its stakeholders and that any rounding effects are minimal. Accordingly, fees under $1,000 are rounded to the nearest $10, fees between $1,000 and $100,000 are rounded to the nearest $100, and fees greater than $100,000 are rounded to the nearest $1,000.

The proposed licensing flat fees are applicable for import and export licensing actions (see fee categories K.1. through K.5. of § 170.21), as well as certain materials licensing actions (see fee categories 1.C. through 1.D., 2.B. through 2.F., 3.A. through 3.S., 4.B. through 5.A., 6.A. through 9.D., 10.B., 15.A. through 15.L., 15.R., and 16 of § 170.31). Applications filed on or after the effective date of the FY 2018 final fee rule will be subject to the revised fees in the final rule.

FY 2018 Fee Collection—Fee-Relief and Low-Level Waste (LLW) Surcharge

As previously noted, OBRA–90 requires the NRC to recover only approximately 90 percent of its annual budget authority for the fiscal year. The NRC applies the remaining 10 percent that is not recovered to offset certain budgeted activities—see Table III for a full listing of these ''fee-relief'' activities. If the amount budgeted for these fee-relief activities is greater or less than 10 percent of the NRC's annual budget authority (less the fee-recovery exclusions), then the NRC applies a fee adjustment (either an increase or decrease) to all licensees' annual fees, based on their percentage share of the NRC's budget.

In FY 2018, the amount budgeted for fee-relief activities is projected to be higher than the 10-percent threshold. Therefore, the NRC proposes to assess a fee-relief surcharge to increase all licensees' annual fees based on their percentage share of the budget. Table III summarizes the fee-relief activities budgeted for FY 2018. The FY 2017 amounts are provided for comparison purposes.

TABLE III—FEE-RELIEF ACTIVITIES

[Dollars in millions]

Fee-relief activities	FY 2017 budgeted costs	FY 2018 budgeted costs	Percentage change
1. Activities not attributable to an existing NRC licensee or class of licensees:			
a. International activities [3]	$13.8	$13.7	−0.7
b. Agreement State oversight	12.9	13.2	2.9
c. Scholarships and Fellowships	17.9	15.0	−19.3
d. Medical Isotope Production Infrastructure	4.2	2.9	−44.8
2. Activities not assessed under 10 CFR part 170 service fees or 10 CFR part 171 annual fees based on existing law or Commission policy:			
a. Fee exemption for nonprofit educational institutions	9.7	8.9	−8.0
b. Costs not recovered from small entities under 10 CFR 171.16(c)	7.4	7.1	−4.3
c. Regulatory support to Agreement States	18.5	17.4	−6.0
d. Generic decommissioning/reclamation (not related to the power reactor and spent fuel storage fee classes)	14.6	14.6	0.0
e. *In Situ* leach rulemaking and unregistered general licensees	1.4	1.5	6.7
f. Potential Department of Defense remediation program MOU activities	1.1	1.1	0.0
g. Non-military radium sites	N/A	1.7	N/A
Total fee-relief activities	101.5	97.1	−4.3
Less 10 percent of the NRC's total FY budget (less the fee recovery exclusions)	−89.4	−91.9	2.8
Fee-Relief Adjustment to be Allocated to All Licensees' Annual Fees	12.1	5.2	−57.3

Table IV shows how the NRC proposes to allocate the $5.2 million fee-relief surcharge to each licensee fee class. Also, in accordance with the Staff Requirements Memorandum dated September 7, 2017, (ADAMS Accession No. ML17250A841), for SECY–17–0026, ''Policy Considerations and Recommendations for Remediation of Non-Military, Unlicensed Historic Radium Sites in Non-Agreement States'' dated February 22, 2017 (ADAMS Accession No. ML17130A783), the NRC has established a new fee-relief category for non-military sites contaminated due to historic uses of radium.

In addition to the fee-relief surcharge, the NRC also proposes to assess a generic LLW surcharge of $3.4 million. Disposal of LLW occurs at commercially operated LLW disposal facilities that are

[3] This amount includes international assistance activities. This amount also includes conventions and treaty activities that are not attributable to an existing NRC licensee or class of licensees, and it includes international cooperation activities that are not attributable to an existing NRC licensee or class of licensees.

licensed by either the NRC or an Agreement State. Four existing LLW disposal facilities in the United States accept various types of LLW. All are located in Agreement States and, therefore, are regulated by an Agreement State, rather than the NRC. The NRC will allocate this surcharge to its licensees based on data available in the U.S. Department of Energy's (DOE) Manifest Information Management System. This database contains information on total LLW volumes and NRC usage information from four generator classes: Academic, industrial, medical, and utility. The ratio of utility waste volumes to total LLW volumes over a period of time is used to estimate the portion of this surcharge that will be allocated to the power reactors, fuel facilities, and materials fee classes. The materials portion is adjusted to account for the fact that a large percentage of materials licensees are licensed by the Agreement States rather than the NRC.

Table IV shows the surcharge, and its proposed allocation across the various fee classes.

TABLE IV—ALLOCATION OF FEE-RELIEF ADJUSTMENT AND LLW SURCHARGE, FY 2018

[Dollars in millions]

	LLW surcharge		Fee-relief adjustment		Total
	Percent	$	Percent	$	$
Operating Power Reactors	41.0	1.4	85.2	4.4	5.8
Spent Fuel Storage/Reactor Decommissioning	0.0	0.0	4.3	0.2	0.2
Research and Test Reactors	0.0	0.0	0.4	0.0	0.0
Fuel Facilities	46.0	1.6	4.5	0.3	1.8
Materials Users	13.0	0.4	3.4	0.2	0.6
Transportation	0.0	0.0	0.5	0.0	0.0
Rare Earth Facilities	0.0	0.0	0.0	0.0	0.0
Uranium Recovery	0.0	0.0	1.7	0.1	0.1
Total	100.0	3.4	100.0	5.2	8.5

FY 2018 Fee Collection—Revised Annual Fees

In accordance with SECY–05–0164, ''Annual Fee Calculation Method,'' dated September 15, 2005 (ADAMS Accession No. ML052580332), the NRC rebaselines its annual fees every year. ''Rebaselining'' entails analyzing the budget in detail and then allocating the budgeted costs to various classes or subclasses of licensees. It also includes updating the number of NRC licensees in its fee calculation methodology.

The NRC proposes to revise its annual fees in §§ 171.15 and 171.16 to recover approximately 90 percent of the NRC's FY 2018 budget authority (less the fee-recovery exclusions and the estimated amount to be recovered through 10 CFR part 170 fees). The total estimated 10 CFR part 170 collections for this proposed rule total are $289.4 million, a decrease of $7.9 million from the FY 2017 fee rule (see the specific fee class sections for a discussion of this decrease). The NRC, therefore, proposes to recover $537.3 million through annual fees from its licensees, which is an increase of $28.7 million from the FY 2017 final rule.

Table V shows the proposed rebaselined fees for FY 2018 for a representative list of categories of licensees. The FY 2017 amounts are provided for comparison purposes.

TABLE V—REBASELINED ANNUAL FEES

Class/category of licenses	FY 2017 final annual fee	FY 2018 proposed annual fee	Percentage change
Operating Power Reactors	$4,308,000	$4,559,000	5.8
+ Spent Fuel Storage/Reactor Decommissioning	188,000	225,000	19.7
Total, Combined Fee	4,496,000	4,784,000	6.4
Spent Fuel Storage/Reactor Decommissioning	188,000	225,000	19.7
Research and Test Reactors (Non-power Reactors)	81,400	81,300	−0.1
High Enriched Uranium Fuel Facility	7,255,000	7,726,000	6.5
Low Enriched Uranium Fuel Facility	2,629,000	2,799,000	6.5
UF_6 Conversion and Deconversion Facility	1,498,000	1,596,000	6.5
Conventional Mills	38,900	38,800	−0.3
Typical Materials Users:			
Radiographers (Category 3O)	27,000	25,700	−4.8
Well Loggers (Category 5A)	16,000	15,600	−2.5
All Other Specific Byproduct Material Licensees (Category 3P)	9,300	9,000	−3.2
Broad Scope Medical (Category 7B)	33,800	32,700	−3.3

The work papers that support this proposed rule show in detail how the NRC proposes to allocate the budgeted resources for each class of licensees and calculate the fees.

Paragraphs a. through h. of this section describe budgeted resources allocated to each class of licensees and the calculations of the rebaselined fees. For more information about detailed fee calculations for each class, please consult the accompanying work papers.

a. Fuel Facilities

The NRC proposes to collect $29.2 million in annual fees from the fuel facilities class.

TABLE VI—ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2017 final	FY 2018 proposed	Percentage change
Total budgeted resources	$33.9	$35.1	3.5
Less estimated 10 CFR part 170 receipts	−9.6	−9.3	−3.2
Net 10 CFR part 171 resources	24.3	25.8	6.2
Allocated generic transportation	1.6	1.6	0.0
Fee-relief adjustment/LLW surcharge	2.5	1.8	−28.0
Billing adjustments	0.0	0.0	0.0
Total remaining required annual fee recovery[4]	28.4	29.2	2.8

In FY 2018, although the fuel facilities budgeted resources increased slightly, there is a slight decrease in estimated 10 CFR part 170 billings as a result of completing the Mixed Oxide Fuel Fabrication Facility's structure review and completing Westinghouse's license renewal (offset by billings for the Honeywell International's license renewal application beginning in FY 2018). There was also a reduction to the LLW percentage allotment because of decreased usage of LLW by this fee class.

The NRC allocates annual fees to individual fuel facility licensees based on the effort/fee determination matrix developed in the FY 1999 final fee rule (64 FR 31447; June 10, 1999). To briefly recap, the matrix groups licensees within this fee class into various fee categories. The matrix lists processes conducted at licensed sites and assigns effort factors for the safety and safeguards activities associated with each process (these effort levels are reflected in Table VII). The annual fees are then distributed across the fee class based on the regulatory effort predicted by the matrix.

TABLE VII—EFFORT FACTORS FOR FUEL FACILITIES, FY 2018

Facility type (fee category)	Number of facilities	Effort factors (percent of total)	
		Safety	Safeguards
High-Enriched Uranium Fuel (1.A.(1)(a))	2	88	96
Low-Enriched Uranium Fuel (1.A.(1)(b))	3	70	30
Limited Operations (1.A.(2)(a))	0	0	0
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	0	0	0
Hot Cell (and others) (1.A.(2)(c))	0	0	0
Uranium Enrichment (1.E.)	1	21	23
UF_6 Conversion and Deconversion (2.A.(1))	1	12	7

In FY 2018, the total remaining required annual fee recovery amount of $29.2 million is comprised of safety activities, safeguards activities and the fee-relief adjustment/LLW surcharge. For FY 2018, the total budgeted resources to be recovered as annual fees for safety activities are $15.1 million. To calculate the annual fee, the NRC allocates this amount to each fee category based on its percent of the total regulatory effort for safety activities. Similarly, the NRC allocates the budgeted resources to be recovered as annual fees for safeguards activities, $12.3 million, to each fee category based on its percent of the total regulatory effort for safeguards activities. Finally, the fuel facility fee class' portion of the fee-relief adjustment/LLW surcharge—$1.8 million—is allocated to each fee category based on its percentage of the total regulatory effort for both safety and safeguards activities. The annual fee per licensee is then calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category. In comparison to FY 2017, for FY 2018 there was an increase of 2.8% for the total remaining required annual fee recovery (see Table VI). However, in comparison to FY 2017 for FY 2018, there was an increase of 6.5% in each fee category. The differences in the percentage increase was due to two licensees leaving the fee class in FY 2017. The fee for each facility is summarized in Table VIII.

[4] See Table VII for percentage change for each fee category.

TABLE VIII—ANNUAL FEES FOR FUEL FACILITIES

Facility type (fee category)	FY 2017 final annual fee	FY 2018 proposed annual fee	Percentage change
High-Enriched Uranium Fuel (1.A.(1)(a))	$7,255,000	$7,726,000	6.5
Low-Enriched Uranium Fuel (1.A.(1)(b))	2,629,000	2,799,000	6.5
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	1,366,000	[5] N/A	N/A
Hot Cell (and others) (1.A.(2)(c))	710,000	[5] N/A	N/A
Uranium Enrichment (1.E.)	3,470,000	3,695,000	6.5
UF_6 Conversion and Deconversion (2.A.(1))	1,498,000	1,596,000	6.5

b. Uranium Recovery Facilities

The NRC proposes to collect $0.6 million in annual fees from the uranium recovery facilities fee class, a decrease of 66.7 percent from FY 2017.

TABLE IX—ANNUAL FEE SUMMARY CALCULATIONS FOR URANIUM RECOVERY FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2017 final	FY 2018 proposed	Percentage change
Total budgeted resources	$14.3	$13.5	−5.6
Less estimated 10 CFR part 170 receipts	−13.5	−13.0	−3.8
Net 10 CFR part 171 resources	0.8	0.5	−60.0
Allocated generic transportation	N/A	N/A	N/A
Fee-relief adjustment	0.2	0.1	−50.0
Billing adjustments	0.0	0.0	0.0
Total required annual fee recovery	1.0	0.6	−66.7

In comparison to FY 2017, the FY 2018 budgeted resources for uranium recovery licensees decreased due to reductions in associated licensing work, realignment of the Uranium Mill Tailings Radiation Control Act (UMTRCA) program, and completed reviews for license amendments for Strata Energy and Jane Dough, offset by increased workload for the Marsland license amendment review.

The NRC computes the annual fee for the uranium recovery fee class by dividing the total annual fee recovery amount among DOE and the other licensees in this fee class. The annual fee decreased for the DOE/UMTRCA program due to the decreased budgeted resources and an increase in 10 CFR part 170 billings for the Atlantic Richfield review. The annual fee decreased slightly for the remaining Uranium Recovery licensees due to a decrease in estimated 10 CFR part 170 billings for completed reviews for license amendments for Strata Energy and Jane Dough, offset by an increase in 10 CFR part 170 billings for the Marsland license amendment review.

The NRC regulates DOE's Title I and Title II activities under UMTRCA [6] and the proposed annual fee to DOE includes the costs specifically budgeted for the NRC's UMTRCA Title I and II activities, as well as 10 percent of the remaining budgeted costs for this fee class. The DOE's UMTRCA annual fee decreased mainly due to the budgeted resources reduction and an increase in estimated 10 CFR part 170 billings for work on the Atlantic Richfield review. The annual fee decreased for the overall fee class due to the decrease in budgeted resources. The NRC assesses the remaining 90 percent of its budgeted costs to the rest of the licensees in this fee class, as described in the work papers. This is reflected in Table X as follows:

TABLE X—COSTS RECOVERED THROUGH ANNUAL FEES; URANIUM RECOVERY FEE CLASS

Summary of costs	FY 2017 final annual fee	FY 2018 proposed annual fee	Percentage change
DOE Annual Fee Amount (UMTRCA Title I and Title II) General Licenses:			
UMTRCA Title I and Title II budgeted costs less 10 CFR part 170 receipts	$574,595	$147,161	−74.4
10 percent of generic/other uranium recovery budgeted costs	19,079	32,434	41.2
10 percent of uranium recovery fee-relief adjustment	21,940	8,547	−61.0
Total Annual Fee Amount for DOE (rounded)	616,000	188,000	−69.5
Annual Fee Amount for Other Uranium Recovery Licenses:			
90 percent of generic/other uranium recovery budgeted costs less the amounts specifically budgeted for UMTRCA Title I and Title II activities	171,714	291,903	70.0

[5] No licensees in this fee category in FY 2018.

[6] The Congress established the two programs, Title I and Title II, under UMTRCA to protect the public and the environment from uranium milling. The UMTRCA Title I program is for remedial action at abandoned mill tailings sites where tailings resulted largely from production of uranium for the weapons program. The NRC also regulates DOE's UMTRCA Title II program, which is directed toward uranium mill sites licensed by the NRC or Agreement States in or after 1978.

TABLE X—COSTS RECOVERED THROUGH ANNUAL FEES; URANIUM RECOVERY FEE CLASS—Continued

Summary of costs	FY 2017 final annual fee	FY 2018 proposed annual fee	Percentage change
90 percent of uranium recovery fee-relief adjustment	197,464	76,924	−61.0
Total Annual Fee Amount for Other Uranium Recovery Licenses	369,178	368,828	−0.1

Further, for the non-DOE licensees, the NRC continues to use a matrix to determine the effort levels associated with conducting the generic regulatory actions for the different licensees in this fee class; this is similar to the NRC's approach for fuel facilities, described previously.

The matrix methodology for uranium recovery licensees first identifies the licensee categories included within this fee class (excluding DOE). These categories are: Conventional uranium mills and heap leach facilities; uranium *In Situ* Recovery (ISR) and resin ISR facilities; mill tailings disposal facilities; and uranium water treatment facilities. The matrix identifies the types of operating activities that support and benefit these licensees, along with each activity's relative weight (for more information, see the work papers). Table XI displays the benefit factors per licensee and per fee category, for each of the non-DOE fee categories included in the uranium recovery fee class as follows:

TABLE XI—BENEFIT FACTORS FOR URANIUM RECOVERY LICENSES

Fee category	Number of licensees	Benefit factor per licensee	Total value	Benefit factor percent total
Conventional and Heap Leach mills (2.A.(2)(a))	1	150	150	10.5
Basic *In Situ* Recovery facilities (2.A.(2)(b))	5	190	950	66.7
Expanded *In Situ* Recovery facilities (2.A.(2)(c))	1	215	215	15.1
Section 11e.(2) disposal incidental to existing tailings sites (2.A.(4))	1	85	85	6.0
Uranium water treatment (2.A.(5))	1	25	25	1.7
Total	9	665	1,425	100.0

Applying these factors to the approximately $368,828 in budgeted costs to be recovered from non-DOE uranium recovery licensees results in the total annual fees for each fee category. The annual fee per licensee is calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category, as summarized in Table XII.

TABLE XII—ANNUAL FEES FOR URANIUM RECOVERY LICENSEES

[Other than DOE]

Facility type (fee category)	FY 2017 final annual fee	FY 2018 proposed annual fee	Percentage change
Conventional and Heap Leach mills (2.A.(2)(a))	$38,900	$38,800	−0.3
Basic *In Situ* Recovery facilities (2.A.(2)(b))	49,200	49,200	0.0
Expanded *In Situ* Recovery facilities (2.A.(2)(c))	55,700	55,600	−0.2
Section 11e.(2) disposal incidental to existing tailings sites (2.A.(4))	22,000	22,000	0.0
Uranium water treatment (2.A.(5))	6,500	6,500	0.0

c. Operating Power Reactors

The NRC proposes to collect $451.3 million in annual fees from the power reactor fee class in FY 2018, as shown in Table XIII. The FY 2017 fees and percentage change are shown for comparison purposes.

TABLE XIII—ANNUAL FEE SUMMARY CALCULATIONS FOR OPERATING POWER REACTORS

[Dollars in millions]

Summary fee calculations	FY 2017 final	FY 2018 proposed	Percentage change
Total budgeted resources	$670.3	$693.0	3.4
Less estimated 10 CFR part 170 receipts	−256.3	−247.1	−3.6
Net 10 CFR part 171 resources	414.0	445.9	7.7
Allocated generic transportation	0.3	0.3	0.0
Fee-relief adjustment/LLW surcharge	11.1	5.8	−47.7

TABLE XIII—ANNUAL FEE SUMMARY CALCULATIONS FOR OPERATING POWER REACTORS—Continued

[Dollars in millions]

Summary fee calculations	FY 2017 final	FY 2018 proposed	Percentage change
Billing adjustment	1.1	−0.7	−163.6
Total required annual fee recovery	426.5	451.3	5.8
Total operating reactors	99	99	0.0
Annual fee per reactor	4,308.0	4,559.0	5.8

In comparison to FY 2017, the operating power reactors budgeted resources increased in FY 2018 primarily because contract costs associated with research in the areas of safety and security of digital systems, materials degradation, the aging of cables, and the effects of concrete degradation were funded in FY 2017 with prior year unobligated carryover. Contract costs also increased to support the new reactor design certification and early site permit reviews, as well as related infrastructure and technical assistance. Offsetting factors include a decrease in staff needed for Fukushima-related work and combined license reviews. Estimated billings under 10 CFR part 170 also slightly declined primarily due to South Carolina Electric and Gas Company's decision to abandon the construction of the two new nuclear units at V.C. Summer Nuclear Station, offset by the increased work for new reactor design certification and early site permit reviews.

The recoverable budgeted costs are divided equally among the 99 licensed power reactors, resulting in a proposed annual fee of $4,559,000 per reactor. Additionally, each licensed power reactor is assessed the FY 2018 spent fuel storage/reactor decommissioning proposed annual fee of $225,000 (see Table XIV and the discussion that follows). The combined proposed FY 2018 annual fee for power reactors is, therefore, $4,784,000.

On May 24, 2016, the NRC amended its licensing, inspection, and annual fee regulations to establish a variable annual fee structure for light-water small modular reactors (SMRs). Under the variable annual fee structure, effective June 23, 2016, an SMR's annual fee would be calculated as a function of its licensed thermal power rating. Currently, there are no operating SMRs; therefore, the NRC is not proposing an annual fee in FY 2018 for this type of licensee.

d. Spent Fuel Storage/Reactor Decommissioning

The NRC proposes to collect $27.4 million in annual fees from 10 CFR part 50 power reactors, and from 10 CFR part 72 licensees that do not hold a 10 CFR part 50 license, to collect the budgeted costs for spent fuel storage/reactor decommissioning.

TABLE XIV—ANNUAL FEE SUMMARY CALCULATIONS FOR THE SPENT FUEL STORAGE/REACTOR DECOMMISSIONING FEE CLASS

[Dollars in millions]

Summary fee calculations	FY 2017 final	FY 2018 proposed	Percentage change
Total budgeted resources	$29.5	$34.6	17.3
Less estimated 10 CFR part 170 receipts	−7.9	−8.3	5.1
Net 10 CFR part 171 resources	21.6	26.3	21.7
Allocated generic transportation costs	0.8	0.9	12.5
Fee-relief adjustment	0.5	0.2	−60.0
Billing adjustments	0.1	0.0	−100.0
Total required annual fee recovery	23.0	27.4	19.4
Total spent fuel storage facilities	122	122	0.0
Annual fee per facility	0.188	0.225	19.7

Compared to FY 2017, the FY 2018 budgeted resources for spent fuel storage/reactor decommissioning increased due to (1) an increase in resources to support the safety, security, emergency preparedness, and environmental reviews for two applications for consolidated interim storage facilities (one of which has been suspended), and (2) efforts to update/consolidate the standard review plan for these facilities. For this fee class, estimated billings under 10 CFR part 170 increased slightly because although there was a decline in 10 CFR part 170 estimated billings due to suspension of the review for the Waste Control Specialists consolidated interim storage facility application, there was an overall increase in 10 CFR part 170 estimated billings due to an anticipated increase in workload for the Holtec International consolidated interim storage facility application, a renewal request for DOE Idaho, and an amendment request by TN Americas.

The required annual fee recovery amount is divided equally among 122 licensees, resulting in an FY 2018 annual fee of $225,000 per licensee.

e. Research and Test Reactors (Non-Power Reactors)

The NRC proposes to collect $0.325 million in annual fees from the research and test reactor licensee class.

TABLE XV—ANNUAL FEE SUMMARY CALCULATIONS FOR RESEARCH AND TEST REACTORS

[Dollars in millions]

Summary fee calculations	FY 2017 final	FY 2018 proposed	Percentage change
Total budgeted resources	$1.982	$2.997	51.2
Less estimated 10 CFR part 170 receipts	−1.724	−2.722	57.9
Net 10 CFR part 171 resources	0.258	0.275	6.6
Allocated generic transportation	0.034	0.034	0.9
Fee-relief adjustment	0.031	0.019	−38.7
Billing adjustments	0.003	−0.003	−200.0
Total required annual fee recovery	0.326	0.325	−0.3
Total research and test reactors	4	4	0.0
Total annual fee per reactor	0.0814	0.0813	−0.1

For this fee class, the budgeted resources increased due to increased licensing and inspection activities associated with medical isotope facilities. Despite the budgeted resources increase, the proposed FY 2018 annual fee decreased due to an increase in estimated 10 CFR part 170 billings for Aerotest's license renewal, continued project management activities for the four test and research reactor sites, and increased licensing and inspection activities associated with medical isotope facilities.

The required annual fee-recovery amount is divided equally among the four research and test reactors subject to annual fees and results in an FY 2018 annual fee of $81,300 for each licensee.

f. Rare Earth

The NRC has not allocated any budgeted resources to this fee class; therefore, the NRC is not proposing an annual fee in FY 2018.

g. Materials Users

The NRC proposes to collect $34.2 million in annual fees from materials users licensed under 10 CFR parts 30, 40, and 70.

TABLE XVI—ANNUAL FEE SUMMARY CALCULATIONS FOR MATERIALS USERS

[Dollars in millions]

Summary fee calculations	FY 2017 final	FY 2018 proposed	Percentage change
Total budgeted resources for licensees not regulated by Agreement States	$33.7	$33.0	−2.1
Less estimated 10 CFR part 170 receipts	−0.9	−1.0	11.1
Net 10 CFR part 171 resources	32.8	32.0	−2.5
Allocated generic transportation	1.6	1.6	0.0
Fee-relief adjustment/LLW surcharge	0.9	0.6	−33.3
Billing adjustments	0.1	0.0	−100.0
Total required annual fee recovery	35.4	34.2	−3.4

The annual fee for these categories of materials users' licenses is developed as follows: Annual Fee = Constant × [Application Fee + (Average Inspection Cost/Inspection Priority)] + Inspection Multiplier × (Average Inspection Cost/Inspection Priority) + Unique Category Costs. The total annual fee recovery proposed for FY 2018 consists of the following: $26.2 million for general costs, $7.1 million for inspection costs, $0.3 million for unique costs for medical licenses and $0.6 million for fee relief/LLW costs. To equitably and fairly allocate the $34.2 million required to be collected among approximately 2,600 diverse materials users licensees, the NRC continues to calculate the annual fees for each fee category within this class based on the 10 CFR part 170 application fees and estimated inspection costs for each fee category. Because the application fees and inspection costs are indicative of the complexity of the materials license, this approach provides a proxy for allocating the generic and other regulatory costs to the diverse fee categories. This fee-calculation method also considers the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses.

The NRC proposes to decrease annual fees for most materials licensees in this fee class in FY 2018 due to a reduction in budgeted resources for oversight activities through implementation of process enhancements and rebaselining of the materials program under Project Aim.

The constant multiplier is established in order to recover the total general costs (including allocated generic transportation costs) of $26.2 million. To derive the constant multiplier, the general cost amount is divided by the product of all fee categories (application fee plus the inspection fee divided by inspection priority) then multiplied by the number of licensees. This calculation results in a constant multiplier of 1.46 for FY 2018. The average inspection cost is the average inspection hours for each fee category multiplied by the professional hourly rate of $270. The inspection priority is the interval between routine inspections, expressed in years. The

inspection multiplier is established in order to recover the $7.1 million in inspection costs. To derive the inspection multiplier, the inspection costs amount is divided by the product of all fee categories (inspection fee divided by inspection priority) then multiplied by the number of licensees. This calculation results in an inspection multiplier of 1.38 for FY 2018. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2018, unique category costs include approximately $0.3 million in budgeted costs for the implementation of revised 10 CFR part 35, ''Medical Use of Byproduct Material,'' which has been allocated to holders of NRC human-use licenses. These unique category costs include the budgeted resources for the medical program of $20 million, adjusted for the percentage of Agreement State licensees. The remainder is divided by the number of licensees within fee categories 7A, 7C and 17. Please see the work papers for more detail about this classification.

The annual fee assessed to each licensee also includes a share of the $0.6 million fee-relief surcharge assessment of approximately $0.2 million allocated to the materials users fee class (see Table IV, ''Allocation of Fee-Relief Adjustment and LLW Surcharge, FY 2018,'' in Section III, ''Discussion,'' of this document), and for certain categories of these licensees, a share of the approximately $0.4 million LLW surcharge costs allocated to the fee class. The proposed annual fee for each fee category is shown in the proposed revision to § 171.16(d).

h. Transportation

The NRC proposes to collect $5.9 million in annual fees to recover generic transportation budgeted resources. The FY 2017 values are shown for comparison purposes.

TABLE XVII—ANNUAL FEE SUMMARY CALCULATIONS FOR TRANSPORTATION

[Dollars in millions]

Summary fee calculations	FY 2017 final	FY 2018 proposed	Percentage change
Total Budgeted Resources	$8.9	$8.8	−1.1
Less Estimated 10 CFR part 170 Receipts	−3.1	−2.9	−6.5
Net 10 CFR part 171 Resources	5.8	5.9	1.7
Less Generic Transportation Resources [7]	−4.5	−4.5	0.0
Fee-relief adjustment/LLW surcharge	0.2	0.0	0.0
Billing adjustments	0.0	0.0	0.0
Total required annual fee recovery	1.5	1.4	−7.2

In comparison to FY 2017, the total budgeted resources for FY 2018 for generic transportation activities decreased due to an anticipated reduction in the Certificates of Compliance (CoCs) for DOE (from 22 to 21) and a decreased anticipated workload due to the expected number of major licensing actions to be completed in FY 2018. There was also a decline in budgeted resources within licensing and rulemaking support due to a reclassification of certain budgeted resources to the spent fuel storage/reactor decommissioning fee class.

Consistent with the policy established in the NRC's FY 2006 final fee rule (71 FR 30721; May 30, 2006), the NRC recovers generic transportation costs unrelated to DOE by including those costs in the annual fees for licensee fee classes. The NRC continues to assess a separate annual fee under § 171.16, fee category 18.A. for DOE transportation activities. The amount of the allocated generic resources is calculated by multiplying the percentage of total CoCs used by each fee class (and DOE) by the total generic transportation resources to be recovered. The proposed annual fee decrease for DOE is mainly due to an anticipated decrease in CoCs from 22 to 21 in FY 2018.

This resource distribution to the licensee fee classes and DOE is shown in Table XVIII. Note that for the research and test reactors fee class, the NRC allocates the distribution to only those licensees that are subject to annual fees. Although four CoCs benefit the entire research and test reactor class, only 4 out of 31 research and test reactors are subject to annual fees. Consequently, the number of CoCs used to determine the proportion of generic transportation resources allocated to research and test reactors annual fees has been adjusted to 0.5 so the research and test reactors subject to annual fees are charged a fair and equitable portion of the total. For more information, see the work papers.

TABLE XVIII—DISTRIBUTION OF TRANSPORTATION RESOURCES, FY 2018

[Dollars in millions]

Licensee fee class/DOE	Number of CoCs benefiting fee class or DOE	Percentage of total CoCs	Allocated generic transportation resources
Materials Users	25.0	27.9	$1.7
Operating Power Reactors	5.0	5.6	0.3
Spent Fuel Storage/Reactor Decommissioning	14.0	15.6	0.9
Research and Test Reactors	0.5	0.6	0.0
Fuel Facilities	24.0	26.8	1.6
Sub-Total of Generic Transportation Resources	68.5	76.5	4.5

[7] New line item added to enhance clarify.

TABLE XVIII—DISTRIBUTION OF TRANSPORTATION RESOURCES, FY 2018—Continued

[Dollars in millions]

Licensee fee class/DOE	Number of CoCs benefiting fee class or DOE	Percentage of total CoCs	Allocated generic transportation resources
DOE	21.0	23.5	1.4
Total	89.5	100.0	5.9

The NRC assesses an annual fee to DOE based on the 10 CFR part 71 CoCs it holds. The NRC, therefore, does not allocate these DOE-related resources to other licensees' annual fees because these resources specifically support DOE.

FY 2018—Policy Change

The NRC proposes one policy change for FY 2018:

Changes to Small Materials Users Fee Categories for Locations of Use

The NRC proposes to add seven new fee subcategories under 10 CFR 170.31, ''Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections, and Import and Export Licenses,'' and 10 CFR 171.16, ''Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC.'' Generally speaking, 10 CFR 170.31 assigns the same fee to each licensee in the fee category, regardless of the amount of locations that the licensee is authorized to use. Yet for some of these fee categories, the NRC staff recently determined that it spends a disproportionate amount of time on licensees with six or more locations compared to licensees in the same fee category with fewer than six locations. Therefore, the NRC is proposing to revise its fee categories so that these fees better align with the actual costs of providing regulatory services.

Previously—in the FY 2015 final fee rule—the NRC added three fee subcategories under one fee category, 3.L. (research and development broad scope) for licenses with six or more locations of use. Although there are 14 additional fee categories that could be modified, the NRC determined that most affected licenses are covered under only 7 of the 14 fee categories. Accordingly, the NRC is proposing to add subcategories to these seven fee categories:

- Manufacturing broad scope licenses under fee category 3.A.
- Other manufacturing licenses under fee category 3.B.
- Medical product distribution licenses under fee category 3.C.
- Industrial radiography licenses under fee category 3.O.
- Other byproduct licenses (*e.g.,* portable and fixed gauges, measuring systems) under fee category 3.P.
- Medical licenses under fee categories 7.A. and 7.B.

To more accurately reflect the cost of services provided by the NRC, this change would result in each fee category having subcategories for 1–5, 6–20, and more than 20 locations of use.

FY 2018—Administrative Changes

The NRC also proposes eleven administrative changes:

1. *Revise the methodology of charging licensees for overhead time for project managers (PMs) and resident inspectors (RIs).*

The NRC proposes to revise the methodology of charging licensees for overhead time for PMs and RIs. Currently, the NRC includes an overhead cost of 6 percent of direct billable costs to all licensees' invoices. The overhead charge is intended to recover the full cost for PM and RI activities that provide a direct benefit to the assigned licensee or site.

In FY 2015 to FY 2017, this 6-percent value was based on the analysis of 4 years of billing data (FY 2011 to FY 2014) for overhead activities recorded in the time and labor system by a PM or RI and billed to the dockets to which the PM or the RI were officially assigned. The NRC has reviewed the process and, as a process enhancement, created docket-related fee-billable cost activity codes. Once the FY 2018 final fee rule is effective, the licensee invoices will no longer include the 6-percent overhead allocation. Instead, the licensee invoices will include the actual hours for activities that support and directly benefit the assigned licensee or site.

2. *Add definitions for inputs in the professional hourly rate calculation in 10 CFR part 170, ''Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services under the Atomic Energy Act of 1954, as Amended.''*

In response to the recommendations in the U.S. Government Accountability Office (GAO) report titled ''Nuclear Regulatory Commission: Regulatory Fee-Setting Calculations Need Greater Transparency'' (GAO–17–232), dated February 2, 2017, the NRC committed to adding definitions for the professional hourly rate components in 10 CFR part 170 during the FY 2018 fee rulemaking. The NRC therefore proposes to add definitions for ''agency support (corporate support and the IG),'' ''mission-direct program salaries and benefits,'' and ''mission-indirect program support'' to 10 CFR 170.3, ''Definitions.''

3. *Delete the definition of ''overhead and general and administrative costs'' from 10 CFR 170.3 and 10 CFR 171.5.*

The term ''overhead and general and administrative costs'' is currently defined in 10 CFR 170.3 and 10 CFR 171.5, but it is not used in 10 CFR parts 170 and 171. Nor do the subordinate elements of the definition—''Government benefits,'' ''travel costs,'' ''overhead,'' ''administrative support costs,'' and ''indirect costs''—appear elsewhere in parts 170 and 171. The NRC therefore proposes to delete these definitions for clarity purposes.

4. *Amend language under 10 CFR 170.11, ''Exemptions,'' to add a new paragraph to include the timeframe in which a request for a fee exemption must be submitted to the Chief Financial Officer (CFO) under 10 CFR part 170.*

The NRC proposes to revise language to provide that a request for a fee exemption under 10 CFR 170.11(a)(1) must be submitted to the CFO within 90 days of the date of the NRC's receipt of the work.

5. *Amend language under 10 CFR 170.31, ''Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections, and Import and Export Licenses,'' and 10 CFR 171.16, ''Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC,'' to enhance clarity.*

When a materials license (or part of a materials license) changes from operational to decommissioning status, it transitions to fee category 14.A. There are two aspects of the fee treatment that follows transition to fee category 14.A. First, the materials license (or part of a materials license) that transitions to fee category 14.A is assessed full cost fees under 10 CFR part 170, even if, before the transition to this fee category, the licensee was assessed flat fees under 10 CFR part 170. Second, the materials license (or part of a materials license) that transitions to fee category 14.A is not assessed annual fees under 10 CFR part 171. If only part of a materials license is transitioned to fee category 14.A, the licensee may be charged annual fees (and any applicable 10 CFR part 170 fees) for other activities authorized under the license that are not in decommissioning status. The NRC is proposing to add a new footnote to the table in 10 CFR 170.31 and to the table in 10 CFR 171.16 to emphasize the fee treatment that follows a transition to fee category 14.A.

The NRC also proposes to add new language to the description of fee category 14.A. in both 10 CFR 170.31 and 171.16 in order to enhance clarity regarding when a materials license (or part of a materials license) transitions to fee category 14.A. Specifically, this transition occurs when a licensee has permanently ceased principal activities. For guidance on what constitutes ''permanently ceasing principal activities,'' please see Regulatory Issue Summary 2015–19 (Sept. 27, 2016) (ADAMS Accession No. ML16008A242).

6. *Amend language under 10 CFR 171.3 and 10 CFR 171.16(a) to clarify when the assessment of annual fees begins for uranium recovery and fuel facility licensees.*

Both uranium recovery and fuel facilities licenses include a condition that the NRC must complete a post-construction, pre-operational inspection to authorize a licensee to possess and use source material. In the FY 2007 final fee rule, the NRC added language to 10 CFR 171.3 and 10 CFR 171.16(a) to codify its policy that annual fees for uranium enrichment facilities will be assessed after the NRC verifies through inspection that the facility has been constructed in accordance with the requirements of the license. The NRC proposes to amend those sections to codify the policy that the assessment of annual fees for uranium recovery or fuel facility licensees, including uranium enrichment facility licensees, begins after the NRC inspection verifies that the facility has been constructed in accordance with the requirements of the license.

7. *Amend footnote 9 to the table in 10 CFR 171.16(d) for clarity.*

The NRC proposes to revise footnote 9 to clarify that nuclear medicine licensees under fee category 7.A. would not be assessed a separate annual fee for pacemaker licenses.

8. *Delete footnote 15 to the table in 10 CFR 171.16(d).*

The NRC proposes to delete footnote 15 because footnote 16 is more comprehensive and already includes the relevant information from footnote 15. The current footnote 16 would be renumbered as footnote 15, and the footnotes that follow current footnote 16 would be renumbered. All references to these footnotes in fee categories will be adjusted accordingly.

9. *Amend footnote 16 to the table in 10 CFR 171.16(d) for clarity.*

The NRC proposes to renumber footnote 16 as footnote 15, as indicated, and revise it to clarify that licensees paying fees under fee category 17 are not be subject to additional fees listed in the table.

10. *Add a new footnote to the table in 10 CFR 171.16(d) for clarity.*

The NRC proposes to add a new footnote (as footnote 20) to clarify when licensees are exempt from paying annual fees under a specific fee category when they are licensed under multiple fee categories. The NRC currently follows this guidance and would add references to the new footnote 20 to fee categories 2.B., 3.N., and 3.P. to enhance clarity.

11. *Amend language under 10 CFR 171.17, ''Proration,'' to add a new sentence on the proration of fees.*

The NRC proposes to revise language regarding (1) reactors, (2) licensees under 10 CFR part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste,'' who do not hold 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' licenses and (3) materials licensees with annual fees of $100,000 or greater for a single fee category. The NRC proposes to base the proration of annual fees for terminated and downgraded licensees on the fee rule in effect at the time the termination or downgrade action is official. The NRC will base the determinations on the proration requirements under 10 CFR 171.17(a)(2) and (3).

Under the current regulations, proration is based on the fee rule for the current fiscal year. This prevents the NRC from accurately billing the licensee at the time the termination or downgrade action is official based on the proration requirements under 10 CFR 171.17(a)(2) and (3). The NRC has to wait until the current year's fee rule is effective (typically during the fourth quarter of a fiscal year) to either bill additional amounts or process refunds to the licensee based on the new fee rule amount.

This amendment would allow the NRC to prorate annual fees based on the fee rule in effect at the time the termination or downgrade action is official based on the proration requirements under 10 CFR 171.17(a)(2) and (3), thereby allowing the licensees to know that their fee amounts would not have to be adjusted in the fourth quarter of the fiscal year. This change would support the fair and equitable assessment of fees because it ties annual fee proration to when the license actually becomes downgraded or terminated.

Update to the Fees Transformation Initiative

The Staff Requirements Memorandum, dated October 19, 2016, for SECY–16–0097, ''Fee Setting Improvements and Fiscal Year 2017 Proposed Fee Rule,'' directed staff to explore, as a voluntary pilot, whether a flat fee structure could be established for routine licensing matters in the area uranium recovery, and to accelerate the fees setting process improvements including the transition to an electronic billing system. With respect to the voluntary flat fees pilot, the staff has developed a project plan and is on target to complete this activity by September 2020. With respect to the fees setting process improvements, all 14 of the activities scheduled for FY 2017 and an additional 3 scheduled for FY 2018 were completed in FY 2017. These improvements included adding additional content to the FY 2018 CBJ to help licensees understand how the planned workload in the budget impacted fees, validating the budgeting process by comparing budgeted amounts with actual amounts in the CBJ, posting the estimated cost of various licensing actions for both the Reactors and Materials programs on the NRC's public website, and modifying the calculation of full-cost fees to facilitate publishing the proposed and final fee rules earlier. For the remaining process changes recommended for future consideration, the NRC is well-positioned to complete them on schedule. In addition, the NRC is considering alternatives to accelerate the transition to an electronic billing system and for opportunities to enhance the detail contained in our invoices. For

more information, please see our fees transformation accomplishments schedule, located on our license fees website at: *https://www.nrc.gov/about-nrc/regulatory/licensing/fees-transformation-accomplishments.html.*

IV. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[8] the NRC has prepared a regulatory flexibility analysis relating to this proposed rule. The regulatory flexibility analysis is available as indicated in Section XIII, Availability of Documents, of this document.

V. Regulatory Analysis

Under OBRA–90, the NRC is required to recover approximately 90 percent of its budget authority in FY 2018. The NRC established fee methodology guidelines for 10 CFR part 170 in 1978, and established additional fee methodology guidelines for 10 CFR part 171 in 1986. In subsequent rulemakings, the NRC has adjusted its fees without changing the underlying principles of its fee policy to ensure that the NRC continues to comply with the statutory requirements for cost recovery in OBRA–90.

In this rulemaking, the NRC continues this long-standing approach. Therefore, the NRC did not identify any alternatives to the current fee structure guidelines and did not prepare a regulatory analysis for this rulemaking.

VI. Backfitting and Issue Finality

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required. A backfit analysis is not required because these amendments do not require the modification of, or addition to, systems, structures, components, or the design of a facility, or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885). The NRC requests comment on the proposed rule with respect to the clarity and effectiveness of the language used.

VIII. National Environmental Policy Act

The NRC has determined that this rule will amend NRC's administrative requirements in 10 CFR part 170 and 10 CFR part 171. Therefore, this action is categorically excluded from needing environmental review as described in 10 CFR 51.22(c)(1). Consequently, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

IX. Paperwork Reduction Act

This proposed rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

X. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC proposes to amend the licensing, inspection, and annual fees charged to its licensees and applicants, as necessary, to recover approximately 90 percent of its budget authority in FY 2018, as required by OBRA–90. This action does not constitute the establishment of a standard that contains generally applicable requirements.

XI. Availability of Guidance

The Small Business Regulatory Enforcement Fairness Act requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. The NRC, in compliance with the law, prepared the ''Small Entity Compliance Guide'' for the FY 2017 proposed fee rule. The NRC plans to continue to use this compliance guide for FY 2018 and has relabeled the compliance guide to reflect the current fiscal year. The FY 2018 version of the compliance guide is available as indicated in Section XIII, Availability of Documents, of this document. The next compliance guide will be developed when the NRC completes the next small entity biennial review in FY 2019.

XII. Public Meeting

The NRC will conduct a public meeting on the proposed rule for the purpose of describing the proposed rule and answering questions from the public on the proposed rule. The NRC will publish a notice of the location, time, and agenda of the meeting on the NRC's public meeting website within at least 10 calendar days before the meeting. In addition, the agenda for the meeting will be posted on *www.regulations.gov* under Docket ID NRC–2017–0026. For instructions to receive alerts when changes or additions occur in a docket folder, see Section XIII, Availability of Documents, of this document. Stakeholders should monitor the NRC's public meeting website for information about the public meeting at: *http://www.nrc.gov/public-involve/public-meetings/index.cfm.*

XIII. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No./weblink
SECY–16–0009, ''Recommendations Resulting from the Integrated Prioritization and Re-Baselining of Agency Activities,'' February 9, 2016.	ML16104A158
SECY–16–0097, ''Fee Setting Improvements and Fiscal Year 2017 Proposed Fee Rule,'' August 22, 2016.	ML16194A365
SECY–17–0026, ''Policy Considerations and Recommendations for Remediation of Non-Military, Unlicensed Historic Radium Sites in Non-Agreement States'' February 22, 2017.	ML17130A783

[8] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, Title II, 110 Stat. 847 (1996).

Document	ADAMS accession No./weblink
Staff Requirements Memorandum September 7, 2017, for SECY–17–0026	ML17250A841
FY 2018 Proposed Rule Work Papers	ML17348A377
FY 2018 Regulatory Flexibility Analysis	ML17319A288
FY 2018 U.S. Nuclear Regulatory Commission Small Entity Compliance Guide	ML17319A291
U.S. Government Accountability Office (GAO) report titled ''Nuclear Regulatory Commission: Regulatory Fee-Setting Calculations Need Greater Transparency'' (GAO–17–232), February 2, 2017.	*http://www.gao.gov/products/GAO17-232*
Regulatory Issue Summary 2015–19, ''Decommissioning Timeliness Rule Implementation and Associated Regulatory Relief,'' September 27, 2016.	ML16008A242
NUREG–1100, Volume 33, ''Congressional Budget Justification: Fiscal Year 2018'' (May 2017).	ML17137A246
NRC Form 526, Certification of Small Entity Status for the Purposes of Annual Fees Imposed under 10 CFR Part 171.	*http://www.nrc.gov/reading-rm/doc-collections/forms/nrc526.pdf*
SECY–05–0164, ''Annual Fee Calculation Method,'' dated September 15, 2005	ML052580332
OMB's Circular A–25, ''User Charges''	*https://www.whitehouse.gov/omb/circulars_default*
Fees Transformation Accomplishments	*https://www.nrc.gov/about-nrc/regulatory/licensing/fees-transformaton-accomplishments.html*

Throughout the development of this rule, the NRC may post documents related to this rule, including public comments, on the Federal Rulemaking website at *http://www.regulations.gov* under Docket ID NRC–2017–0026. The Federal Rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder NRC–2017–0026; (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Approvals, Byproduct material, Holders of certificates, Intergovernmental relations, Nonpayment penalties, Nuclear materials, Nuclear power plants and reactors, Registrations, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 170 and 171:

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

■ 1. The authority citation for part 170 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 161(w) (42 U.S.C. 2014, 2201(w)); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 42 U.S.C. 2214; 31 U.S.C. 901, 902, 9701; 44 U.S.C. 3504 note.

■ 2. In § 170.3, add the definitions for *Agency support (corporate support and the IG), Mission-direct program salaries and benefits,* and *Mission-indirect program support* in alphabetical order and remove the definition of *Overhead and general administrative costs.*

The additions read as follows:

§ 170.3 Definitions.

* * * * *

Agency support (corporate support and the IG) means resources located in executive, administrative, and other support offices such as the Office of the Commission, the Office of the Secretary, the Office of the Executive Director for Operations, the Offices of Congressional and Public Affairs, the Office of the Inspector General, the Office of Administration, the Office of the Chief Financial Officer, the Office of the Chief Information Officer, the Office of the Chief Human Capital Officer and the Office of Small Business and Civil Rights. These resources administer the corporate or shared efforts that more broadly support the activities of the agency. These resources also include information technology services, human capital services, financial management, and administrative support.

* * * * *

Mission-direct program salaries and benefits means resources that are allocated to perform core work activities committed to fulfilling the agency's mission of protecting the public health and safety, promoting the common defense and security, and protecting the environment. These resources include the majority of the resources assigned under the direct business lines (Operating Reactors, New Reactors, Fuel Facilities, Nuclear Materials Users, Decommissioning and Low-Level Waste, and Spent Fuel Storage and Transportation).

Mission-indirect program support means resources that support the core mission-direct activities. These resources include supervisory and nonsupervisory support and mission travel and training. Supervisory and nonsupervisory support and mission travel and training resources assigned under direct business line structure are considered mission-indirect due to their supporting role of the core mission activities.

* * * * *

■ 3. In § 170.11, add paragraph (c) to read as follows:

§ 170.11 Exemptions.

* * * * *

(c) For purposes of § 170.11(a)(1), a request for a fee exemption must be submitted to the CFO within 90 days of the date of the NRC's receipt of the work.

■ 4. Revise § 170.20 to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, 10 CFR part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the professional staff-hour rate of $270 per hour.

■ 5. In § 170.21, in the table, revise fee category K. to read as follows:

§ 170.21 Schedule of fees for production or utilization facilities, review of standard referenced design approvals, special projects, inspections, and import and export licenses.

* * * * *

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1] [2]
* * * * * * *	
K. Import and export licenses:	
Licenses for the import and export only of production or utilization facilities or the export only of components for production or utilization facilities issued under 10 CFR part 110.	
1. Application for import or export of production or utilization facilities [4] (including reactors and other facilities) and exports of components requiring Commission and Executive Branch review, for example, actions under 10 CFR 110.40(b)	$18,900.
Application—new license, or amendment; or license exemption request.	
2. Application for export of reactor and other components requiring Executive Branch review, for example, those actions under 10 CFR 110.41(a)	9,500.
Application—new license, or amendment; or license exemption request.	
3. Application for export of components requiring the assistance of the Executive Branch to obtain foreign government assurances	4,600.
Application—new license, or amendment; or license exemption request.	
4. Application for export of facility components and equipment not requiring Commission or Executive Branch review, or obtaining foreign government assurances	4,600.
Application—new license, or amendment; or license exemption request.	
5. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms or conditions or to the type of facility or component authorized for export and, therefore, do not require in-depth analysis or review or consultation with the Executive Branch, U.S. host state, or foreign government authorities	2,700.
Minor amendment to license.	

[1] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under title 10 of the *Code of Federal Regulations* (*e.g.,* 10 CFR 50.12, 10 CFR 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect when the service was provided.

* * * * * * * *

[4] Imports only of major components for end-use at NRC-licensed reactors are authorized under NRC general import license in 10 CFR 110.27.

* * * * * * * *

■ 6. In § 170.31, revise the table to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

* * * * *

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
1. Special nuclear material [11]:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21213]	Full Cost.
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210]	Full Cost.
(2) All other special nuclear materials licenses not included in Category 1.A. (1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations [Program Code(s): 21240, 21310, 21320]	Full Cost.
(b) Gas centrifuge enrichment demonstration facilities [Program Code(s): 21205]	Full Cost.
(c) Others, including hot cell facilities [Program Code(s): 21130, 21133]	Full Cost.
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200].	Full Cost.
C. Licenses for possession and use of special nuclear material of less than a critical mass as defined in § 70.4 in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers.[4]	
Application [Program Code(s): 22140]	$1,200.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass, as defined in § 70.4 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A.[4]	
Application [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22170, 23100, 23300, 23310].	$2,500.
E. Licenses or certificates for construction and operation of a uranium enrichment facility [Program Code(s): 21200]	Full Cost.
F. Licenses for possession and use of special nuclear material greater than critical mass as defined in § 70.4 of this chapter, for development and testing of commercial products, and other non-fuel-cycle activities.[4] [[Program Code(s): 22155].	Full Cost.
2. Source material [11]:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride or for deconverting uranium hexafluoride in the production of uranium oxides for disposal. [Program Code(s): 11400].	Full Cost.
(2) Licenses for possession and use of source material in recovery operations such as milling, *in-situ* recovery, heap-leaching, ore buying stations, ion-exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Conventional and Heap Leach facilities [Program Code(s): 11100]	Full Cost.
(b) Basic *In Situ* Recovery facilities [Program Code(s): 11500]	Full Cost.
(c) Expanded *In Situ* Recovery facilities [Program Code(s): 11510]	Full Cost.
(d) *In Situ* Recovery Resin facilities [Program Code(s): 11550]	Full Cost.
(e) Resin Toll Milling facilities [Program Code(s): 11555]	Full Cost.
(f) Other facilities [Program Code(s): 11700]	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600, 12000].	Full Cost.
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) [Program Code(s): 12010].	Full Cost.
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water [Program Code(s): 11820].	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding.[6 7 8]	
Application [Program Code(s): 11210]	$1,200.
C. Licenses to distribute items containing source material to persons exempt from the licensing requirements of part 40 of this chapter.	
Application [Program Code(s): 11240]	$2,200.
D. Licenses to distribute source material to persons generally licensed under part 40 of this chapter.	
Application [Program Code(s): 11230, 11231]	$2,700.
E. Licenses for possession and use of source material for processing or manufacturing of products or materials containing source material for commercial distribution.	
Application [Program Code(s): 11710]	$2,600.
F. All other source material licenses.	
Application [Program Code(s): 11200, 11220, 11221, 11300, 11800, 11810]	$2,600.
3. Byproduct material [11]:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 1–5.	
Application [Program Code(s): 03211, 03212, 03213]	$12,600.
(1). Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 6–20.	
Application [Program Code(s): 03211, 03212, 03213]	$16,800.
(2). Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: more than 20.	
Application [Program Code(s): 03211, 03212, 03213]	$21,000.
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 1–5.	
Application [Program Code(s): 03214, 03215, 22135, 22162]	$3,500.
(1). Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 6–20.	
Application [Program Code(s): 03214, 03215, 22135, 22162]	$4,600.
(2). Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: more than 20.	
Application [Program Code(s): 03214, 03215, 22135, 22162]	$5,800.
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). Number of locations of use: 1–5.	
Application [Program Code(s): 02500, 02511, 02513]	$5,100.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
(1). Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). Number of locations of use: 6–20.	
Application [Program Code(s): 02500, 02511, 02513]	$6,700.
(2). Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). Number of locations of use: more than 20.	
Application [Program Code(s): 02500, 02511, 02513]	$8,400.
D. [Reserved]	N/A.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).	
Application [Program Code(s): 03510, 03520]	$3,100.
F. Licenses for possession and use of less than or equal to 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03511]	$6,300.
G. Licenses for possession and use of greater than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03521]	$60,300.
H. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03254, 03255, 03257]	$6,500.
I. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03250, 03251, 03252, 03253, 03256]	$9,700.
J. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03240, 03241, 03243]	$1,900.
K. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03242, 03244]	$1,100.
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: 1–5.	
Application [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613, 04610, 04611, 04612, 04613, 04614, 04615, 04616, 04617, 04618, 04619, 04620, 04621, 04622, 04623].	$5,300.
(1) Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: 6–20.	
Application [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613, 04610, 04611, 04612, 04613, 04614, 04615, 04616, 04617, 04618, 04619, 04620, 04621, 04622, 04623].	$7,100.
(2) Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: more than 20.	
Application [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613, 04610, 04611, 04612, 04613, 04614, 04615, 04616, 04617, 04618, 04619, 04620, 04621, 04622, 04623].	$8,800.
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution.	
Application [Program Code(s): 03620]	$6,900.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4.A., 4.B., and 4.C.	
Application [Program Code(s): 03219, 03225, 03226]	$7,100.
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. Number of locations of use: 1–5.	
Application [Program Code(s): 03310, 03320]	$3,100.
(1). Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. Number of locations of use: 6–20.	
Application [Program Code(s): 03310, 03320]	$4,100.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
(2). Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. Number of locations of use: more than 20.	
Application [Program Code(s): 03310, 03320]	$5,100.
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D.[9] Number of locations of use: 1–5.	
Application [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03130, 03140, 03220, 03221, 03222, 03800, 03810, 22130].	$3,300.
(1). All other specific byproduct material licenses, except those in Categories 4.A. through 9.D.[9] Number of locations of use: 6–20.	
Application [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03130, 03140, 03220, 03221, 03222, 03800, 03810, 22130].	$4,500.
(2). All other specific byproduct material licenses, except those in Categories 4.A. through 9.D.[9] Number of locations of use: more than 20.	
Application [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03130, 03140, 03220, 03221, 03222, 03800, 03810, 22130].	$5,600.
Q. Registration of a device(s) generally licensed under part 31 of this chapter. Registration	$700.
R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section.[5].	
1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified.	
Application [Program Code(s): 02700].	$2,500.
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4), or (5).	
Application [Program Code(s): 02710]	$2,400.
S. Licenses for production of accelerator-produced radionuclides.	
Application [Program Code(s): 03210]	$13,800.
4. Waste disposal and processing [11]:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material.	
Application [Program Code(s): 03231, 03233, 03236, 06100, 06101]	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	
Application [Program Code(s): 03234]	$6,700.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	
Application [Program Code(s): 03232]	$4,900.
5. Well logging [11]:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies.	
Application [Program Code(s): 03110, 03111, 03112]	$4,500.
B. Licenses for possession and use of byproduct material for field flooding tracer studies.	
Licensing [Program Code(s): 03113]	Full Cost.
6. Nuclear laundries [11]:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material.	
Application [Program Code(s): 03218]	$21,500.
7. Medical licenses [11]:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. Number of locations of use: 1–5.	
Application [Program Code(s): 02300, 02310]	$10,800.
(1). Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. Number of locations of use: 6–20.	
Application [Program Code(s): 02300, 02310]	$14,400.
(2). Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. Number of locations of use: more than 20.	
Application [Program Code(s): 02300, 02310]	$17,900.
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[10] Number of locations of use: 1–5.	
Application [Program Code(s): 02110]	$8,400.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
(1). Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[10] Number of locations of use: 6–20.	
Application [Program Code(s): 02110]	$11,200.
(2). Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. [10] Number of locations of use: more than 20.	
Application [Program Code(s): 02110]	$14,000.
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices.	
Application [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	$5,400.
8. Civil defense [11]:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities.	
Application [Program Code(s): 03710]	$2,500.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution.	
Application—each device	$5,300.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices.	
Application—each device	$8,800.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution.	
Application—each source	$5,100.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel.	
Application—each source	$1,030.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	Full Cost.
2. Other Casks	Full Cost.
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators.	
Application	$4,100.
Inspections	Full Cost.
2. Users.	
Application	$4,100.
Inspections	Full Cost.
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices).	Full Cost.
11. Review of standardized spent fuel facilities	Full Cost.
12. Special projects: Including approvals, pre-application/licensing activities, and inspections.	
Application [Program Code: 25110]	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance	Full Cost.
B. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Decommissioning/Reclamation [11]:	
A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter, including master materials licenses (MMLs). The transition to this fee category occurs when a licensee has permanently ceased principal activities. [Program Code(s): 03900, 11900, 21135, 21215, 21240, 21325, 22200].	Full Cost.
B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, regardless of whether or not the sites have been previously licensed.	Full Cost.
15. Import and Export licenses: Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, and the export only of heavy water, or nuclear grade graphite (fee categories 15.A. through 15.E.).	
A. Application for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under 10 CFR 110.40(b).	
Application—new license, or amendment; or license exemption request	$18,900.
B. Application for export or import of nuclear material, including radioactive waste, requiring Executive Branch review, but not Commission review. This category includes applications for the export and import of radioactive waste and requires the NRC to consult with domestic host state authorities (i.e., Low-Level Radioactive Waste Compact Commission, the U.S. Environmental Protection Agency, etc.).	
Application—new license, or amendment; or license exemption request	$9,500.
C. Application for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring the assistance of the Executive Branch to obtain foreign government assurances.	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
Application—new license, or amendment; or license exemption request	$4,600.
D. Application for export or import of nuclear material not requiring Commission or Executive Branch review, or obtaining foreign government assurances.	
Application—new license, or amendment; or license exemption request	$4,600.
E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities.	
Minor amendment	$2,700.
Licenses issued under part 110 of this chapter for the import and export only of Category 1 and Category 2 quantities of radioactive material listed in appendix P to part 110 of this chapter (fee categories 15.F. through 15.R.).	
Category 1 (Appendix P, 10 CFR Part 110) Exports:	
F. Application for export of appendix P Category 1 materials requiring Commission review (e.g. exceptional circumstance review under 10 CFR 110.42(e)(4)) and to obtain one government-to-government consent for this process. For additional consent see fee category 15.I.	
Application—new license, or amendment; or license exemption request	$14,900.
G. Application for export of appendix P Category 1 materials requiring Executive Branch review and to obtain one government-to-government consent for this process. For additional consents see fee category 15.I.	
Application—new license, or amendment; or license exemption request	$8,100.
H. Application for export of appendix P Category 1 materials and to obtain one government-to-government consent for this process. For additional consents see fee category 15.I.	
Application—new license, or amendment; or license exemption request	$4,100.
I. Requests for each additional government-to-government consent in support of an export license application or active export license.	
Application—new license, or amendment; or license exemption request	$300.
Category 2 (Appendix P, 10 CFR Part 110) Exports:	
J. Application for export of appendix P Category 2 materials requiring Commission review (e.g. exceptional circumstance review under 10 CFR 110.42(e)(4)).	
Application—new license, or amendment; or license exemption request	$14,900.
K. Applications for export of appendix P Category 2 materials requiring Executive Branch review.	
Application—new license, or amendment; or license exemption request	$8,100.
L. Application for the export of Category 2 materials.	
Application—new license, or amendment; or license exemption request	$3,200.
M. [Reserved]	N/A.
N. [Reserved]	N/A.
O. [Reserved]	N/A.
P. [Reserved]	N/A.
Q. [Reserved]	N/A.
Minor Amendments (Category 1 and 2, Appendix P, 10 CFR Part 110, Export):	
R. Minor amendment of any active export license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign authorities. Minor amendment.	$1,400.
16. Reciprocity: Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application	$1,800.
17. Master materials licenses of broad scope issued to Government agencies.	
Application [Program Code(s): 03614].	Full Cost.
18. Department of Energy.	
A. Certificates of Compliance. Evaluation of casks, packages, and shipping containers (including spent fuel, high-level waste, and other casks, and plutonium air packages).	Full Cost.
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	Full Cost.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews; applications for new licenses, approvals, or license terminations; possession-only licenses; issuances of new licenses and approvals; certain amendments and renewals to existing licenses and approvals; safety evaluations of sealed sources and devices; generally licensed device registrations; and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses, except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee category 1.C. only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses, renewals, and amendments to existing licenses, pre-application consultations and other documents submitted to the NRC for review, and project manager time for fee categories subject to full cost fees are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to an export or import license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment, unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under title 10 of the *Code of Federal Regulations* (*e.g.,* 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in fee categories 9.A. through 9.D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect when the service is provided, and the appropriate contractual support services expended.

[4] Licensees paying fees under categories 1.A., 1.B., and 1.E. are not subject to fees under categories 1.C., 1.D. and 1.F. for sealed sources authorized in the same license, except for an application that deals only with the sealed sources authorized by the license.

[5] Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

[6] Licensees subject to fees under fee categories 1.A., 1.B., 1.E., or 2.A. must pay the largest applicable fee and are not subject to additional fees listed in this table.

[7] Licensees paying fees under 3.C. are not subject to fees under 2.B. for possession and shielding authorized on the same license.

[8] Licensees paying fees under 7.C. are not subject to fees under 2.B. for possession and shielding authorized on the same license.

[9] Licensees paying fees under 3.N. are not subject to paying fees under 3.P. for calibration or leak testing services authorized on the same license.

[10] Licensees paying fees under 7.B. are not subject to paying fees under 7.C. for broad scope licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices authorized on the same license.

[11] A materials license (or part of a materials license) that transitions to fee category 14.A is assessed full-cost fees under 10 CFR part 170, but is not assessed an annual fee under 10 CFR part 171. If only part of a materials license is transitioned to fee category 14.A, the licensee may be charged annual fees (and any applicable 10 CFR part 170 fees) for other activities authorized under the license that are not in decommissioning status.

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

■ 7. The authority citation for part 171 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 161(w), 223, 234 (42 U.S.C. 2014, 2201(w), 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 42 U.S.C. 2214; 44 U.S.C. 3504 note.

■ 8. In § 171.3, revise the last sentence to read as follows:

§ 171.3 Scope.

* * * Notwithstanding the other provisions in this section, the regulations in this part do not apply to uranium recovery and fuel facility licensees until after the Commission verifies through inspection that the facility has been constructed in accordance with the requirements of the license.

§ 171.5 [Amended]

■ 9. In § 171.5, remove the definition of *Overhead and general and administrative costs.*

■ 10. In § 171.15, revise paragraphs (b)(1), (b)(2) introductory text, (c)(1), (c)(2) introductory text, (d)(1) introductory text, (d)(2) and (3), and (f) to read as follows:

§ 171.15 Annual fees: Reactor licenses and independent spent fuel storage licenses.

* * * * *

(b)(1) The FY 2018 annual fee for each operating power reactor that must be collected by September 30, 2018, is $4,559,000.

(2) The FY 2018 annual fees are comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (fee-relief adjustment). The activities comprising the spent fuel storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(i) and (ii) of this section. The activities comprising the FY 2018 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2018 base annual fee for operating power reactors are as follows:

* * * * *

(c)(1) The FY 2018 annual fee for each power reactor holding a 10 CFR part 50 license that is in a decommissioning or possession-only status and has spent fuel onsite, and for each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license, is $225,000.

(2) The FY 2018 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section) and a fee-relief adjustment. The activities comprising the FY 2018 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2018 spent fuel storage/reactor decommissioning rebaselined annual fee are:

* * * * *

(d)(1) The fee-relief adjustment allocated to annual fees includes a surcharge for the activities listed in paragraph (d)(1)(i) of this section, plus the amount remaining after total budgeted resources for the activities included in paragraphs (d)(1)(ii) and (iii) of this section are reduced by the appropriations the NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (d)(1)(ii) and (iii) of this section for a given fiscal year, annual fees will be reduced. The activities comprising the FY 2018 fee-relief adjustment are as follows:

* * * * *

(2) The total FY 2018 fee-relief adjustment allocated to the operating power reactor class of licenses is a $5,761,255 fee-relief surcharge, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2018 operating power reactor fee-relief adjustment to be assessed to each operating power reactor is approximately a $58,195 fee-relief surcharge. This amount is calculated by dividing the total operating power reactor fee-relief surplus adjustment, $5,761,255, by the number of operating power reactors (99).

(3) The FY 2018 fee-relief adjustment allocated to the spent fuel storage/reactor decommissioning class of licenses is a $225,000 fee-relief surcharge. The FY 2018 spent fuel storage/reactor decommissioning fee relief adjustment to be assessed to each operating power reactor, each power reactor in decommissioning or

possession-only status that has spent fuel onsite, and to each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license, is a $1,844 fee-relief assessment. This amount is calculated by dividing the total fee-relief adjustment costs allocated to this class by the total number of power reactors licenses, except those that permanently ceased operations and have no fuel onsite, and 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license.

* * * * *

(f) The FY 2018 annual fees for licensees authorized to operate a research or test (non-power) reactor licensed under 10 CFR part 50, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor	$81,300
Test reactor	81,300

■ 11. In § 171.16, revise paragraphs (a)(2), (d), and (e) introductory text to read as follows:

§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.

(a) * * *

(2) Notwithstanding the other provisions in this section, the regulations in this part do not apply to uranium recovery and fuel facility licensees until after the Commission verifies through inspection that the facility has been constructed in accordance with the requirements of the license.

* * * * *

(d) The FY 2018 annual fees are comprised of a base annual fee and an allocation for fee-relief adjustment. The activities comprising the FY 2018 fee-relief adjustment are shown for convenience in paragraph (e) of this section. The FY 2018 annual fees for materials licensees and holders of certificates, registrations, or approvals subject to fees under this section are shown in the following table:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130]	$7,726,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210]	2,799,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations [Program Code(s): 21310, 21320]	N/A
(b) Gas centrifuge enrichment demonstration facilities	N/A
(c) Others, including hot cell facilities	N/A
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200]	[11] N/A
C. Licenses for possession and use of special nuclear material of less than a critical mass, as defined in § 70.4 of this chapter, in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers. [Program Code(s): 22140]	3,000
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass, as defined in § 70.4 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A. [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22170, 23100, 23300, 23310]	8,400
E. Licenses or certificates for the operation of a uranium enrichment facility [Program Code(s): 21200]	3,695,000
F. Licenses for possession and use of special nuclear materials greater than critical mass, as defined in § 70.4 of this chapter, for development and testing of commercial products, and other non-fuel cycle activities.[4] [Program Code: 22155]	6,400
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride or for deconverting uranium hexafluoride in the production of uranium oxides for disposal. [Program Code: 11400]	1,596,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ recovery, heap-leaching, ore buying stations, ion-exchange facilities and in-processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Conventional and Heap Leach facilities [Program Code(s): 11100]	38,800
(b) Basic *In Situ* Recovery facilities [Program Code(s): 11500]	49,200
(c) Expanded *In Situ* Recovery facilities [Program Code(s): 11510]	55,600
(d) *In Situ* Recovery Resin facilities [Program Code(s): 11550]	[5] N/A
(e) Resin Toll Milling facilities [Program Code(s): 11555]	[5] N/A
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600, 12000]	[5] N/A
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) [Program Code(s): 12010]	22,000
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water [Program Code(s): 11820]	6,500
B. Licenses that authorize possession, use, and/or installation of source material for shielding.[15] [16] [17] [20] [Program Code: 11210]	3,300
C. Licenses to distribute items containing source material to persons exempt from the licensing requirements of part 40 of this chapter. [Program Code: 11240]	5,500
D. Licenses to distribute source material to persons generally licensed under part 40 of this chapter [Program Code(s): 11230 and 11231]	6,400

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
E. Licenses for possession and use of source material for processing or manufacturing of products or materials containing source material for commercial distribution. [Program Code: 11710]	7,800
F. All other source material licenses. [Program Code(s): 11200, 11220, 11221, 11300, 11800, 11810]	10,300
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 1–5. [Program Code(s): 03211, 03212, 03213]	32,800
(1). Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 6–20. [Program Code(s): 03211, 03212, 03213]	43,200
(2). Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: More than 20. [Program Code(s): 03211, 03212, 03213]	53,800
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 1–5. [Program Code(s): 03214, 03215, 22135, 22162]	12,700
(1). Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 6–20. [Program Code(s): 03214, 03215, 22135, 22162]	16,400
(2). Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: More than 20. [Program Code(s): 03214, 03215, 22135, 22162]	20,300
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). Number of locations of use: 1–5. [Program Code(s): 02500, 02511, 02513]	12,900
(1). Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). Number of locations of use: 6–20. [Program Code(s): 02500, 02511, 02513]	16,600
(2). Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). Number of locations of use: More than 20. [Program Code(s): 02500, 02511, 02513]	20,500
D. [Reserved]	[5] N/A
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units) [Program Code(s): 03510, 03520]	10,500
F. Licenses for possession and use of less than or equal to 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03511]	11,700
G. Licenses for possession and use of greater than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03521]	96,700
H. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03254, 03255, 03257]	11,800
I. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03250, 03251, 03252, 03253, 03256]	16,500
J. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03240, 03241, 03243]	4,400
K. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03242, 03244]	3,200
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: 1–5. [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]	16,000
(1) Licenses of broad scope for possession and use of product material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: 6–20. [Program Code(s): 04610, 04612, 04614, 04616, 04618, 04620, 04622]	20,900

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
(2) Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: More than 20. [Program Code(s): 04611, 04613, 04615, 04617, 04619, 04621, 04623]	25,700
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 03620]	14,800
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee categories 4.A., 4.B., and 4.C.[20] [Program Code(s): 03219, 03225, 03226]	19,200
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license Number of locations of use: 1–5. [Program Code(s): 03310, 03320]	25,700
(1). Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license. Number of locations of use: 6–20. [Program Code(s): 03310, 03320]	34,300
(2). Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license. Number of locations of use: More than 20. [Program Code(s): 03310, 03320]	42,600
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D.[18] [20] Number of locations of use: 1–5. [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03140, 03130, 03220, 03221, 03222, 03800, 03810, 22130]	9,000
(1). All other specific byproduct material licenses, except those in Categories 4.A. through 9.D.[18] [20] Number of locations of use: 6–20. [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03140, 03130, 03220, 03221, 03222, 03800, 03810, 22130]	12,000
(2). All other specific byproduct material licenses, except those in Categories 4.A. through 9.D.[18] [20] Number of locations of use: more than 20. [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03140, 03130, 03220, 03221, 03222, 03800, 03810, 22130]	15,000
Q. Registration of devices generally licensed under part 31 of this chapter	[13] N/A
R. Possession of items or products containing radium–226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section: [14]	
(1). Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified [Program Code(s): 02700]	7,400
(2). Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4) or (5) [Program Code(s): 02710]	7,700
S. Licenses for production of accelerator-produced radionuclides [Program Code(s): 03210]	31,700
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101]	[5] N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03234]	20,400
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03232]	12,000
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies [Program Code(s): 03110, 03111, 03112]	15,600
B. Licenses for possession and use of byproduct material for field flooding tracer studies. [Program Code(s): 03113]	[5] N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material [Program Code(s): 03218]	38,900
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. Number of locations of use: 1–5. [Program Code(s): 02300, 02310]	21,700
(1). Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. Number of locations of use: 6–20. [Program Code(s): 02300, 02310]	31,800

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
(2). Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. Number of locations of use: More than 20. [Program Code(s): 02300, 02310]	35,900
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] Number of locations of use: 1–5. [Program Code(s): 02110]	32,700
(1). Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] Number of locations of use: 6–20. [Program Code(s): 02110]	43,100
(2). Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] Number of locations of use: more than 20. [Program Code(s): 02110]	53,300
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] [19] [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	14,500
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities [Program Code(s): 03710]	7,400
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	7,800
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	12,900
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	7,500
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	1,500
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
2. Other Casks	[6] N/A
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators	[6] N/A
2. Users	[6] N/A
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices)	[6] N/A
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects [Program Code(s): 25110]	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	[12] N/A
14. Decommissioning/Reclamation:	
A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter, including master materials licenses (MMLs). The transition to this fee category occurs when a licensee has permanently ceased principal activities. [Program Code(s): 03900, 11900, 21135, 21215, 21240, 21325, 22200]	[7] [21] 0
B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, whether or not the sites have been previously licensed	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies [Program Code(s): 03614]	334,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,405,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	188,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current FY. The annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1 of the current FY, and permanently ceased licensed activities entirely before this date. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession-only license during the FY and for new licenses issued during the FY will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (*e.g.,* human use and irradiator activities), annual fees will be assessed for each category applicable to the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each FY, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] Other facilities include licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, 10 CFR parts 71 and 72 Certificates of Compliance and related Quality Assurance program approvals, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions that also hold nuclear medicine licenses under fee categories 7.A, 7.B. or 7.C.

[10] This includes Certificates of Compliance issued to the U.S. Department of Energy that are not funded from the Nuclear Waste Fund.

[11] See § 171.15(c).

[12] See § 171.15(c).

[13] No annual fee is charged for this category because the cost of the general license registration program applicable to licenses in this category will be recovered through 10 CFR part 170 fees.

[14] Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

[15] Licensees subject to fees under categories 1.A., 1.B., 1.E., 2.A., and licensees paying fees under fee category 17 must pay the largest applicable fee and are not subject to additional fees listed in this table.

[16] Licensees paying fees under 3.C. are not subject to fees under 2.B. for possession and shielding authorized on the same license.

[17] Licensees paying fees under 7.C. are not subject to fees under 2.B. for possession and shielding authorized on the same license.

[18] Licensees paying fees under 3.N. are not subject to paying fees under 3.P. for calibration or leak testing services authorized on the same license.

[19] Licensees paying fees under 7.B. are not subject to paying fees under 7.C. for broad scope license licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices authorized on the same license.

[20] Licensees are exempt from paying annual fees under this fee category when they are licensed under multiple fee categories.

[21] No annual fee is charged for a materials license (or part of a materials license) that has transitioned to this fee category because the decommissioning costs will be recovered through 10 CFR part 170 fees, but annual fees may be charged for other activities authorized under the license that are not in decommissioning status.

(e) The fee-relief adjustment allocated to annual fees includes the budgeted resources for the activities listed in paragraph (e)(1) of this section, plus the total budgeted resources for the activities included in paragraphs (e)(2) and (3) of this section, as reduced by the appropriations the NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (e)(2) and (3) of this section for a given fiscal year, a negative fee-relief adjustment (or annual fee reduction) will be allocated to annual fees. The activities comprising the FY 2018 fee-relief adjustment are as follows:

* * * * *

■ 12. In § 171.17, revise paragraph (a) introductory text to read as follows:

§ 171.17 Proration.

* * * * *

(a) Reactors, 10 CFR part 72 licensees who do not hold 10 CFR part 50 licenses, and materials licenses with annual fees of $100,000 or greater for a single fee category. The NRC will base the proration of annual fees for terminated and downgraded licensees on the fee rule in effect at the time the action is official. The NRC will base the determinations on the proration requirements under paragraphs (a)(2) and (3) of this section.

* * * * *

Dated at Rockville, Maryland, this 10th day of January 2018.

For the Nuclear Regulatory Commission.

Maureen E. Wylie,

Chief Financial Officer.

[FR Doc. 2018–01065 Filed 1–24–18; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM17–13–000]

Supply Chain Risk Management Reliability Standards

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to approve supply chain risk management Reliability Standards CIP–013–1 (Cyber Security—Supply Chain Risk Management), CIP–005–6 (Cyber Security—Electronic Security Perimeter(s)) and CIP–010–3 (Cyber Security—Configuration Change Management and Vulnerability

Assessments). The North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization, submitted the proposed Reliability Standards for Commission approval in response to a Commission directive. In addition, the Commission proposes that NERC develop and submit certain modifications to the supply chain risk management Reliability Standards.

DATES: Comments are due March 26, 2018.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

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Kevin Ryan (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6840, *kevin.ryan@ferc.gov*.

SUPPLEMENTARY INFORMATION:

1. Pursuant to section 215(d)(2) of the Federal Power Act (FPA),[1] the Commission proposes to approve supply chain risk management Reliability Standards CIP–013–1 (Cyber Security—Supply Chain Risk Management), CIP–005–6 (Cyber Security—Electronic Security Perimeter(s)) and CIP–010–3 (Cyber Security—Configuration Change Management and Vulnerability Assessments). The North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), submitted the proposed Reliability Standards for Commission approval in response to a Commission directive in Order No. 829.[2] The proposed Reliability Standards are intended to augment the currently-effective CIP Reliability Standards to mitigate cybersecurity risks associated with the supply chain for BES Cyber Systems.[3]

2. As the Commission previously recognized, the global supply chain provides the opportunity for significant benefits to customers, including low cost, interoperability, rapid innovation, a variety of product features and choice.[4] However, the global supply chain also enables opportunities for adversaries to directly or indirectly affect the management or operations of companies that may result in risks to end users. Supply chain risks may include the insertion of counterfeits, unauthorized production, tampering, theft, or insertion of malicious software, as well as poor manufacturing and development practices. We propose to determine that the supply chain risk management Reliability Standards submitted by NERC constitute substantial progress in addressing the supply chain cyber security risks identified by the Commission.

3. The Commission also proposes to approve the proposed Reliability Standards' associated violation risk factors and violation severity levels. With respect to the proposed Reliability Standards' implementation plan and effective date, the Commission proposes to reduce the implementation period from the first day of the first calendar quarter that is 18 months following the effective date of a Commission order approving the proposed Reliability Standards, as proposed by NERC, to the first day of the first calendar quarter that is 12 months following the effective date of a Commission order.

4. While the Commission proposes to determine that the proposed Reliability Standards address most aspects of the Commission's directive in Order No. 829, there remains a significant cyber security risk associated with the supply chain for BES Cyber Systems because the proposed Reliability Standards exclude Electronic Access Control and Monitoring Systems (EACMS),[5] Physical Access Control Systems (PACS),[6] and Protected Cyber Assets (PCAs),[7] with the exception of the modifications in proposed Reliability Standard CIP–005–6, which apply to PCAs. To address this gap, pursuant to section 215(d)(5) of the FPA,[8] the Commission proposes to direct NERC to develop modifications to the CIP Reliability Standards to include EACMS associated with medium and high impact BES Cyber Systems within the scope of the supply chain risk management Reliability Standards.[9] In addition, the Commission proposes to direct NERC to evaluate the cyber security supply chain risks presented by PACS and PCAs in the study of cyber security supply chain risks requested by the NERC Board of Trustees (BOT) in its resolutions of August 10, 2017.[10] The Commission further proposes to direct NERC to file the BOT-requested study's interim and final reports with the Commission upon their completion.

[1] 16 U.S.C. 824o(d)(2).

[2] *Revised Critical Infrastructure Protection Reliability Standards,* Order No. 829, 156 FERC ¶ 61,050, at P 43 (2016).

[3] BES Cyber System is defined as ''[o]ne or more BES Cyber Assets logically grouped by a responsible entity to perform one or more reliability tasks for a functional entity.'' Glossary of Terms Used in NERC Reliability Standards (NERC Glossary), *http://www.nerc.com/files/glossary_of_terms.pdf.* The acronym BES refers to the bulk electric system.

[4] *Revised Critical Infrastructure Protection Reliability Standards,* Notice of Proposed Rulemaking, 80 FR 43354 (July, 22, 2015), 152 FERC ¶ 61,054, at PP 61–62 (2015).

[5] EACMS are defined as ''Cyber Assets that perform electronic access control or electronic access monitoring of the Electronic Security Perimeter(s) or BES Cyber Systems. This includes Intermediate Systems.'' NERC Glossary. Reliability Standard CIP–002–5.1a (Cyber Security—BES Cyber System Categorization) states that examples of EACMS include ''Electronic Access Points, Intermediate Systems, authentication servers (e.g., RADIUS servers, Active Directory servers, Certificate Authorities), security event monitoring systems, and intrusion detection systems.'' Reliability Standard CIP–002–5.1a (Cyber Security—BES Cyber System Categorization) Section A.6 at 6.

[6] PACS are defined as ''Cyber Assets that control, alert, or log access to the Physical Security Perimeter(s), exclusive of locally mounted hardware or devices at the Physical Security Perimeter such as motion sensors, electronic lock control mechanisms, and badge readers.'' NERC Glossary. Reliability Standard CIP–002–5.1a states that examples include ''authentication servers, card systems, and badge control systems.'' *Id.*

[7] PCAs are defined as ''[o]ne or more Cyber Assets connected using a routable protocol within or on an Electronic Security Perimeter that is not part of the highest impact BES Cyber System within the same Electronic Security Perimeter. The impact rating of Protected Cyber Assets is equal to the highest rated BES Cyber System in the same [Electronic Security Perimeter].'' NERC Glossary. Reliability Standard CIP–002–5.1a states that examples include, to the extent they are within the Electronic Security Perimeter, ''file servers, ftp servers, time servers, LAN switches, networked printers, digital fault recorders, and emission monitoring systems.'' *Id.*

[8] 16 U.S.C. 824o(d)(5).

[9] Reliability Standard CIP–002–5.1a (Cyber Security System Categorization) provides a ''tiered'' approach to cybersecurity requirements, based on classifications of high, medium and low impact BES Cyber Systems.

[10] Proposed Additional Resolutions for Agenda Item 9.a: Cyber Security—Supply Chain Risk Management—CIP–005–6, CIP–010–3, and CIP–013–1 (August 10, 2017), *http://www.nerc.com/gov/bot/Agenda%20highlights%20and%20Mintues%202013/Proposed%20Resolutions%20re%20Supply%20Chain%20Follow-Up%20v2.pdf.*

I. Background

A. Section 215 and Mandatory Reliability Standards

5. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[11] Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[12] and subsequently certified NERC.[13]

B. Order No. 829

6. In Order No. 829, the Commission directed NERC to develop a new or modified Reliability Standard that addresses supply chain risk management for industrial control system hardware, software and computing and networking services associated with bulk electric system operations.[14] Specifically, the Commission directed NERC to develop a forward-looking, objective-based Reliability Standard that would require responsible entities to develop and implement a plan with supply chain management security controls focused on four security objectives: (1) Software integrity and authenticity; (2) vendor remote access; (3) information system planning; and (4) vendor risk management and procurement controls.[15]

7. The Commission explained that the first objective, verification of software integrity and authenticity, is intended to reduce the likelihood that an attacker could exploit legitimate vendor patch management processes to deliver compromised software updates or patches to a BES Cyber System.[16]

8. With respect to the second objective, vendor remote access, the Commission stated that the objective is intended to address the threat that vendor credentials could be stolen and used to access a BES Cyber System without the responsible entity's knowledge, as well as the threat that a compromise at a trusted vendor could traverse over an unmonitored connection into a responsible entity's BES Cyber System.[17]

9. For the third objective, information system planning, Order No. 829 indicated that the objective is intended to address the risk that responsible entities could unintentionally plan to procure and install unsecure equipment or software within their information systems, or could unintentionally fail to anticipate security issues that may arise due to their network architecture or during technology and vendor transitions.[18]

10. Vendor risk management and procurement controls, the fourth objective, the Commission explained, are intended to address the risk that responsible entities could enter into contracts with vendors that pose significant risks to the responsible entities' information systems, as well as the risk that products procured by a responsible entity fail to meet minimum security criteria. This objective also addresses the risk that a compromised vendor would not provide adequate notice and related incident response to responsible entities with whom that vendor is connected.[19]

11. Order No. 829 stated that while responsible entities should be required to develop and implement a plan, the Commission did not require NERC to impose any specific controls or ''one-size-fits-all'' requirements.[20] In addition, the Commission stated that NERC's response to the Order No. 829 directive should respect the Commission's jurisdiction under FPA section 215 by only addressing the obligations of responsible entities and not by directly imposing any obligations on non-jurisdictional suppliers, vendors or other entities that provide products or services to responsible entities.[21]

C. NERC Petition and Proposed Reliability Standards

12. On September 26, 2017, NERC submitted for Commission approval proposed Reliability Standards CIP–013–1, CIP–005–6, and CIP–010–3 and their associated violation risk factors and violation severity levels, implementation plans, and effective dates.[22] NERC states that the purpose of the proposed Reliability Standards is to enhance the cybersecurity posture of the electric industry by requiring responsible entities to take additional actions to address cybersecurity risks associated with the supply chain for BES Cyber Systems. NERC explains that the proposed Reliability Standards are designed to augment the existing controls required in the currently-effective CIP Reliability Standards that help mitigate supply chain risks, providing increased attention on minimizing the attack surfaces of information and communications technology products and services procured to support reliable bulk electric system operations, consistent with Order No. 829. Each proposed Reliability Standard is summarized below.

13. NERC states that the proposed Reliability Standards apply only to medium and high impact BES Cyber Systems. NERC explains that the goal of the CIP Reliability Standards is to ''focus[ ] industry resources on protecting those BES Cyber Systems with heightened risks to the [bulk electric system] . . . [and] that the requirements applicable to low impact BES Cyber Systems, given their lower risk profile, should not be overly burdensome to divert resources from the protection of medium and high impact BES Cyber Systems.'' [23] NERC further maintains that the standard drafting team chose to apply the proposed Reliability Standards only to medium and high impact BES Cyber Systems because the proposed Reliability Standards are ''consistent with the type of existing CIP cybersecurity requirements applicable to high and medium impact BES Cyber Systems as opposed to those applicable to low impact BES Cyber Systems.'' [24]

14. NERC states that the standard drafting team also excluded EACMS, PACS, and PCAs from the scope of the proposed Reliability Standards, with the exception of the modifications in proposed Reliability Standard CIP–005–6, which apply to PCAs. NERC explains that although certain requirements in the existing CIP Reliability Standards apply to EACMS, PACS, and PCAs due to their association with BES Cyber Systems (either by function or location), the standard drafting team determined that the proposed supply chain risk management Reliability Standards should focus on high and medium impact BES Cyber Systems only. NERC states that this determination was based on the conclusion that applying the

[11] 16 U.S.C. 824o(e).

[12] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[13] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[14] Order No. 829, 156 FERC ¶ 61,050 at P 43.

[15] *Id.* P 45.

[16] *Id.* P 49.

[17] *Id.* P 52.

[18] *Id.* P 57.

[19] *Id.* P 60.

[20] *Id.* P 13.

[21] *Id.* P 21.

[22] Proposed Reliability Standards CIP–013–1, CIP–005–6 and CIP–010–3 are not attached to this notice of proposed rulemaking (NOPR). The proposed Reliability Standards are available on the Commission's eLibrary document retrieval system in Docket No. RM17–13–000 and on the NERC website, *www.nerc.com.*

[23] NERC Petition at 16–17.

[24] *Id.* at 18.

proposed Reliability Standards to EACMS, PACS, and PCAs ''would divert resources from protecting medium and high BES Cyber Systems.'' [25]

15. NERC maintains that with respect to low impact BES Cyber Systems and EACMS, PACS, and PCAs, while not mandatory, NERC expects that these assets will likely be subject to responsible entity supply chain risk management plans required by proposed Reliability Standard CIP–013–1. Specifically, NERC asserts that ''Responsible Entities may implement a single process for procuring products and services associated with their operational environments.'' [26] NERC contends that ''by requiring that entities implement supply chain cybersecurity risk management plans for high and medium impact BES Cyber Systems, those plans would likely also cover their low impact BES Cyber Systems.'' [27] NERC also claims that responsible entities ''may also use the same vendors for procuring PACS, EACMS, and PCAs as they do for their high and medium impact BES Cyber Systems such that the same security considerations may be addressed for those Cyber Assets.'' [28]

Proposed Reliability Standard CIP–013–1

16. NERC states that the focus of proposed Reliability Standard CIP–013–1 is on the steps that responsible entities take ''to consider and address cybersecurity risks from vendor products and services during BES Cyber System planning and procurement.'' [29] NERC explains that proposed Reliability Standard CIP–013–1 does not require any specific controls or mandate ''one-size-fits-all'' requirements due to the differences in needs and characteristics of responsible entities and the diversity of bulk electric system environments, technologies, and risks. NERC states that the goal of the proposed Reliability Standard is ''to help ensure that responsible entities establish organizationally-defined processes that integrate a cybersecurity risk management framework into the system development lifecycle.'' [30] NERC explains that, among other things, proposed Reliability Standard CIP–013–1 addresses the risk associated with information system planning, as well as vendor risk management and procurement controls, the third and fourth objectives outlined in Order No. 829.

17. NERC states that, consistent with the Commission's FPA section 215 jurisdiction and Order No. 829, the proposed Reliability Standard applies only to responsible entities and does not directly impose obligations on suppliers, vendors, or other entities that provide products or services to responsible entities. NERC explains that the focus of the proposed Reliability Standard is on the steps responsible entities take to account for security issues during the planning and procurement phase of high and medium impact BES Cyber Systems. NERC also explains that any resulting obligation that a supplier, vendor, or other entity accepts in providing products or services to the responsible entity is a contractual matter between the responsible entity and third parties, which is outside the scope of the proposed Reliability Standard.

18. NERC explains that the term ''vendor'' is used broadly to refer to any person, company or other organization with whom the responsible entity, or an affiliate, contracts with to supply BES Cyber Systems and related services to the responsible entity. NERC states that the use of the term ''vendor,'' however, ''was not intended to bring registered entities that provide reliability services to other registered entities as part of their functional obligations under NERC's Reliability Standards (*e.g.,* a Balancing Authority providing balancing services for registered entities in its Balancing Authority Area) within the scope of the proposed Reliability Standards.'' [31]

19. NERC maintains that, consistent with Order No. 829, responsible entities need not apply their supply chain risk management plans to the acquisition of vendor products or services under contracts executed prior to the effective date of Reliability Standard CIP–013–1, nor would such contracts need to be renegotiated or abrogated to comply with the proposed Reliability Standard. In addition, NERC indicates that, consistent with the development of a forward looking Reliability Standard, if entities are in the middle of procurement activities for an applicable product or service at the time of the effective date of proposed Reliability Standard CIP–013–1, NERC would not expect entities to begin those activities anew to implement their supply chain cybersecurity risk management plan to comply with proposed Reliability Standard CIP–013–1.

20. NERC explains that, under Requirement R1 of this Reliability Standard, responsible entities would be required to have one or more processes to address, as applicable, the following baseline set of security concepts in their procurement activities for high and medium impact BES Cyber Systems: (1) Vendor security event notification processes (Part 1.2.1); (2) coordinated incident response activities (Part 1.2.2); (3) vendor personnel termination notification for employees with access to remote and onsite systems (Part 1.2.3); (4) product/services vulnerability disclosures (Part 1.2.4); (5) verification of software integrity and authenticity (Part 1.2.5); and (6) coordination of vendor remote access controls (Part 1.2.6). NERC states that the intent of Part 1.2 of Requirement R1 is not to require that every contract with a vendor include provisions for each of the listed items, but to ensure that these security items are an integrated part of procurement activities, such as a request for proposal or in the contract negotiation process.

21. NERC states that Requirement R2 mandates that each responsible entity implement its supply chain cybersecurity risk management plan. NERC explains that the actual terms and conditions of a procurement contract and vendor performance under a contract are outside the scope of proposed Reliability Standard CIP–013–1. NERC states that the focus of proposed Reliability Standard CIP–013–1 is ''on the processes Responsible Entities implement to consider and address cyber security risks from vendor products or services during BES Cyber System planning and procurement, not on the outcome of those processes. . . .'' [32] NERC maintains that responsible entities must make a business decision on whether and how to proceed with an acquisition after weighing the risks associated with a vendor or product and making a good faith effort to include security controls in any agreement with a vendor, as required by proposed Reliability Standard CIP–013–1. In addition, NERC states that vendor performance is outside the scope of the proposed Reliability Standards and, while NERC expects responsible entities to enforce the provisions of their contracts, ''a Responsible Entity should not be held responsible under the proposed Reliability Standard for actions (or inactions) of the vendor.'' [33]

22. With regard to assessing compliance with proposed Reliability

[25] *Id.* at 20.
[26] *Id.*
[27] *Id.* at 19.
[28] *Id.* at 20.
[29] *Id.* at 22.
[30] *Id.* at 23.
[31] *Id.* at 21.
[32] *Id.* at 27.
[33] *Id.* at 28.

Standard CIP–013–1, NERC states that NERC and Regional Entities would focus on whether responsible entities: (1) Developed processes reasonably designed to (i) identify and assess risks associated with vendor products and services in accordance with Part 1.1 and (ii) ensure that the security items listed in Part 1.2 are an integrated part of procurement activities; and (2) implemented those processes in good faith. NERC explains that NERC and Regional Entities will evaluate the steps a responsible entity took to assess risks posed by a vendor and associated products or services and, based on that risk assessment, the steps the entity took to mitigate those risks, including the negotiation of security provisions in its agreements with the vendor.

23. Finally, NERC explains that Requirement R3 requires a responsible entity to review and obtain the CIP Senior Manager's approval of its supply chain risk management plan at least once every 15 calendar months in order to ensure that the plan remains up-to-date.

Proposed Modifications in Reliability Standard CIP–005–6

24. Proposed Reliability Standard CIP–005–6 includes two new parts, Parts 2.4 and 2.5, to address vendor remote access, which is the second objective discussed in Order No. 829. NERC explains that the new parts work in tandem with proposed Reliability Standard CIP–013–1, Requirement R1.2.6, which requires responsible entities to address Interactive Remote Access and system-to-system remote access when procuring industrial control system hardware, software, and computing and networking services associated with bulk electric system operations. NERC states that proposed Reliability Standard CIP–005–6, Requirement R2.4 requires one or more methods for determining active vendor remote access sessions, including Interactive Remote Access and system-to-system remote access. NERC explains that the security objective of Requirement R2.4 is to provide awareness of all active vendor remote access sessions, both Interactive Remote Access and system-to-system remote access, that are taking place on a responsible entity's system.

25. NERC maintains that proposed Reliability Standard CIP–005–6, Requirement R2.5 requires one or more methods to disable active vendor remote access, including Interactive Remote Access and system-to-system remote access. NERC explains that the security objective of Requirement R2.5 is to provide the ability to disable active remote access sessions in the event of a system breach. In addition, NERC explains that Requirement R2 was modified to only reference Interactive Remote Access where appropriate. Specifically, Requirements R2.1, R2.2, and R2.3 apply to Interactive Remote access only, while Requirements R2.4 and R2.5 apply both to Interactive Remote Access and system-to-system remote access.

Proposed Modifications in Reliability Standard CIP–010–3

26. Proposed Reliability Standard CIP–010–3 includes a new part, Part 1.6, to address software integrity and authenticity, the first objective addressed in Order No. 829, by requiring the identification of the publisher and confirming the integrity of all software and patches. NERC explains that proposed Reliability Standard CIP–010–3, Requirement R1.6 requires responsible entities to verify software integrity and authenticity in the operational phase, if the software source provides a method to do so. Specifically, NERC states that proposed Reliability Standard CIP–010–3, Requirement R1.6 requires that responsible entities must verify the identity of the software source and the integrity of the software obtained by the software sources prior to installing software that changes established baseline configurations, when methods are available to do so. NERC asserts that the security objective of proposed Requirement R1.6 is to ensure that the software being installed in the BES Cyber System was not modified without the awareness of the software supplier and is not counterfeit. NERC contends that these steps help reduce the likelihood that an attacker could exploit legitimate vendor patch management processes to deliver compromised software updates or patches to a BES Cyber System.

BOT Resolutions

27. In the petition, NERC states that in conjunction with the adoption of the proposed Reliability Standards, on August 10, 2017 the BOT adopted resolutions regarding supply chain risk management. In particular, the BOT requested that NERC management, in collaboration with appropriate NERC technical committees, industry representatives, and appropriate experts, including representatives of industry vendors, further study the nature and complexity of cyber security supply chain risks, including risks associated with low impact assets not currently subject to the proposed supply chain risk management Reliability Standards. The BOT further requested NERC to develop recommendations for follow-up actions that will best address any issues identified. Finally, the BOT requested that NERC management provide an interim progress report no later than 12 months after the adoption of these resolutions and a final report no later than 18 months after the adoption of the resolutions. In its petition, NERC states that ''over the next 18 months, NERC, working with various stakeholders, will continue to assess whether supply chain risks related to low impact BES Cyber Systems, PACS, EACMS and PCA necessitate further consideration for inclusion in a mandatory Reliability Standard.'' [34]

Implementation Plan

28. NERC's proposed implementation plan provides that the proposed Reliability Standards become effective on the first day of the first calendar quarter that is 18 months after the effective date of a Commission order approving them. NERC states that the proposed implementation period is designed to afford responsible entities sufficient time to develop and implement their supply chain cybersecurity risk management plans required under proposed Reliability Standard CIP–013–1 and implement the new controls required in proposed Reliability Standards CIP–005–6 and CIP–010–3.

II. Discussion

29. Pursuant to section 215(d)(2) of the FPA, the Commission proposes to approve supply chain risk management Reliability Standards CIP–013–1, CIP–005–6 and CIP–010–3 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. The proposed Reliability Standards will enhance existing protections for bulk electric system reliability by addressing the four objectives set forth in Order No. 829: (1) Software integrity and authenticity; (2) vendor remote access; (3) information system planning; and (4) vendor risk management and procurement controls.

30. The proposed Reliability Standards address the four objectives discussed in Order No. 829. Proposed Reliability Standard CIP–013–1 addresses information system planning and vendor risk management and procurement controls by requiring that responsible entities develop and implement one or more documented supply chain cyber security risk management plan(s) for high and medium impact BES Cyber Systems.

[34] *Id.* at 20–21.

The required plans must address, as applicable, a baseline set of six security concepts: Vendor security event notification; coordinated incident response; vendor personnel termination notification; product/services vulnerability disclosures; verification of software integrity and authenticity; and coordination of vendor remote access controls. Proposed Reliability Standard CIP–005–6 addresses vendor remote access by creating two new requirements: for determining active vendor remote access sessions and for having one or more methods to disable active vendor remote access sessions. Proposed Reliability Standard CIP–010–3 addresses software authenticity and integrity by creating a new requirement that responsible entities verify the identity of the software source and the integrity of the software obtained from the software source prior to installing software that changes established baseline configurations, when methods are available to do so. Taken together, the proposed Reliability Standards constitute substantial progress in addressing the supply chain cyber security risks identified in Order No. 829.

31. While the Commission proposes to approve the proposed Reliability Standards, certain cyber security risks associated with the supply chain for BES Cyber Systems may not be adequately addressed by the NERC proposal. In particular, as discussed below, the Commission is concerned with the exclusion of EACMS, PACS, and PCAs from the scope of the proposed Reliability Standards.[35] To address this risk, pursuant to section 215(d)(5) of the FPA, the Commission proposes that NERC develop modifications to the CIP Reliability Standards to include EACMS within the scope of the supply chain risk management Reliability Standards. In addition, the Commission proposes to direct NERC to evaluate the cyber security supply chain risks presented by PACS and PCAs in the cyber security supply chain risks study requested by the BOT. The Commission further proposes to direct NERC to file the BOT-requested study's interim and final reports with the Commission upon their completion.

32. Below, we discuss the following issues: (A) Inclusion of EACMS in the supply chain risk management Reliability Standards; (B) inclusion of PACS and PCAs in the BOT-requested study on cyber security supply chain risks and filing of the study's interim and final reports with the Commission; and (C) NERC's proposed implementation plan.

A. Inclusion of EACMS in CIP Reliability Standards

33. The proposed Reliability Standards only apply to medium and high impact BES Cyber Systems; they do not apply to low impact BES Cyber Systems or Cyber Assets associated with medium and high impact BES Cyber Systems (i.e., EACMS, PACS, and PCAs). The BOT-requested study on cyber security supply chain risks will examine the risks posed by low impact BES Cyber Systems and, as discussed in the following section, we believe it is appropriate to await the outcome of that study's final report before considering whether low impact BES Cyber Systems should be addressed in the supply chain risk management Reliability Standards.

34. With respect to Cyber Assets associated with medium and high impact BES Cyber Systems, and EACMS in particular, we propose further action than what is requested in the BOT resolutions.[36] As explained in current Reliability Standard CIP–002–5.1a, BES Cyber Systems have associated Cyber Assets, which, if compromised, pose a threat to the BES Cyber System by virtue of: (1) Their location within the Electronic Security Perimeter (i.e., PCAs), or (2) the security control function they perform (i.e., EACMS and PACS).[37] EACMS support BES Cyber Systems and are part of the network and security architecture that allow BES Cyber Systems to work as intended by performing electronic access control or electronic access monitoring of the Electronic Security Perimeter (ESP) or BES Cyber Systems.

35. Since EACMS support and enable BES Cyber System operation, misoperation and unavailability of EACMS that support a given BES Cyber System could also contribute to misoperation of a BES Cyber System or render it unavailable, which could adversely affect bulk electric system reliability. EACMS control electronic access, including interactive remote access, into the ESP that protects high and medium impact BES Cyber Systems. One function of electronic access control is to prevent malware or malicious actors from gaining access to the BES Cyber Systems and PCAs within the ESP. Once an EACMS is compromised, the attacker may gain control of the BES Cyber System or PCA. An attacker does not need physical access to the facility housing a BES Cyber System in order to gain access to a BES Cyber System or PCA via an EACMS compromise. By contrast, compromise of PACS, which could potentially grant an attacker physical access to a BES Cyber System, requires physical access. Further, PCAs typically become vulnerable to remote compromise once EACMS have been compromised. Therefore, EACMS represent the most likely route an attacker would take to access a BES Cyber System or PCA within an ESP.

36. Currently-effective Reliability Standard CIP–010–2 applies to EACMS and the modifications proposed in Reliability Standard CIP–010–3 maintain the current coverage of EACMS, except for new Part 1.6 of Requirement R1, which addresses software integrity and authenticity. Moreover, NERC's petition acknowledges that requirements in the existing CIP Reliability Standards ''require Responsible Entities to apply certain protections to PACS, EACMS, and PCAs, given their association with BES Cyber Systems either by function or location.'' [38] This statement suggests a recognition by NERC that EACMS, PACS, and PCAs warrant certain protections. We agree with NERC's statement, but we believe that the most important focus is on EACMS for the reasons described above.

37. In addition, while EACMS is a term unique to NERC-developed Reliability Standards, it is widely recognized that the types of access and monitoring functions that are included within NERC's definition of EACMS, such as firewalls, are integral to protecting industrial control systems. For example, the Department of Homeland Security's Industrial Control Systems Cyber Emergency Response Team (ICS–CERT) identifies firewalls as ''the first line of defense within an ICS network environment'' that ''keep the intruder out while allowing the authorized passage of data necessary to run the organization.'' [39] ICS–CERT further explains that firewalls ''act as

[35] As we noted previously, the only exceptions are the modifications in proposed Reliability Standard CIP–005–6, which apply to PCAs.

[36] We address PACS and PCAs in the following section.

[37] Reliability Standard CIP–002–5.1a (Cyber Security—BES Cyber System Categorization), Background at 6.

[38] NERC Petition at 19.

[39] ICS–CERT, Recommended Practice: Improving Industrial Control System Cybersecurity with Defense-in-Depth Strategies, at 23 (September 2016), *https://ics-cert.us-cert.gov/sites/default/files/recommended_practices/NCCIC_ICS-CERT_Defense_in_Depth_2016_S508C.pdf*. *See also* NIST, Guide to Industrial Control Systems (ICS) Security, NIST Special Publication 800–82, Revision 2, at Section 5 (ICS Security Architecture) (May 2015) (discussing importance of technologies and strategies, including firewalls, to secure industrial control systems), *http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-82r2.pdf*.

sentinels, or gatekeepers, between zones . . . [and] [w]hen properly configured, they will only let essential traffic cross security boundaries[,] . . . [i]f they are not properly configured, they could easily pass unauthorized or malicious users or content.'' Accordingly, if EACMS are compromised, that could adversely affect the reliable operation of associated BES Cyber Systems.

38. NERC explains that the standard drafting team chose to limit the scope of the proposed Reliability Standards to medium and high impact BES Cyber Systems, but not their associated Cyber Assets (e.g., EACMS), in order not to ''divert resources from protecting medium and high BES Cyber Systems.'' [40] As noted above, EACMS include ''authentication servers (e.g., RADIUS servers, Active Directory servers, Certificate Authorities), security event monitoring systems, and intrusion detection systems'' that are integral to the security of the medium and high impact BES Cyber Systems to which they are associated.[41] While NERC states that it will continue to assess whether supply chain risks related to low impact BES Cyber Systems, PACS, EACMS, and PCAs necessitate further consideration for inclusion in a mandatory Reliability Standard, in view of the discussion above, we propose to determine that a sufficient basis currently exists to include EACMS associated with medium and high impact BES Cyber Systems in the supply chain risk management Reliability Standards.

39. Accordingly, pursuant to section 215(d)(5) of the FPA, the Commission proposes to direct NERC to develop modifications to the CIP Reliability Standards to include EACMS associated with medium and high impact BES Cyber Systems within the scope of the supply chain risk management Reliability Standards. The Commission seeks comment on this proposal.

B. BOT-Requested Cyber Security Supply Chain Risks Study

40. As discussed above, we believe it is appropriate to await the findings from the BOT-requested study on cyber security supply chain risks before considering whether low impact BES Cyber Systems should be addressed in the supply chain risk management Reliability Standards.

41. We note that while the BOT resolutions explicitly stated that the BOT-requested study should examine the risks posed by low impact BES Cyber Systems, the BOT resolutions did not identify PACS and PCAs as subjects of the study. However, NERC's petition suggests that NERC will be evaluating PACS and PCAs as part of the BOT-requested study.[42]

42. While many of the concerns expressed in the previous section with respect to the risks posed by EACMS also apply to varying degrees to PACS and PCAs, we propose to direct NERC, consistent with the representation made in NERC's petition, to include PACS and PCAs in the BOT-requested study and to await the findings of the study's final report before considering further action. We distinguish among EACMS and the other Cyber Assets because, for example, a compromise of a PACS, which would potentially grant an attacker physical access to a BES Cyber System or PCA, is less likely since physical access is also required. Therefore, while we believe that EACMS require immediate action, because they represent the most likely route an attacker would take to access a BES Cyber System or PCA within an ESP, possible action on other Cyber Assets can await completion of the BOT-requested study's final report.

43. In addition to proposing to direct NERC to include PACS and PCAs in the BOT-requested study, we propose to direct that NERC file the study's interim and final reports with the Commission upon their completion. The Commission seeks comment on these proposals.

C. Implementation Plan

44. The 18-month implementation period proposed by NERC does not appear to be justified based on the anticipated effort required to develop and implement a supply chain risk management plan.[43] While NERC maintains that the proposed implementation period is ''designed to afford responsible entities sufficient time to develop and implement their supply chain cybersecurity risk management plans required under proposed Reliability Standard CIP–013–1 and implement the new controls required in proposed Reliability Standards CIP–005–6 and CIP–010–3,'' [44] the security objectives of the proposed Reliability Standards are process-based and do not prescribe technology that might justify an extended implementation period. Instead, we propose that the proposed Reliability Standards become effective the first day of the first calendar quarter that is 12 months following the effective date of a Commission order approving the Reliability Standards. Our proposed implementation period is reasonable, given the nature of the requirements in the proposed Reliability Standards, and provides enhanced security for the bulk electric system in a timelier manner. We seek comment on this proposal.

III. Information Collection Statement

45. The FERC–725B information collection requirements contained in this notice of proposed rulemaking are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[45] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[46] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

46. The Commission bases its paperwork burden estimates on the changes in paperwork burden presented by the newly proposed CIP Reliability Standard CIP–013–1 and the proposed revisions to CIP Reliability Standard CIP–005–6 and CIP–010–3 as compared to the current Commission-approved Reliability Standards CIP–005–5 and CIP–010–2, respectively. As discussed above, the notice of proposed rulemaking addresses several areas of the CIP Reliability Standards through proposed Reliability Standard CIP–013–1, Requirements R1, R2, and R3. Under Requirement R1, responsible entities

[40] *Id.* at 20.

[41] Reliability Standard CIP–002–5.1a (Cyber Security—BES Cyber System Categorization), Section A.6 at 6.

[42] NERC Petition at 21 (''over the next 18 months, NERC, working with various stakeholders, will continue to assess whether supply chain risks related to low impact BES Cyber Systems, PACS, EACMS, and PCA necessitate further consideration for inclusion in a mandatory Reliability Standard'').

[43] The 18-month implementation plan proposed by NERC may be longer given NERC's request that the effective date of the proposed Reliability Standards falls on the first day of the first calendar quarter that is 18 months after the effective date of a Commission order approving the proposed Reliability Standards.

[44] NERC Petition at 35.

[45] 44 U.S.C. 3507(d).

[46] 5 CFR 1320.11.

would be required to have one or more processes to address the following baseline set of security concepts, as applicable, in their procurement activities for high and medium impact BES Cyber Systems: (1) Vendor security event notification processes (Part 1.2.1); (2) coordinated incident response activities (Part 1.2.2); (3) vendor personnel termination notification for employees with access to remote and onsite systems (Part 1.2.3); (4) product/services vulnerability disclosures (Part 1.2.4); (5) verification of software integrity and authenticity (Part 1.2.5); and (6) coordination of vendor remote access controls (Part 1.2.6). Requirement R2 mandates that each responsible entity implement its supply chain cybersecurity risk management plan. Requirement R3 requires a responsible entity to review and obtain the CIP Senior Manager's approval of its supply chain risk management plan at least once every 15 calendar months in order to ensure that the plan remains up-to-date.

47. Separately, proposed Reliability Standard CIP–005–6, Requirement R2.4 requires one or more methods for determining active vendor remote access sessions, including Interactive Remote Access and system-to-system remote access. Proposed Reliability Standard CIP–005–6, Requirement R2.5 requires one or more methods to disable active vendor remote access, including Interactive Remote Access and system-to-system remote access. Proposed Reliability Standard CIP–010–3, Requirement R1.6 requires responsible entities to verify software integrity and authenticity in the operational phase, if the software source provides a method to do so.

48. The NERC Compliance Registry, as of December 2017, identifies approximately 1,250 unique U.S. entities that are subject to mandatory compliance with Reliability Standards. Of this total, we estimate that 288 entities will face an increased paperwork burden under proposed Reliability Standards CIP–013–1, CIP–005–6, and CIP–010–3. Based on these assumptions, we estimate the following reporting burden:

RM17–13–000 NOPR

[Mandatory Reliability Standards for Critical Infrastructure Protection Reliability Standards]

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden and cost per response [47] (4)	Total annual burden hours and total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Create supply chain risk management plan (one-time) [48] (CIP–013–1 R1).	288	1	288	546 hrs.; $44,772	157,248 hrs.; $12,894,336.	44,772
Updates and reviews of supply chain risk management plan (ongoing) [49] (CIP–013–1 R2).	288	1	288	30 hrs.; $2,460 ..	8,640 hrs.; $708,480.	2,460
Develop Procedures to update remote access requirements (one time) (CIP–005–6 R1–R4).	288	1	288	50 hrs.; $4,100 ..	14,400 hrs.; $1,180,800.	4,100
Develop procedures for software integrity and authenticity requirements (one time) (CIP–010–3 R1–R4).	288	1	288	50 hrs.; $4,100 ..	14,400 hrs.; $1,180,800.	4,100
Total (one-time)	.....	.....	864	.....	186,048 hrs.; $15,255,936.	.....
Total (ongoing)	.....	.....	288	.....	8,640 hrs.; $708,340.	.....

The one-time burden of 186,048 hours will be averaged over three years (186,048 hours ÷ 3 = 62,016 hours/year over three years).

The ongoing burden of 8,640 hours applies to only Years 2 and beyond.

The number of responses is also average over three years (864 responses (one-time) + (288 responses (Year 2) + 288 responses (Year 3)) ÷ 3 = 480 responses.

The responses and burden for Years 1–3 will total respectively as follows:
Year 1: 480 responses; 62,016 hours
Year 2: 480 responses; 62,016 hours + 8,640 hours = 70,656 hours
Year 3: 480 responses; 62,016 hours + 8,640 hours = 70,656 hours

49. The following shows the annual cost burden for each year, based on the burden hours in the table above:

- Year 1: $15,255,936
- Years 2 and beyond: $708,480
- The paperwork burden estimate includes costs associated with the initial development of a policy to address requirements relating to: (1) Developing the supply chain risk management plan; (2) updating the procedures related to remote access requirements (3) developing the procedures related to software integrity and authenticity. Further, the estimate reflects the assumption that costs incurred in year 1 will pertain to plan and procedure development, while costs in years 2 and 3 will reflect the burden associated with maintaining the SCRM plan and modifying it as necessary on a 15 month basis.

[47] The loaded hourly wage figure (includes benefits) is based on the average of the occupational categories for 2016 found on the Bureau of Labor Statistics website (*http://www.bls.gov/oes/current/naics2_22.htm*):

Legal (Occupation Code: 23–0000): $143.68.

Information Security Analysts (Occupation Code 15–1122): $66.34.

Computer and Information Systems Managers (Occupation Code: 11–3021): $100.68.

Management (Occupation Code: 11–0000): $81.52.

Electrical Engineer (Occupation Code: 17–2071): $68.12.

Management Analyst(Code: 43–0000): $63.49.

These various occupational categories are weighted as follows: [($81.52)(.10) + $66.34(.315) + $68.12(.02) + $143.68(.15) + $100.68(.10) + $63.49(.315)] = $82.03. The figure is rounded to $82.00 for use in calculating wage figures in this NOPR.

[48] One-time burdens apply in Year One only.

[49] Ongoing burdens apply in Year 2 and beyond.

50. *Title:* Mandatory Reliability Standards, Revised Critical Infrastructure Protection Reliability Standards.

Action: Proposed Collection FERC–725B.

OMB Control No.: 1902–0248.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On Occasion.

Necessity of the Information: This notice of proposed rulemaking proposes to approve the requested modifications to Reliability Standards pertaining to critical infrastructure protection. As discussed above, the Commission proposes to approve NERC's proposed CIP Reliability Standards CIP–013–1, CIP–005–6, and CIP–010–3 pursuant to section 215(d)(2) of the FPA because they improve upon the currently-effective suite of cyber security CIP Reliability Standards.

Internal Review: The Commission has reviewed the proposed Reliability Standards and made a determination that its action is necessary to implement section 215 of the FPA.

51. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, e-mail: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

52. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the Commission, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285]. For security reasons, comments to OMB should be submitted by e-mail to: *oira_submission@omb.eop.gov*. Comments submitted to OMB should include Docket Number RM17–13–000.

IV. Environmental Analysis

53. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[50] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[51] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act Analysis

54. The Regulatory Flexibility Act of 1980 (RFA) generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities.[52] The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[53] The SBA revised its size standard for electric utilities (effective January 22, 2014) to a standard based on the number of employees, including affiliates (from the prior standard based on megawatt hour sales).[54]

55. Proposed Reliability Standards CIP–013–1, CIP–005–6, CIP–010–3 are expected to impose an additional burden on 288 entities [55] (reliability coordinators, generator operators, generator owners, interchange coordinators or authorities, transmission operators, balancing authorities, and transmission owners).

56. Of the 288 affected entities discussed above, we estimate that approximately 248 or 86.2 percent of the affected entities are small entities. We estimate that each of the 248 small entities to whom the proposed modifications to Reliability Standards CIP–013–1, CIP–005–6, CIP–010–3 apply will incur one-time costs of approximately $52,972 per entity to implement the proposed Reliability Standards, as well as the ongoing paperwork burden reflected in the Information Collection Statement (approximately $2,460 per year per entity). We do not consider the estimated costs for these 248 small entities to be a significant economic impact. Accordingly, we certify that proposed Reliability Standards CIP–013–1, CIP–005–6, and CIP–010–3 will not have a significant economic impact on a substantial number of small entities.

VI. Comment Procedures

57. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due March 26, 2018. Comments must refer to Docket No. RM17–13–000, and must include the commenter's name, the organization they represent, if applicable, and address.

58. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

59. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

60. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

61. 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*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

62. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number of this document, excluding the last three digits, in the docket number field.

63. User assistance is available for eLibrary and the Commission's website during normal business hours from the

[50] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[51] 18 CFR 380.4(a)(2)(ii).

[52] 5 U.S.C. 601–12.

[53] 13 CFR 121.101.

[54] 13 CFR 121.201, Subsection 221.

[55] Public utilities may fall under one of several different categories, each with a size threshold based on the company's number of employees, including affiliates, the parent company, and subsidiaries. For the analysis in this NOPR, we are using a 500 employee threshold due to each affected entity falling within the role of Electric Bulk Power Transmission and Control (NAISC Code: 221121).

Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission. Commissioner LaFleur is concurring with a separate statement attached.

Issued: January 18, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Attachment

LaFLEUR, Commissioner *concurring:*

In today's order, the Commission proposes to approve the supply chain risk management standards filed by the North American Electric Reliability Corporation (NERC), and direct certain modifications to those standards. I write separately to explain my vote in support of today's order, given my dissent on the Commission order that directed the development of these standards.[1]

As I stated in my dissent, I shared the Commission's concern about supply chain threats and supported continued Commission attention to those threats. Indeed, I remain concerned that the supply chain is a significant cyber vulnerability for the bulk power system. However, I believed that the Commission was proceeding too quickly to require a supply chain standard, without having sufficiently worked with NERC, industry, and other stakeholders on how to design an effective, auditable, and enforceable standard. In my view, the directive that resulted was insufficiently developed and created a risk that needed protections against supply threats would be delayed, due in large part to the nature of the NERC standards process.

Given the limited guidance and timeline provided by the Commission in Order No. 829, the proposed standards are, unsurprisingly, quite general, focusing primarily ''on the processes Responsible Entities implement to consider and address cyber security risks from vendor products or services during BES Cyber System planning and procurement, not on the outcome of those processes . . .'' [2] The proposed standards would provide significant flexibility to registered entities to determine how best to comply with their requirements. In my view, that flexibility presents both potential risks and benefits. It could allow effective, adaptable approaches to flourish, or allow compliance plans that meet the letter of the standards but do not effectively address supply chain threats. I hope that we will see more of the former, but I believe the Commission, NERC, and the Regional Entities should closely monitor implementation if the standards are ultimately approved.

In voting for today's order, I recognize that the choice before the Commission today is not the same as it was in July 2016. I acknowledge that a significant amount of time and effort have been committed to the development of these standards in response to a duly voted Commission order. Most importantly, I agree that they are an improvement over the *status quo.* I do not believe that remanding these standards or the larger supply chain issue to the NERC standards process would be a prudent step at this point. Rather, I believe the better course of action at this time is to move forward with these standards and, assuming the Commission ultimately proceeds to Final Rule, improve them over time as needed.

In that regard, I believe the Commission is appropriately proposing to direct a modification to the proposed standards to address an identified reliability gap regarding Electronic Access Control and Monitoring Systems. I also support the proposal to require NERC to include Physical Access Controls and Protected Cyber Assets within its ongoing assessment of the supply chain risks posed by low-impact Bulk Electric System Cyber Systems, which will help the Commission and NERC determine whether further revisions to the standards are needed.

More so than with most standards, I believe that whether these standards are effective will only reveal itself over time as we gain additional experience with them. I am therefore particularly interested in feedback from commenters on how the Commission, NERC, and industry should assess these standards, including any reporting obligations that might be appropriate.[3] In addition, given the very general process-oriented nature of the standard, I also support the proposal to shorten the implementation date for the new standards. If ultimately adopted, the revised deadline will allow industry, NERC, and the Commission to put the standards in place sooner while continuing to evaluate how best to protect the bulk power system against supply chain threats.

For these reasons, I respectfully concur.

Cheryl A. LaFleur,

Commissioner.

[FR Doc. 2018–01247 Filed 1–24–18; 8:45 am]

BILLING CODE 6717–01–P

[1] *Revised Critical Infrastructure Protection Reliability Standards,* Order No. 829, 156 FERC ¶ 61,050 (2016) (LaFleur, Comm'r, *dissenting*).

[2] NERC Petition at 27.

[3] I note that NERC has also developed draft implementation guidance that provides additional detail regarding possible compliance approaches. As NERC and the Regional Entities gain additional experience with assessing compliance under these standards, updating this implementation guidance could be an effective approach for quickly disseminating best practices and lessons learned.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2011–N–0143]

Foreign Supplier Verification Programs for Importers of Food for Humans and Animals: What You Need To Know About the Food and Drug Administration Regulation; Small Entity Compliance Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a guidance for industry entitled ''Foreign Supplier Verification Programs for Importers of Food for Humans and Animals: What You Need to Know About the FDA Regulation; Small Entity Compliance Guide.'' The small entity compliance guide (SECG) is intended to help small entities comply with the final rule entitled ''Foreign Supplier Verification Programs for Importers of Food for Humans and Animals.''

DATES: The announcement of the guidance is published in the **Federal Register** on January 25, 2018.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a

written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2011–N–0143 for ''What You Need to Know About the FDA Regulation: Foreign Supplier Verification Programs for Importers of Food for Humans and Animals—Small Entity Compliance Guide.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

See the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

FOR FURTHER INFORMATION CONTACT: Sharon Mayl, Office of Foods and Veterinary Medicine, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4719.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 27, 2015 (80 FR 74225), we issued a final rule entitled ''Foreign Supplier Verification Programs for Importers of Food for Humans and Animals'' (the final rule) that requires importers to perform certain risk-based activities to verify that food imported into the United States has been produced in a manner that meets applicable U.S. safety standards. The final rule, which is codified at 21 CFR part 1, subpart L, became effective January 26, 2016, but has compliance dates starting May 30, 2017.

We examined the economic implications of the final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612) and determined that the final rule will have a significant economic impact on a substantial number of small entities. In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121, as amended by Pub. L. 110–28), we are making available the SECG to reduce the burden of determining how to comply by further explaining and clarifying the actions that a small entity must take to comply with the rule.

We are issuing the SECG consistent with our good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 1, subpart L, have been approved under OMB control number 0910–0752.

III. Electronic Access

Persons with access to the internet may obtain the SECG at either *https://www.fda.gov/FoodGuidances* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: January 19, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–01300 Filed 1–24–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2017–D–6592]

Application of the Foreign Supplier Verification Program Regulation to Importers of Grain Raw Agricultural Commodities: Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, we, or Agency) is announcing the availability of a guidance for industry entitled ''Application of the Foreign Supplier Verification Program Regulation to Importers of Grain Raw Agricultural Commodities: Guidance for Industry.'' This guidance is intended to explain our intent to exercise enforcement discretion for importers of grain raw agricultural commodities (RACs) that are solely engaged in the storage of grain intended for further distribution or processing and grain importers that do not take physical possession of the grain they import, but instead arrange for the delivery of the grain to others for storage, packing, or manufacturing/processing.

DATES: The announcement of the guidance is published in the **Federal Register** on January 25, 2018.

ADDRESSES: You may submit either electronic or written comments on FDA guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–D–6592 for ''Application of the Foreign Supplier Verification Program Regulation to Importers of Grain Raw Agricultural Commodities: Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5).

Submit written requests for single copies of the guidance to Office of Food Safety, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–300), 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Sharon Mayl, Office of Foods and Veterinary Medicine, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4719.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for industry entitled ''Application of the Foreign Supplier Verification Program Regulation to Importers of Grain Raw Agricultural Commodities: Guidance for Industry.'' We are issuing the guidance consistent with our good guidance practices regulation § 10.115 (21 CFR 10.115). In accordance with § 10.115(g)(2), we are implementing the guidance immediately because we have determined that prior public participation is not feasible or appropriate. We made this determination because this guidance document provides information pertaining to regulations with which many importers were required to comply as of May 30, 2017, and it sets out compliance policy that reduces regulatory burdens for importers of certain raw agricultural commodities. Although the guidance document is immediately in effect, we invite comments at any time in accordance with the Agency's good guidance practices (§ 10.115(g)(3)).

The guidance represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

The FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353) enables FDA to better protect public health by helping to ensure the safety and security of the food supply. It amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) to add, among other food safety requirements, provisions requiring the verification of the safety of food imported from foreign suppliers of that food.

Section 805(c) of the FD&C Act (21 U.S.C. 384a(c)) directs FDA to issue regulations on the content of Foreign Supplier Verification Programs (FSVPs). We issued the FSVP final rule on November 27, 2015 (80 FR 74225). The FSVP regulation requires food importers to develop, maintain, and follow an FSVP that provides adequate assurances that the foreign supplier uses processes and procedures that provide the same level of public health protection as those required under the preventive controls and produce safety provisions of FSMA (if applicable) and regulations implementing those provisions, as well as assurances that the imported food is not adulterated and that human food is not misbranded with respect to allergen labeling.

FSMA also includes provisions requiring certain food facilities to implement preventive controls to, among other things, provide assurances that hazards identified in a hazard analysis will be significantly minimized or prevented. FDA's final rules on current good manufacturing practice, hazard analysis, and risk-based preventive controls for human food (80 FR 55908, September 17, 2015) and for animal food (80 FR 56170, September 17, 2015) include provisions requiring receiving facilities to conduct a hazard analysis and to establish and implement supply-chain programs for domestic and imported raw materials and other ingredients for which the facility has identified a hazard requiring a supply-chain applied control.

The preventive controls requirements, including the supply-chain program provisions, do not apply to facilities that are solely engaged in the storage of non-produce RACs (including grain RACs) intended for further distribution or processing. However, the FSVP regulation applies to all importers of non-produce RACs, including importers that are solely engaged in the storage of these RACs intended for further processing.

The guidance describes FDA's current thinking on the application of the FSVP regulation to importers of grain RACs. To better align the FSVP regulation with the exemption from preventive controls requirements for facilities solely engaged in the storage of non-produce RACs, and because of the nature of the hazards associated with grain RACs and how they are generally addressed in the distribution chain, we intend to exercise enforcement discretion for importers of grain RACs that are solely engaged in the storage of grain intended for further distribution or processing with respect to the FSVP regulation. This intent to exercise enforcement discretion with respect to FSVP also applies to grain importers that do not take physical possession of the grain they import but instead arrange for the delivery of the grain to others for storage, packing or manufacturing/processing.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 1, subpart L have been approved under OMB control number 0910–0752.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/FoodGuidances* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: January 18, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–01298 Filed 1–24–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2017–D–5225]

Foreign Supplier Verification Programs for Importers of Food for Humans and Animals; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a draft guidance for industry entitled ''Foreign Supplier Verification Programs for Importers of Food for Humans and Animals.'' The draft guidance, once finalized, will provide our thinking on how importers of human or animal food can comply with the regulation on foreign supplier verification programs (FSVPs) issued on November 27, 2015.

DATES: Submit either electronic or written comments on the draft guidance by May 25, 2018 to ensure that the Agency considers your comments on this draft guidance before it completes a final version of the guidance,

ADDRESSES: You may submit comments on any guidance at any time as follows.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–D–5225 for ''Foreign Supplier Verification Programs for Importers of Food for Humans and Animals: Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not

in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Outreach and Information Center (HFS–009), Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Mischelle B. Ledet, Office of Compliance (HFS–600), Center for Food Safety and Applied Nutrition, 5001 Campus Dr., College Park, MD 20740, 240–701–5986.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 27, 2015 (80 FR 74226), we issued a final rule adopting a regulation on foreign supplier verification programs (FSVPs) for importers of food for humans and animals (FSVP final rule). The FSVP final rule implements section 301 of the FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353), which enables the Agency to better protect public health by helping to ensure the safety and security of the food supply.

Section 301 of FSMA added section 805 to the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 384a) to require persons who import food into the United States to perform risk-based foreign supplier verification activities. In addition to directing FDA to issue regulations on the content of FSVPs, section 805 directs FDA to issue guidance to assist importers in developing FSVPs.

In accordance with section 805 of the FD&C Act, we are announcing the availability of a draft guidance for industry entitled ''Foreign Supplier Verification Programs for Importers of Food for Humans and Animals.'' The draft guidance, once finalized, will provide our thinking on how to comply with the FSVP regulation, including, but not limited to, requirements to analyze the hazards in food, evaluate a potential foreign supplier's performance and the risk posed by a food, and determine and conduct appropriate foreign supplier verification activities. The draft guidance also addresses how importers can meet the modified FSVP requirements for importers of dietary supplements, very small importers, importers of food from certain small foreign suppliers, and importers of food from countries whose food safety systems we have officially recognized as comparable or determined to be equivalent to that of the United States.

The draft guidance reflects interpretations regarding two matters addressed in the preamble to the FSVP final rule that differ from the interpretations expressed there. First, the draft guidance reflects an interpretation that is different from our statement in the preamble to the FSVP final rule that waxing and cooling raw agricultural commodities, when done by a packing operation for purposes of storage or transport, may be considered a packing activity (see 80 FR 74226 at 74236 (Comment/Response 14)). Instead, the draft guidance states that such activities may be packing activities and/or holding activities, depending on the circumstances. This change reflects our revised thinking regarding the classification of waxing, which we now consider may be incidental to holding (not packing) under certain circumstances (see ''Classification of Activities as Harvesting, Packing, Holding, or Manufacturing/Processing for Farms and Facilities: Draft Guidance for Industry'' (81 FR 58421, August 25, 2016) available at: *https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/UCM517575.pdf*). Second, the draft guidance reflects an interpretation that differs from our statement in the preamble to the FSVP final rule that there may be circumstances in which hazards that may be intentionally introduced by acts of terrorism may present a known or reasonably foreseeable hazard, such that importers may need to address these hazards as part of their supplier verification activities (see 80 FR 74226 at 74281 (Comment/Response 174)). That statement assumed that importers would consider such hazards in their hazard analyses. In the draft guidance, we clarify that importers are not required under the FSVP regulation to consider in their hazard analysis hazards that are intentionally introduced to cause wide scale public health harm. Instead, importers should consider warning letters or other enforcement action taken by FDA against foreign suppliers for violation of FDA's regulation on intentional adulteration (in 21 CFR part 121) as part of their evaluation of potential suppliers under 21 CFR 1.505 in the FSVP regulation. Our prior statements were incorrect and we hereby withdraw them. We further explain our thinking on these matters in the FSVP draft guidance.

II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You may use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This draft guidance is not subject to Executive Order 12866.

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 1, subpart L, have been approved under OMB control number 0910–0752.

IV. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/FoodGuidances* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the draft guidance.

Dated: January 18, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–01297 Filed 1–24–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1, 112, 117, and 507

[Docket No. FDA–2017–D–0397]

Considerations for Determining Whether a Measure Provides the Same Level of Public Health Protection as the Corresponding Requirement in 21 CFR Part 112 or the Preventive Controls Requirements in Part 117 or 507; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, we, or Agency) is announcing the availability of a draft guidance for industry entitled ''Considerations for Determining Whether a Measure Provides the Same Level of Public Health Protection as the Corresponding Requirement in 21 CFR 112 or the Preventive Controls Requirements in Part 117 or 507.'' The draft guidance describes FDA's current thinking on the concept of ''same level of public health protection'' (SLPHP), and FDA's expectations for how an SLPHP evaluation should be conducted and an SLPHP determination should be reached. The draft guidance identifies certain points to consider that a competent authority, a farm, a facility, an importer, or other relevant entity should take into consideration when evaluating whether a measure that is different from that required under (part 112) 21 CFR part 112 or the preventive controls requirements in (part 117 or part 507) 21 CFR part 117 or 507 meets the SLPHP threshold under the foreign supplier verification program (FSVP) regulation (21 CFR part 1, subpart L) or under part 112.

DATES: Submit either electronic or written comments on the draft guidance by May 25, 2018 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–D–0397 for ''Considerations for Determining Whether a Measure Provides the Same Level of Public Health Protection as the Corresponding Requirement in 21 CFR 112 or the Preventive Controls Requirements in Part 117 or 507.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Ritu Nalubola, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–3252.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a draft guidance for industry entitled ''Considerations for Determining Whether a Measure Provides the Same Level of Public Health Protection as the Corresponding Requirement in 21 CFR 112 or the Preventive Controls Requirements in Part 117 or 507.'' We are issuing the draft guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on this topic. It does not establish any rights for

any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

The draft guidance relates to four of the seven foundational rules that we have established in Title 21 of the Code of Federal Regulations (21 CFR) as part of our implementation of the FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353). Table 1 lists these four rules.

TABLE 1—THE FOUR FOUNDATIONAL FSMA RULES RELEVANT TO THE DRAFT GUIDANCE

Title and abbreviations for the purpose of this document	Regulatory codification	Publication
Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food (PC for Human Food regulation).	21 CFR part 117	80 FR 55908, September 17, 2015.
Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals (PC for Animal Food regulation).	21 CFR part 507	80 FR 56170, September 17, 2015.
Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption (Produce Safety regulation).	21 CFR part 112	80 FR 74354, November 27, 2015.
Foreign Supplier Verification Programs for Importers of Food for Humans and Animals (FSVP regulation).	21 CFR part 1, subpart L	80 FR 74226, November 27, 2015.

The FSVP regulation requires, in relevant part, that importers develop, maintain, and follow an FSVP that provides adequate assurances that the foreign supplier of a food is using processes and procedures that provide the SLPHP as those required under part 112 or the preventive controls requirements in part 117 or part 507, respectively, if any is applicable. As incorporated in 21 CFR 1.502(a), this means that importers may import food consistent with the FSVP regulation even if their foreign supplier uses a process or procedure that varies in some way from the processes and procedures required under the applicable requirements in these regulations, provided that the importer follows an FSVP that provides adequate assurance that the processes or procedures that the supplier uses provide the SLPHP as those required under the relevant FDA requirement. Similarly, a provision in the FSVP requirements for dietary supplements, in 21 CFR 1.511(c), also requires that foreign supplier verification activities performed under that section must provide adequate assurances that a supplier is producing the dietary supplement in accordance with processes and procedures that provide the same level of public health protection as those required under 21 CFR part 111 (the dietary supplement current good manufacturing practice regulations). In addition, the Produce Safety regulation includes certain provisions whereby farms may use measures different from those required under part 112, provided all relevant requirements are met, including that those measures must provide the SLPHP as the corresponding FDA-established requirement (§§ 112.12, 112.49, and 112.171–182 (Subpart P—Variances)).

The draft guidance describes FDA's current thinking on considerations relevant to SLPHP determinations, specifically in relation to the FSVP, PC for Human Food, PC for Animal Food, and Produce Safety regulations. The draft guidance identifies certain points to consider that a competent authority, a farm, a facility, an importer, or other relevant entity should take into consideration when evaluating whether a measure that is different from that required under part 112 or the preventive controls requirements in part 117 or 507 meets the SLPHP threshold under the FSVP or Produce Safety regulations. In addition, FDA expects to apply these same points in our own evaluations of whether a measure that is different from that required under the applicable provisions of these regulations provides the same level of public health protection as the corresponding requirement.

These points are intended to provide a general framework for evaluating the adequacy of a measure to provide the necessary level of public health protection that FDA determined is appropriate by establishing the corresponding requirement. We rely on an overarching principle that an SLPHP determination should be supported by sound scientific evidence that is analyzed by competent individuals, taking into account any unique measure-specific considerations. There are different scenarios under which an SLPHP evaluation may be conducted, and we recognize that an evaluation of a measure's level of public health protection compared to the corresponding FDA requirement can vary widely, including with respect to the scope of evaluation and the entity that conducts the evaluation. Although the points to consider can be flexibly used, as appropriate and applicable, considering the specific circumstances applicable to the measure and the context for its evaluation, we expect using these points will help achieve consistency in the application of the concept of SLPHP across different circumstances and by different entities. As we implement the FSMA rules, FDA will also consider what, if any, training may be necessary for our personnel to better understand and apply these points, and help ensure consistency in our evaluations for SLPHP determinations.

II. The Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 117 have been approved under OMB control number 0910–0751. The collections of information in part 507 have been approved under OMB control number 0910–0789. The collections of information in part 112 have been approved under OMB control number 0910–0816. The collections of information in part 1, subpart L, have been approved under OMB control number 0910–0752.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *http://www.fda.gov/FoodGuidances* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: January 18, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–01296 Filed 1–24–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 117

[Docket No. FDA–2016–D–2343]

Hazard Analysis and Risk-Based Preventive Controls for Human Food; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, we, or Agency) is announcing the availability of another draft chapter of a multichapter guidance for industry entitled ''Hazard Analysis and Risk-Based Preventive Controls for Human Food: Draft Guidance for Industry.'' This multichapter draft guidance is intended to explain our current thinking on how to comply with the requirements for hazard analysis and risk-based preventive controls under our rule entitled ''Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food.'' The newly available draft chapter is entitled ''Chapter 15—Supply-Chain Program for Human Food Products.''

DATES: Submit either electronic or written comments by May 25, 2018 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–D–2343 for ''Hazard Analysis and Risk-Based Preventive Controls for Human Food: Draft Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to Office of Food Safety, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–300), 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Jenny Scott, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2166.

SUPPLEMENTARY INFORMATION:

I. Background

The FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353) enables FDA to better protect public health by helping to ensure the safety and security of the food supply. It enables FDA to focus more on preventing food safety problems rather than relying primarily on reacting to problems after they occur. FSMA recognizes the important role industry plays in ensuring the safety of the food supply, including the adoption of modern systems of preventive controls in food production.

Section 103 of FSMA amended section 418 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 350g) by adding requirements for hazard analysis and risk-based preventive controls for establishments that are required to register as food facilities under our regulations, in 21 CFR part 1, subpart H, in accordance with section 415 of the FD&C Act (21 U.S.C. 350d). We have established regulations to implement these requirements within part 117 (21 CFR part 117).

In the **Federal Register** of August 24, 2016 (81 FR 57816), we announced the availability of several chapters (Chapters 1–5) of a multichapter draft guidance for industry entitled ''Hazard Analysis and Risk-Based Preventive Controls for Human Food.'' In the **Federal Register** of August 31, 2017 (82 FR 41364), we announced the availability of an additional chapter (Chapter 6). We now are announcing the availability of an additional draft chapter of this multichapter guidance for industry.

II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Hazard Analysis and Risk-Based Preventive Controls for Human Food''. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

The multichapter draft guidance for industry is intended to explain our current thinking on how to comply with the requirements for hazard analysis and risk-based preventive controls under part 117, principally in subparts C and G. The chapter that we are announcing in this document is entitled ''Chapter 15—Supply-Chain Program for Human Food Products.''

We intend to announce the availability for public comment of additional chapters of the draft guidance as we complete them.

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 117 have been approved under OMB control number 0910–0751.

IV. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/FoodGuidances* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: January 18, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–01299 Filed 1–24–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2017–0993]

RIN 1625–AA00

Special Local Regulation: Fort Lauderdale Air Show; Atlantic Ocean, Fort Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a recurring special local regulation for navigable waters of the Atlantic Ocean, east of Fort Lauderdale, Florida beginning at the Port Everglades Inlet. This action is necessary to ensure the safety of the general public, spectators, vessels, and the marine environment from potential hazards during aerobatic maneuvers conducted by high-speed, low-flying airplanes and any high speed vessels performing inside of the regulated area during the Fort Lauderdale Air Show. This proposed rulemaking would prohibit persons and non-participant vessels from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before February 26, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2017–0993 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Mara J. Brown, Sector Miami Waterways Management Division, U.S. Coast Guard; telephone 305–535–4317, email *Mara.J.Brown@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The City of Fort Lauderdale notified the Coast Guard that it will be hosting the Fort Lauderdale Air Show annually on one weekend (Saturday and Sunday) during the month of May. The regulated area would cover all navigable waters of the Atlantic Ocean, east of Fort Lauderdale, Florida beginning at the Port Everglades Inlet and continues north for approximately six miles. The regulated area is intended to protect personnel, vessels, and the marine environment from potential hazards during aerobatic maneuvers by high speed, low flying airplanes and high speed vessels during the air show. Over the years, there have been unfortunate instances of aircraft mishaps during performances at various air shows around the world. Occasionally, these incidents result in a wide area of scattered debris in the water that can damage property or cause significant injury or death to the public observing the air shows. The Captain of the Port Miami has determined that a special local regulation is necessary to protect the general public from hazards associated with aerial flight demonstrations.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

This rule establishes a special local regulation on the waters of the Atlantic Ocean, east of Fort Lauderdale, Florida beginning at the Port Everglades Inlet and continuing north for approximately six miles. The duration of the regulated area is intended to ensure the safety of the public during the aerial flight demonstrations and high speed boat races. Non participant vessels are not permitted to enter, transit through, anchor in, or remain within the regulated area without obtaining permission from the Captain of the Port Miami or a designated representative. The Coast Guard will provide notice of the regulated area by Broadcast Notice to Mariners and on-scene designated representatives. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below, we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. Vessel traffic would be able to safely transit around this special local regulation which would impact a small designated area of the Atlantic Ocean. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the special local regulation may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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 $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually, or cumulatively have a significant effect on the human environment. This proposed rule involves a regulated area that would prohibit persons and vessels from transiting the regulated area during the air and sea show. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination will be available once we receive public comment for this rule and will be located in the docket indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION**

CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Waterways, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 33 CFR 1.05–1.

■ 2. Add § 100.726 to read as follows:

§ 100.726 Special Local Regulation; Fort Lauderdale Air Show; Atlantic Ocean, Fort Lauderdale, FL.

(a) *Regulated area.* The following area is a regulated area located on the Atlantic Ocean in Fort Lauderdale, FL. All waters of the Atlantic Ocean encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 26°11′01″ N, 080°05′42″ W; thence due east to Point 2 in position 26°11′01″ N, 080°05′00″ W; thence south west to Point 3 in position 26°05′42″ N, 080°05′35″ W; thence west to Point 4 in position 26°05′42″ N, 080°06′17″ W; thence following the shoreline north back to the point of origin. These coordinates are based on North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) *Regulations.*

(1) All non participant vessels or persons are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Miami by telephone at (305) 535–4472, or a designated representative via VHF–FM radio on channel 16 to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(d) *Enforcement period.* This rule will be enforced annually on one weekend (Saturday and Sunday) during the month of May. The exact dates and times will be published annually in the **Federal Register** through a Notice of Enforcement. Also, the Coast Guard may use Broadcast Notice to Mariners via VHF–FM channel 16 or on-scene oral notice to notify the public of the exact dates and time of enforcement.

Dated: January 4, 2018.

M.M. Dean,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 2018–01275 Filed 1–24–18; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register
Vol. 83, No. 17
Thursday, January 25, 2018

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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Ohio Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Ohio Advisory Committee (Committee) will hold a meeting on Wednesday, February 7, 2018, at 12:00 p.m. EST for the purpose of discussing civil rights concerns related to voting in Ohio.

DATES: The meeting will be held on Wednesday, February 7, 2018, at 12:00 p.m. EST. Public Call Information: Dial: 888–395–3239, Conference ID: 8818542.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

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

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Ohio Advisory Committee link (*https://facadatabase.gov/committee/meetings.aspx?cid=268*). Select ''meeting details'' and ''documents'' to download. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Introductions
Project Discussion: ''Civil Rights and Voting in Ohio''
Public Comment
Future Plans and Actions
Adjournment

Dated: January 19, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–01346 Filed 1–24–18; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Arkansas Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Arkansas Advisory Committee (Committee) will hold meetings on Wednesday, February 7, 2018 at 12 p.m. Central time. The Committee will discuss approval of a project proposal to study civil rights and criminal justice in the state.

DATES: The meeting will take place on Wednesday, February 7, 2018 at 12 p.m. Central. Public Call Information: Dial: 888–254–2821, Conference ID: 6990886.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

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

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the

Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Arkansas Advisory Committee link (*https://www.facadatabase.gov/committee/meetings.aspx?cid=236*). Click on ''meeting details'' and then ''documents'' to download. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Roll Call
Civil Rights in Arkansas: Criminal Justice
Future Plans and Actions
Public Comment
Adjournment

Dated: January 19, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–01344 Filed 1–24–18; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Kansas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Kansas Advisory Committee (Committee) will hold a meeting on Thursday, February 01, 2018 at 12 p.m. Central time. The Committee will continue discussion and preparations to hold a public hearing as part of their current study on civil rights and school funding in the state.

DATES: The meeting will take place on Thursday, February 01, 2018 at 12 p.m. Central time. Public Call Information: Tuesday January 09, 2018: Dial: 877–723–9522, Conference ID: 5306689.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

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

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Kansas Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=249*). Click on ''meeting details'' and then ''documents'' to download. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Roll Call
Civil Rights in Kansas: School funding
Future Plans and Actions
Public Comment
Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstance of this Committee preparing for a forthcoming web hearing, February 2018.

Dated: January 19, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–01345 Filed 1–24–18; 8:45 am]

BILLING CODE 6335–01–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 applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 16, 2018.

A. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President), Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Cyrus Bancshares, Inc., Cyrus, Minnesota;* to merge with Quality Bankshares, Inc., Page, North Dakota, and thereby indirectly acquire Quality Bank, Fingal, North Dakota.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Chebelle Corporation, Belle Plaine, Iowa;* to acquire 100 percent of the

voting shares of Victor State Bank, Victor, Iowa.

Board of Governors of the Federal Reserve System, January 19, 2018.

Margaret M. Shanks,

Deputy Secretary of the Board.

[FR Doc. 2018–01329 Filed 1–24–18; 8:45 am]

BILLING CODE 6210–01–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 (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 notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 8, 2018.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Winifred Holm, Omaha, Nebraska; to retain voting shares of Mackey BanCo, Inc., Ansley, Nebraska, and thereby retain shares of Security State Bank, Ansley Nebraska. In connection with this notice, Notificant also has applied to become a member of the Royal family group.

Board of Governors of the Federal Reserve System, January 19, 2018.

Margaret M. Shanks,

Deputy Secretary of the Board.

[FR Doc. 2018–01330 Filed 1–24–18; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[17X; LLID933000 .L54200000.PN0000.LVDI1702700; 4500110301]

Notice of Application for Recordable Disclaimer of Interest in Lands, Bingham County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Claire Rich Blakely has filed an application with the Bureau of Land Management (BLM) for a Recordable Disclaimer of Interest from the United States on behalf of LaRue J. Rich and Violet B. Rich. The application affects an approximately 56-acre unsurveyed parcel of land in Bingham County, Idaho. This Notice is intended to inform the public of the pending application and of the opportunity for comment.

DATES: Comments on this application should be received by April 25, 2018.

ADDRESSES: Comments must be filed in writing with James M. Fincher, Chief, Branch of Lands, Minerals, and Water Rights, Bureau of Land Management, Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709.

FOR FURTHER INFORMATION CONTACT: John Sullivan, Supervisory Realty Specialist, at the above address or by phone at (208) 373–3863. 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: Pursuant to Section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), Claire Rich Blakely, on behalf of LaRue J. Rich and Violet B. Rich, filed an application for a Disclaimer of Interest for an approximate 56-acre parcel of unsurveyed land lying in Bingham County, Idaho, described as follows:

Unsurveyed lands (not officially surveyed and filed by the Federal Government) located in Section 6, Township 4 South, Range 34 East, Boise Meridian, Idaho; lying between Government lots 1, 2, and 3 of Section 6 and the northerly (right) bank of the Snake River, as shown on the official plat of survey filed November 17, 2006; including,

A parcel of land situated in a portion of Section 6, in Township 4 South, Range 34 East, Boise Meridian, Bingham County, Idaho, as surveyed and shown in a Record of Survey, January 17, 2014, filed under Instrument No. 655830 in the office of the Recorder of Bingham County, Idaho, at the request of Keller Associates Inc., being more particularly described as follows:

Commencing at the one-quarter (¼) section corner of sections 1 and 6, on the west boundary of T. 4 S., R. 34 E. and being the Point of Beginning;

Thence, along the west boundary of Section 6 the following 2 courses:

1. North 1°45′18″ East, a distance of 774.84 feet;

2. North 0°15′41″ East, a distance of 126.06 feet;

Thence, along the southerly boundary of Government lot 3 and a portion of Government lot 2 the following 6 courses:

1. North 39°51′44″ East, a distance of 700.36 feet;

2. South 60°38′55″ East, a distance of 171.60 feet;

3. South 65°38′55″ East, a distance of 283.80 feet;

4. South 1°38′55″ East, a distance of 231.00 feet;

5. North 69°21′05″ East, a distance of 310.20 feet;

6. North 88°21′05″ East, a distance of 131.77 feet;

Thence, South 0°41′49″ West, a distance of 2151.64 feet to a point on the right bank of the Snake River;

Thence, westerly along the right bank of the Snake River the following 7 courses:

1. North 86°32′48″ West, a distance of 241.70 feet;

2. North 61°14′09″ West, a distance of 718.51 feet;

3. North 39°30′00″ West, a distance of 83.26 feet;

4. North 11°54′58″ West, a distance of 102.69 feet;

5. North 31°36′34″ West, a distance of 174.64 feet;

6. North 51°27′15″ West, a distance of 155.21 feet;

7. North 41°02′59″ West, a distance of 191.97 feet to a point on the west boundary of Section 6;

Thence, North 0°14′18″ East along the west boundary of Section 6 a distance of 116.96 feet to the Point of Beginning.

Metes and Bounds Basis of Bearings: Per a Record of Survey filed January 17, 2014, filed under Instrument No. 655830 in the office of the Recorder of Bingham County, Idaho, at the request of Keller Associates Inc.

The land(s) described contain 56.60 acres, more or less.

The above-referenced parcel was researched and described in the October 4, 2016, Disclaimer of Interest Report by Mark Smirnov, BLM Cadastral Surveyor (now retired). In his report, Mr. Smirnov references a BLM Official Dependent Resurvey approved on August 31, 2006, and filed on November 17, 2006. The report concludes that there were no original fraudulent or grossly erroneous errors made in the original public land surveys and, therefore, the land outside the originally described northerly meanders of the Snake River is a combination of non-substantial omitted

lands and accretions to the original patent description.

The parcel that is the subject of this disclaimer application is claimed by LaRue J. Rich and Violet B. Rich based on the fact that they are the current owners of the property immediately abutting the northerly boundary of the unsurveyed property. The adjacent property owned by LaRue J. Rich and Violet B. Rich was obtained via a United States patent that was issued on April 12, 1928 (no. 1014619), to their predecessor, Lafayette S. Rich, under the authority of the Desert Land Act of March 3, 1877 (19 Stat. 377). The unsurveyed parcel that is the subject of this disclaimer application abuts the patented property, and the application states that the parcel has been used by the Rich family as a part of their property since the family first entered the area in 1895. Issuing a recordable disclaimer would clarify title to the land. If no valid objection is received, a Disclaimer of Interest may be approved stating that the United States does not have a valid interest in the above-described land.

Comments, including names and street addresses of commentors, will be available for public review at the BLM Idaho State Office (see **ADDRESSES** above), during regular business hours, Monday through Friday, except Federal holidays. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR Subpart 1864.

James M. Fincher,

Chief, Branch of Lands, Minerals and Water Rights.

[FR Doc. 2018–01322 Filed 1–24–18; 8:45 am]

BILLING CODE 4310–AK–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1055]

Certain Mirrors With Internal Illumination and Components Thereof Issuance of a Limited Exclusion Order and Cease and Desist Order Directed Against the Defaulting Respondent; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, and has issued a limited exclusion order directed against infringing products of the respondent Project Light, LLC (d/b/a Project Light, Inc., Prospetto Light, LLC, and/or Prospetto Lighting, LLC) of Stow, Ohio (''Project Light'' or ''the defaulting respondent'') previously found in default. The Commission has also issued a cease and desist order directed against the defaulting respondent.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 8, 2017, based on a complaint filed by Electric Mirror, LLC of Everett, Washington (''Electric Mirror'') and Kelvin 42 LLC of Pensacola, Florida (''Kelvin''). 82 FR 21405–06. The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain claims of U.S. Patent Nos. 7,853,414 (''the '414 patent'') and 7,559,668 (''the '668 patent''). The complaint further alleged the existence of a domestic industry. The Commission's notice of investigation named as respondents Project Light; Lumidesign Inc. of Ontario, Canada (''Lumidesign''); and Majestic Mirrors & Frame, LLC of Miami, Florida (''Majestic''). The complaint and notice of investigation were served on all respondents. *See* Notice of Investigation, Certificate of Service (May 2, 2017) (EDIS Document 610362). The Office of Unfair Import Investigations did not participate in the investigation.

On July 10, 2017, the Commission determined not to review an initial determination (''ID'') (Order No. 6) issued by the presiding administrative law judge (''ALJ'') terminating the investigation as to complainant Kelvin, respondent Majestic, and the '668 patent based on withdrawal of those allegations in the complaint. On July 27, 2017, the Commission determined not to review the ALJ's ID (Order No. 8) terminating the investigation as to Lumidesign based on a settlement agreement.

On August 3, 2017, the ALJ issued an ID (Order No. 10) finding Project Light in default, pursuant to 19 CFR 210.16, because this respondent did not respond to the complaint and notice of investigation, or to Order No. 9 to show cause why it should not be found in default. On August 22, 2017, the Commission determined not to review the ID finding Project Light in default. The Commission found that the statutory requirements of section 337(g)(1)(A)–(E) (19 U.S.C. 1337(g)(1)(A)–(E)) were met with respect to Project Light. Accordingly, pursuant to section 337(g)(1) (19 U.S.C. 1337(g)(1)) and Commission rule 210.16(c) (19 CFR 210.16(c)), the Commission presumed the facts alleged in the complaint to be true.

On the same date, the Commission requested public briefing on remedy, the public interest, and bonding with respect to Project Light. 82 FR 43252–54 (Sept. 14, 2017). On September 5, 2017, Electric Light submitted responsive briefing including a proposed limited exclusion order directed to the covered products of Project Light and a cease and desist order directed to the defaulting respondent.

The Commission has determined that the appropriate form of relief includes a limited exclusion order prohibiting the unlicensed entry of mirrors with internal illumination and components thereof that infringe one or more of claims 9 and 18 of the '414 patent, which are manufactured abroad by or on behalf of, or are imported by or on behalf of, Project Light, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or their successors or assigns. Appropriate relief also includes a cease and desist order prohibiting Project Light from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for

sale, transferring (except for exportation), and soliciting U.S. agents or distributors for mirrors with internal illumination and components thereof that infringe one or more of claims 9 and 18 of the '414 patent. *See Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same,* Inv. No. 337–TA–959, Comm'n Op. (Feb. 13, 2017) (public version) (including Chairman Schmidtlein Separate views on issuing cease and desist orders governed by section 337(g)(1)).

The Commission has further determined that the public interest factors enumerated in sections 337(d), (f), and (g)(1) (19 U.S.C. 1337(d), (f), and (g)(1)) do not preclude issuance of the limited exclusion order or the cease and desist order. Finally, the Commission has determined that a bond in the amount of 100 percent of the entered value of the covered products is required to permit temporary importation during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's orders were delivered to the President and to the United States Trade Representative on the day of their issuance.

The Commission has terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: January 19, 2018.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2018–01318 Filed 1–24–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Amendment to a Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On January 9, 2018, the Department of Justice lodged a proposed amendment to the 2003 consent decree with the United States District Court for the Eastern District of New York in the lawsuit entitled *United States, et al.* v. *Mattiace Industries, Inc., et al.,* Civil Action No. 03–1011.

In that action, the United States sought, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601, *et seq.,* injunctive relief and recovery of response costs regarding the Mattiace Petrochemical Superfund Site in the City of Glen Cove, Nassau County, New York (the ''Site''). The matter was originally resolved in 2003 when the United States entered into a Consent Decree with 27 potentially responsible parties regarding the Site (the ''2003 Consent Decree''). These parties were joined by a 28th party, TRC Companies, Inc. (''TRC''), which, though not a liable party, agreed to be bound by the 2003 Consent Decree and to perform the remedy. The 2003 Consent Decree required, among other things, that the settlors implement portions of the remedial action selected by the U.S. Environmental Protection Agency (''EPA'') in a 1991 record of decision (''1991 ROD'') for the Site.

On September 29, 2014, EPA issued an amendment to the 1991 ROD, which, among other things, documented EPA's decision regarding a modification to the remedy to be implemented at the Site and identification of a new remedy to address remaining contaminated groundwater and soil gas at the Site. The proposed amendment to the 2003 Consent Decree, which was lodged with the Court on January 9, 2018, modifies the 2003 Consent Decree to make it consistent with the amended ROD. Specifically, it will substitute the amended ROD for the 2003 ROD; will substitute a new statement of work for the original statement of work; and will include updates to the Site history, definitions and internal references. TRC will continue to perform the work, as a signatory with the settling defendants.

The publication of this notice opens a period for public comment on the proposed Amendment to the 2003 Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, et al.* v. *Mattiace Industries, Inc., et al.,* Civil Action No. 03–1011, D.J. Ref. No. 90–11–3–07234. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed amended consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed amended consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $9.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018–01326 Filed 1–24–18; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for the Division of Physics (1208)—University of Utah Site Visit.

Date and Time: February 20, 2018; 8:30 a.m.–6:00 p.m., February 21, 2018; 8:30 a.m.–3:00 p.m.

Place: University of Utah, Salt Lake City, UT 84112.

Type of Meeting: Part-Open.

Contact Person: Jean Cottam-Allen, Program Director for Physics Frontier Centers, Division of Physics, National Science Foundation, 2415 Eisenhower Avenue, Room W9217, Alexandria, VA 22314; Telephone: (703) 292–8783.

Purpose of Meeting: Site visit to provide an evaluation of the progress of the projects at the host site for the Division of Physics at the National Science Foundation.

Agenda

February 20, 2018; 8:30 a.m.–6:00 p.m.

08:30 a.m.–09:30 a.m. Greetings and introductions
09:30 a.m.–10:15 a.m. P. Sokolsky (composition, anistotropy, sFLASH)
10:15 a.m.–10:30 a.m. Break
10:30 a.m.–12:00 p.m. D. Bergman and G. Thomson presentations
12:00 p.m.–1:00 p.m. Lunch (panel meets with students and post docs)
1:00 p.m.–2:15 p.m. J. Betz and C. Jui presentations
2:15 p.m.–2:30 p.m. Break
2:30 p.m.–4:00 p.m. J. Calahan and C. Jui discussions and Thomson (summary)
4:00 p.m.–5:00 p.m. Panel meeting and questions on experiments
5:00 p.m.–6:00 p.m. Poster Session (Greg, Jackson, JiHee, Jon Paul and Bill)

6:30 p.m. Panel working Dinner—Closed Session

February 21, 2018; 8:30 a.m.–6:00 p.m.

08:30 a.m.–10:00 a.m. PI's present responses to panel questions
10:00 a.m.–10:30 a.m. Break
10:30 a.m.–3:00 p.m. Panel working session—Closed Session

Reason for Closing: Topics to be discussed and evaluated during the site review will include information of a proprietary or confidential nature, including technical information and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 19, 2018.

Suzanne Plimpton,

Acting Committee Management Officer.

[FR Doc. 2018–01325 Filed 1–24–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting Cancellation

The National Transportation Safety Board has cancelled the Sunshine Act meeting previously scheduled for Tuesday, January 23, 2017, at the NTSB Conference Center, 429 L'Enfant Plaza, SW, Washington, DC. The matter scheduled to be considered at the Sunshine Act meeting concerned Aircraft Accident Report—Uncontained Engine Failure and Subsequent Fire, American Airlines Flight 383, Boeing 767–323, N345AN, Chicago, Illinois, October 28, 2016. This meeting is rescheduled for January 30, 2018.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Candi Bing, (202) 314–6403 or by email at *bingc@ntsb.gov*.

Dated: January 23, 2017.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2018–01423 Filed 1–23–18; 11:15 am]

BILLING CODE 7533–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, January 30, 2018.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW, Washington, DC 20594.

STATUS: The one item is open to the public.

MATTERS TO BE CONSIDERED:

57292 Aircraft Accident Report—Uncontained Engine Failure and Subsequent Fire, American Airlines Flight 383, Boeing 767–323, N345AN, Chicago, Illinois, October 28, 2016.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle McCallister at (202) 314–6305 or by email at *Rochelle.McCallister@ntsb.gov* by Wednesday, January 24, 2018.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov.*

Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Candi Bing at (202) 314–6403 or by email at *bingc@ntsb.gov.*

FOR MEDIA INFORMATION CONTACT: Peter Knudson at (202) 314–6100 or by email at *peter.knudson@ntsb.gov.*

Dated: January 23, 2018.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2018–01431 Filed 1–23–18; 11:15 am]

BILLING CODE 7533–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–512, OMB Control No. 3235–0570]

Submission for OMB Review; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:
Form N–CSR.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Form N–CSR (17 CFR 249.331 and 274.128) is a combined reporting form used by registered management investment companies (''funds'') to file certified shareholder reports under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') and the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). Specifically, Form N–CSR is to be used for reports under section 30(b)(2) of the Investment Company Act (15 U.S.C. 80a–29(b)(2)) and section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) and 78o(d)), filed pursuant to rule 30b2–1(a) under the Investment Company Act (17 CFR 270.30b2–1(a)). Reports on Form N–CSR are to be filed with the Securities and Exchange Commission (''Commission'') no later than 10 days after the transmission to stockholders of any report that is required to be transmitted to stockholders under rule 30e–1 under the Investment Company Act (17 CFR 270.30e–1). The information filed with the Commission permits the verification of compliance with securities law requirements and assures the public availability and dissemination of the information.

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995 [1] and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. Compliance with Form N–CSR is mandatory. Responses to the collection of information will not be kept confidential.

The current total annual burden hour inventory for Form N–CSR is 172,899 hours.[2] The hour burden estimates for preparing and filing reports on Form N–CSR are based on the Commission's experience with the contents of the form. The number of burden hours may vary depending on, among other things, the complexity of the filing and whether preparation of the reports is performed by internal staff or outside counsel.

The Commission's new estimate of burden hours that will be imposed by Form N–CSR is as follows:

[1] 44 U.S.C. 3501 *et seq.*

[2] This estimate is based on the following calculations: 172,899 hours = (11,856 management investment companies × 14.52 hour burden per fund per year) + 750 additional hours for closed-end funds.

HOUR BURDEN FOR REPORTS ON FORM N–CSR

Number of funds	[3] 11,856
Number of filings per fund per year	2
Hour burden per fund per filing	7.31
Hour burden per fund per year (7.31 hours per filing × 2 filings per year)	14.62
Additional aggregate annual burden for closed-end funds	[4] 750
Total annual hour burden	[5] 174,085

In total, the Commission estimates it will take 174,085 burden hours per year for all funds to prepare and file reports on Form N–CSR. Based on the Commission's estimate of 174,085 burden hours and an estimated wage rate of approximately $324 per hour,[6] the total internal annual cost to registrants of the hour burden for complying with Form N–CSR requirements is approximately $56 million.[7]

Estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. Compliance with the collection of information requirements of Form N–CSR is mandatory. Responses to the collection of information will not be kept confidential. 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 public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 19, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–01338 Filed 1–24–18; 8:45 am]

BILLING CODE 8011–01–P

[3] This estimate is based on the following calculation: 11,856 management investment companies = (1,594 exchange-traded funds − eight organized as unit investment trusts + 750 closed-end funds + 481 money market funds + 9,039 other mutual funds).

[4] This estimate is based on the following calculation: 750 hours = (750 closed-end funds × 1 hour per closed-end fund).

[5] This estimate is based on the following calculation: 174,085 hours = 750 hours + (11,856 funds × 14.62 burden hours per fund per year).

[6] The Commission's estimate concerning the wage rate is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figure is based on published rates for compliance attorneys and senior programmers, modified to account for an 1,800-hour work year and inflation; multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead; and adjusted to account for the effects of inflation, yielding effective hourly rates of $340 and $308, respectively. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013. We estimate that compliance attorneys and senior programmers would divide their time equally, yielding an estimated hourly wage rate of $324. ($340 per hour for compliance attorneys + $308 per hour for senior programmers) ÷ 2 = $324 per hour.

[7] 174,085 hours × $324 per hour = $56,403,540 per year.

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–173, OMB Control No. 3235–0178]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Rule 31a–1.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 31a–1 (17 CFR 270.31a–1) under the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a) is entitled ''Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.'' Rule 31a–1 requires registered investment companies (''funds''), and every underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of a fund, to maintain and keep current accounts, books, and other documents which constitute the record forming the basis for financial statements required to be filed pursuant to section 31 of the Act (15 U.S.C. 80a–30) and of the auditor's certificates relating thereto. The rule lists specific records to be maintained by funds. The rule also requires certain underwriters, brokers, dealers, depositors, and investment advisers to maintain the records that they are required to maintain under federal securities laws. The Commission periodically inspects the operations of funds to insure their compliance with the provisions of the Act and the rules thereunder. The books and records required to be maintained by rule 31a–1 constitute a major focus of the Commission's inspection program.

There are approximately 4029 investment companies registered with the Commission, all of which are required to comply with rule 31a–1. For purposes of determining the burden imposed by rule 31a–1, the Commission staff estimates that each fund is divided into approximately four series, on average, and that each series is required to comply with the recordkeeping requirements of rule 31a–1. Based on conversations with fund representatives, it is estimated that rule 31a–1 imposes an average burden of approximately 1750 hours annually per series for a total of 7000 annual hours per fund. The estimated total annual burden for all 4029 funds subject to the rule therefore is approximately 28,203,000 hours. Based on conversations with fund representatives, however, the Commission staff estimates that even absent the requirements of rule 31a–1, 90 percent of the records created pursuant to the rule are the type that generally would be created as a matter of normal business practice and to prepare financial statements. Thus, the Commission staff estimates that the total annual burden associated with rule 31a–1 is 2,820,300 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study. The collection of information required by rule 31a–1 is mandatory. Responses will not be kept confidential. The records required by rule 31a–1 are required to be preserved pursuant to rule 31a–2 under the Investment Company Act (17 CFR 270.31a–2). Rule 31a–2 requires that certain of these records be preserved permanently, and that others be preserved six years from the end of the fiscal year in which any transaction occurred. In both cases, the records should be kept in an easily accessible place for the first two years. 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 public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 19, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–01337 Filed 1–24–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–316, OMB Control No. 3235–0359]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:
Form N–17f–1.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form N–17f–1 (17 CFR 274.219) is entitled ''Certificate of Accounting of Securities and Similar Investments of a Management Investment Company in the Custody of Members of National Securities Exchanges.'' The form serves as a cover sheet to the accountant's certificate that is required to be filed periodically with the Commission pursuant to rule 17f–1 (17 CFR 270.17f–1) under the Act, entitled ''Custody of Securities with Members of National Securities Exchanges,'' which sets forth the conditions under which a fund may place its assets in the custody of a member of a national securities exchange. Rule 17f–1 requires, among other things, that an independent public accountant verify the fund's assets at the end of every annual and semi-annual fiscal period, and at least one other time during the fiscal year as chosen by the independent accountant. Requiring an independent accountant to examine the fund's assets in the custody of a member of a national securities exchange assists Commission staff in its inspection program and helps to ensure that the fund assets are subject to proper auditing procedures. The accountant's certificate stating that it has made an examination, and describing the nature and the extent of the examination, must be attached to Form N–17f–1 and filed with the Commission promptly after each examination. The form facilitates the filing of the accountant's certificates, and increases the accessibility of the certificates to both Commission staff and interested investors.

Commission staff estimates that it takes: (i) 1 Hour of clerical time to prepare and file Form N–17f–1; and (ii) 0.5 hour for the fund's chief compliance officer to review Form N–17f–1 prior to filing with the Commission, for a total of 1.5 hours. Each fund is required to make 3 filings annually, for a total annual burden per fund of approximately 4.5 hours.[1] Commission staff estimates that an average of 6 funds currently file Form N–17f–1 with the Commission 3 times each year, for a total of 18 responses annually.[2] The total annual hour burden for Form N–17f–1 is therefore estimated to be approximately 27 hours.[3]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance with the collections of information required by Form N–17f–1 is mandatory for funds that place their assets in the custody of a national securities exchange member. Responses will not be kept confidential. 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 control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 19, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–01339 Filed 1–24–18; 8:45 am]

BILLING CODE 8011–01–P

[1] This estimate is based on the following calculation: (1.5 hours × 3 responses annually = 4.5 hours).

[2] This estimate is based on a review of Form N–17f–1 filings made with the Commission over the last three years.

[3] This estimate is based on the following calculations: (4.5 hours × 6 funds = 27 total hours).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–516, OMB Control No. 3235–0574]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:
Rule 3a–8.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 3a–8 (17 CFR 270.3a–8) of the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Act''), serves as a nonexclusive safe harbor from investment company status for certain research and development companies (''R&D companies'').

The rule requires that the board of directors of an R&D company seeking to rely on the safe harbor adopt an appropriate resolution evidencing that the company is primarily engaged in a non-investment business and record that resolution contemporaneously in its minute books or comparable documents.[1] An R&D company seeking to rely on the safe harbor must retain these records only as long as such

[1] Rule 3a–8(a)(6) (17 CFR 270.3a–8(6)).

records must be maintained in accordance with state law.

Rule 3a–8 contains an additional requirement that is also a collection of information within the meaning of the PRA. The board of directors of a company that relies on the safe harbor under rule 3a–8 must adopt a written policy with respect to the company's capital preservation investments. We expect that the board of directors will base its decision to adopt the resolution discussed above, in part, on investment guidelines that the company will follow to ensure its investment portfolio is in compliance with the rule's requirements.

The collection of information imposed by rule 3a–8 is voluntary because the rule is an exemptive safe harbor, and therefore, R&D companies may choose whether or not to rely on it. The purposes of the information collection requirements in rule 3a–8 are to ensure that: (i) The board of directors of an R&D company is involved in determining whether the company should be considered an investment company and subject to regulation under the Act, and (ii) adequate records are available for Commission review, if necessary. Rule 3a–8 would not require the reporting of any information or the filing of any documents with the Commission.

Commission staff estimates that there is no annual recordkeeping burden associated with the rule's requirements. Nevertheless, the Commission requests authorization to maintain an inventory of one burden hour for administrative purposes.

Commission staff estimates that approximately 65,139 R&D companies may take advantage of rule 3a–8.[2] Given that the board resolutions and investment guidelines will generally need to be adopted only once (unless relevant circumstances change),[3] the Commission believes that all the R&D companies that existed prior to the adoption of rule 3a–8 adopted their board resolutions and established written investment guidelines in 2003 when the rule was adopted. We expect that R&D companies formed subsequent to the adoption of rule 3a–8 would adopt the board resolution and investment guidelines simultaneously with their formation documents in the ordinary course of business.[4] Therefore, we estimate that rule 3a–8 does not impose additional burdens.

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 control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 19, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–01340 Filed 1–24–18; 8:45 am]

BILLING CODE 8011–01–P

[2] *See* National Science Foundation/Division of Science Resources Statistics, Business Research and Development and Innovation Survey: 2013 (results published August 2, 2016).

[3] In the event of changed circumstances, the Commission believes that the board resolution and investment guidelines will be amended and recorded in the ordinary course of business and would not create additional time burdens.

[4] In order for these companies to raise sufficient capital to fund their product development stage, Commission staff believes that they will need to present potential investors with investment guidelines. Investors generally want to be assured that the company's funds are invested consistent with the goals of capital preservation and liquidity.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Unified Carrier Registration Plan Board of Directors Meeting.

TIME AND DATE: The meeting will be held on January 30, 2018, from 1:00 p.m. to 5:00 p.m., Central Standard Time.

PLACE: The meeting will be open to the public at the; Royal Sonesta New Orleans, 300 Bourbon Street, New Orleans, LA 70130, and via conference call. Those not attending the meeting in person may call toll-free; 1–877–422–1931, passcode 2855443940, to listen and participate in the meeting.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board. An agenda for this meeting is available at: *https://ucrplan.org.*

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: January 22, 2018.

Larry W. Minor,

Associate Administrator, Office of Policy, Federal Motor Carrier Safety Administration.

[FR Doc. 2018–01454 Filed 1–23–18; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2017–0082]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: On October 18, 2017, in accordance with the Paperwork Reduction Act of 1995, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice in the **Federal Register** to invite comments on an information collection under Office of Management and Budget (OMB) Control No. 2137–0629 to revise Form PHMSA F 7100.1–1 Annual Report—Gas Distribution System, and the instructions associated with this Form.

During the 60-day comment period, PHMSA received five comments in response to this information collection from the stakeholders. PHMSA is publishing this notice to respond to the comments received and to announce that the information collection will be submitted to OMB for approval.

DATES: Comments must be submitted on or before February 26, 2018.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to OMB, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503. You may also send comments by email to *OIRA-submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Angela Dow by telephone at 202–366–

1246, by fax at 202–366–4566, or by mail at U.S. Department of Transportation, PHMSA, 1200 New Jersey Avenue SE, PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected entities an opportunity to comment on information collection and recordkeeping requests. This notice identifies the proposed changes to the information collection that PHMSA will submit to OMB for approval. In order to improve the data collection processes, PHMSA is revising the Gas Distribution Annual Report Form PHMSA F 7100.1–1, and the instructions associated with this Form. PHMSA will remove ''Other'' as a selection for Operator Type in Part A7 and add guidance for the proper selection to the instructions. By eliminating ''Other'' as a selection, PHMSA will obtain more accurate data about the types of gas distribution operators.

PHMSA is also changing the instructions for PHMSA Form 7100.1–1, Gas Distribution System Annual Report, related to calculating the percent of lost and unaccounted for (LAUF) gas and negative percent values. PHMSA will calculate the percent of LAUF gas by dividing the LAUF volume by the gas consumption volume. PHMSA will allow a negative value to be reported for the percent of LAUF gas. These changes will harmonize the PHMSA and Energy Information Administration (EIA) methodologies for calculating the percent of LAUF gas.

PHMSA received five comments in response to the revision of this information collection. Four comments came from anonymous sources and one comment came from The American Public Gas Association (APGA).

A. Summary of Comment

PHMSA has proposed changing the denominator from ''volume of input'' to ''volume consumed'' when calculating the percent of lost and unaccounted for gas. This change would match the methodology used by the EIA. APGA recommends no change to the methodology for calculating the percent of lost and unaccounted for gas since a percent is not reported to the EIA. Also, changing the denominator for calculating percent would make analysis of multi-year trends more difficult.

B. PHMSA Response

Each year, EIA publishes volume data in a document titled: *Natural Gas Annual.* In Table A1 of the calendar year 2016 *Natural Gas Annual,* the EIA calculates ''Losses and Unaccounted as a percent of Total Consumption.'' PHMSA's proposal aligns with the EIA methodology in the *Natural Gas Annual.* Regarding the impact of the methodology change on the analysis of multi-year trends, the impact would be minimal. For example, using calendar year 2016 EIA data for Massachusetts, the percent using the current PHMSA methodology yields a value of 3.2 percent. When using the EIA methodology, the value is 3.3 percent.

II. Summary of Impacted Collection

Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will submit to OMB for revision. The changes proposed by PHMSA would have no effect on the calendar year 2017 data collection now in progress. The changes would be implemented when operators submit calendar year 2018 data early in calendar year 2019.

The following information is provided for this information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection. PHMSA will request a three-year term of approval for this information collection activity. PHMSA requests comments on the following information collection:

1. *Title:* Annual Report for Gas Distribution Pipeline Operators.

OMB Control Number: 2137–0629.

Current Expiration Date: 1/31/2018.

Type of Request: Revision.

Abstract: PHMSA intends to revise the form and instructions for the gas distribution annual report PHMSA F 7100.1–1.

Affected Public: Gas distribution pipeline operators.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 1,446.

Total Annual Burden Hours: 24,582.

Frequency of Collection: Annually.

Comments are invited on:

(a) The need for the renewal and revision of these collections of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on January 18, 2018, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2018–01324 Filed 1–24–18; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Senior Executive Service; Departmental Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Performance Review Board (PRB).

SUMMARY: This notice announces the appointment of members of the Departmental PRB. The purpose of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions for which the Secretary or Deputy Secretary is the appointing authority. These positions include SES bureau heads, deputy bureau heads and certain other positions. The Board will perform PRB functions for other key bureau positions if requested.

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Julia J. Markham, Director, Office of Executive Resources, 1500 Pennsylvania Avenue NW, ATTN: 1722 Eye Street, 9th Floor, Washington, DC 20220, Telephone: (202) 927–4370.

Composition of Departmental PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the

members shall consist of career appointees. The names and titles of the PRB members are as follows:

- Kody H. Kinsley, Assistant Secretary for Management
- Jamal El-Hindi, Deputy Director, Financial Crimes and Enforcement Network
- Kimberly McCoy, Deputy Commissioner, Fiscal Accounting and Shared Services, Bureau of Fiscal Services
- Martha Pacold, Deputy General Counsel
- Kirsten Wielobob, Deputy Commissioner, Services and Enforcement
- David A. Lebryk, Fiscal Assistant Secretary
- John J. Manfreda, Administrator, Alcohol and Tobacco Tax and Trade Bureau
- Mary G. Ryan, Deputy Administrator, Alcohol and Tobacco Tax and Trade Bureau
- Sheryl Morrow, Commissioner, Bureau of Fiscal Service
- Leonard Olijar, Director, Bureau of Engraving and Printing
- Jeffrey Tribiano, Deputy Commissioner, Operations Support, Internal Revenue Service

Dated: January 11, 2018.

Julia J. Markham,

Director, Office of Executive Resources.

[FR Doc. 2018–01277 Filed 1–24–18; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Senior Executive Service; Departmental Offices Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Offices Performances Review Board.

SUMMARY: This notice announces the appointment of members of the Departmental Offices Performance Review Board (PRB). The purpose of this Board is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions in the Departmental Offices, excluding the Legal Division. The Board will perform PRB functions for other bureau positions if requested.

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Julia J. Markham or Kimberly Jackson, Office of Executive Resources, 1500 Pennsylvania Avenue NW, ATTN: 1722 Eye Street, 9th Floor, Washington, DC 20220, Telephone: 202–622–0774.

Composition of Departmental Offices PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the Board members are as follows:

Names for Federal Register Publication

- John Farley, Director, Executive Office for Asset Forfeiture
- Aimen Mir, Deputy Assistant Secretary for Investment Security
- Nancy Ostrowski, Director, Office of DC Pensions
- J. Trevor Norris, Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer
- Michael Kaplan, Deputy Assistant Secretary, Western Hemisphere and South Asia
- Mark D. Sobel, Deputy Assistant Secretary, International Money and Financial Policy
- Ryan Law, DAS for Privacy, Transparency and Records
- Kathryn Malague, Director for Strategic Planning and Performance Improvement
- Luke Ballman, Deputy Assistant Secretary for Legislative Affairs
- Jennifer Fowler, Deputy Assistant Secretary for Terrorist Financing and Financial Crimes
- Sarah Runge, Director, Office of Strategic Policy for Terrorist Financing and Financial Crimes
- Daniel W. Moger, III, Director, Office of Global Affairs
- John H. Battle, Associate Director for Resource Management, Office of Foreign Assets Control
- Brian Peretti, Director for Critical Infrastructure Protection and Compliance Policy
- Douglas M. Bell, Deputy Assistant Secretary for Trade and Investment Policy
- Robert S. Dohner, Deputy Assistant Secretary for International Economic Analysis
- Gary Grippo, Deputy Assistant Secretary, Government Finance Policy

Dated: January 11, 2018.

Julia J. Markham,

Director, Office of Executive Resources.

[FR Doc. 2018–01270 Filed 1–24–18; 8:45 am]

BILLING CODE 4810–25–P

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 Ironworkers Local Union No. 16 Pension Fund (Ironworkers 16 Pension Fund), a multiemployer pension plan, has submitted an application to Treasury 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 Ironworkers 16 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 Ironworkers 16 Pension Fund.

DATES: Comments must be received by March 12, 2018.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Electronic submissions through *www.regulations.gov* are encouraged.

Comments may also be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW, Room 1224, Washington, DC 20220. Attn: Eric Berger. Comments sent via facsimile and 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 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 Ironworkers 16 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 28, 2017, the Board of Trustees of the Ironwokers 16 Pension Fund 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://auth.treasury.gov/services/Pages/Plan-Applications.aspx.* Treasury is publishing this notice in the **Federal Register**, in consultation with the PBGC and the Department of Labor, to solicit public comments on all aspects of the Ironworkers 16 Pension Fund application.

Comments are requested from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Ironworkers 16 Pension Fund. Consideration will be given to any comments that are timely received by Treasury.

Dated: January 19, 2018.

David Kautter,

Assistant Secretary for Tax Policy.

[FR Doc. 2018–01273 Filed 1–24–18; 8:45 am]

BILLING CODE 4810–25–P

FEDERAL REGISTER

Vol. 83 Thursday,
No. 17 January 25, 2018

Part II

Department of Transportation

National Highway Traffic Safety Administration

23 CFR Part 1300
Uniform Procedures for State Highway Safety Grant Programs; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1300

[Docket No. NHTSA–2016–0057]

RIN 2127–AL71

Uniform Procedures for State Highway Safety Grant Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule makes changes and clarifications to the revised uniform procedures implementing State highway safety grant programs in response to comments received on the interim final rule published May 23, 2016.

DATES: This final rule is effective on February 26, 2018.

FOR FURTHER INFORMATION CONTACT:

For program issues: Barbara Sauers, Director, Office of Grants Management and Operations, Regional Operations and Program Delivery, National Highway Traffic Safety Administration, Telephone number: (202) 366–0144; Email: *barbara.sauers@dot.gov.*

For legal issues: Jin H. Kim, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, Telephone number: (202) 366–1834; Email: *jin.kim@dot.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

On December 4, 2015, the President signed into law the ''Fixing America's Surface Transportation Act'' (FAST Act), Public Law 114–94. The FAST Act amended NHTSA's highway safety grant program (23 U.S.C. 402 or Section 402) and the National Priority Safety Program grants (23 U.S.C. 405 or Section 405). Specifically, the FAST Act made limited administrative changes to the Section 402 grant program and made no changes to the contents of the Highway Safety Plan. The FAST Act made the following changes to the Section 405 grant program:

- Occupant Protection Grants—no substantive changes;
- State Traffic Safety Information System Improvements Grants—no substantive changes;
- Impaired Driving Countermeasures Grants—no substantive changes;
- Motorcyclist Safety Grants—no substantive changes;
- Alcohol-Ignition Interlock Law Grants—Added flexibility for States to qualify for grants (*e.g.,* permitted three exceptions);
- Distracted Driving Grants—Added flexibility for States to qualify for grants (*e.g.,* removed increased fines and created Special Distracted Driving grants);
- State Graduated Driver Licensing Incentive Grants—Added flexibility for States to qualify for grants (*e.g.,* reduced some driving restrictions and better aligned the compliance criteria);
- 24–7 Sobriety Programs Grants—Established a new grant;
- Nonmotorized Safety Grants—Established a new grant.

In addition, the FAST Act restored (with some changes) the racial profiling data collection grant authorized under the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users'' (SAFETEA–LU), Sec. 1906, Public Law 109–59 (Section 1906).

As in past authorizations, the FAST Act required NHTSA to implement the grants pursuant to rulemaking. To provide States with as much advance time as practicable to prepare grant applications and ensure the timely award of all grants, NHTSA published an interim final rule (IFR) that was effective immediately, but sought public comment to inform the promulgation of a final rule. This action addresses the comments received in response to the IFR.

II. Summary of the Interim Final Rule

The IFR implemented the provisions of the FAST Act, addressed comments on the predecessor rule implementing the ''Moving Ahead for Progress in the 21st Century Act'' (MAP–21), Public Law 112–141, and made several specific amendments to the Highway Safety Plan (HSP) contents to foster consistency across all States and facilitate the electronic submission of HSPs required under the FAST Act. (81 FR 32554, May 23, 2016.) The IFR set forth the application, approval, and administrative requirements for all 23 U.S.C. Chapter 4 grants and Section 1906 grants. While the MAP–21 rule established the beginnings of a single, consolidated application, the IFR more fully integrated the Section 402 and Section 405 programs, establishing the HSP as the State's single planning document accounting for all behavioral highway safety activities. The IFR clarified the HSP contents (highway safety planning process, performance measures and targets, and countermeasure strategies and projects), so that these already-existing elements could serve as a means to fulfill some of the application requirements for certain Section 405 grants, thereby reducing duplicative requirements in the grant applications. By creating links between the HSP content requirements provided in Section 402 and the Section 405 grant application requirements, the IFR streamlined the NHTSA grant application process and relieved some of the burdens and redundancies associated with the previous process.

The FAST Act amended Section 402 to require NHTSA to accommodate State submission of HSPs in electronic form. (23 U.S.C. 402(k)(3).) NHTSA has been working to implement this provision with the Grants Management Solutions Suite (GMSS), an enhanced electronic system that States will use to submit the HSP to apply for grants, receive grant funds, make HSP amendments throughout the fiscal year, manage grant funds, and invoice expenses. This electronic system will replace the Grants Tracking System that States currently use to receive funds and invoice expenses.

While the FAST Act did not make many substantive changes to the MAP–21 requirements, the IFR clarified parts of the HSP and required submission of certain project-level information. The IFR also codified the FAST Act requirement for a biennial automated traffic enforcement systems survey.

For Section 405 grants that were not substantively changed by the FAST Act (Occupant Protection Grants, State Traffic Safety Information System Improvements Grants, Impaired Driving Countermeasures Grants and Motorcyclist Safety Grants), NHTSA aligned and linked the application requirements with the HSP requirements under Section 402 to streamline and ease State burdens in applying for Section 402 and Section 405 grants. For Section 405 grants for which the FAST Act afforded additional flexibility (Alcohol-Ignition Interlock Law Grants, Distracted Driving Grants and State Graduated Driver Licensing Incentive Grants) and for the new grants under the FAST Act (24–7 Sobriety Program Grants, Nonmotorized Grants and Racial Profiling Data Collection Grants), the IFR adopted the statutory qualification language with limited changes.

The IFR made a few changes to the administrative provisions related to the highway safety programs, such as clarifying existing requirements, providing for improved accountability of Federal funds, and updating requirements based on changes in the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR part 200, and the Department of Transportation's implementing regulation at 2 CFR part 1201.

III. Public Comments on Interim Final Rule

In response to the IFR, the following submitted comments to the public docket on *www.regulations.gov*: Advocates for Highway & Auto Safety (Advocates); Association of Ignition Interlock Program Administrators (AIIPA); California Office of Traffic Safety (CA OTS); Commonwealth of the Northern Mariana Islands Department of Public Safety—Highway Safety Office (CNMI DPS); Colorado Highway Safety Office (CO HSO); Connecticut Highway Safety Office (CT HSO); Delaware Office of Highway Safety (DE OHS); Governors Highway Safety Association (GHSA); Guam Department of Public Works Office of Highway Safety (GU DPS); Intoximeters, Inc. (Intoximeters); Kentucky Office of Highway Safety; Maryland Department of Transportation (MD DOT); Michigan Office of Highway Safety Planning; Minnesota Department of Public Safety (MN DPS); Montana Department of Transportation (MT DOT); National Conference of State Legislatures (NCSL); National Safety Council (NSC); New York Governor's Traffic Safety Committee (NY GTSC); Ohio Highway Safety Office; Pennsylvania Highway Safety Office; Penny Corn (without affiliation); Rhode Island Office on Highway Safety; South Carolina Department of Public Safety—Office of Highway Safety and Justice Programs; Tennessee Highway Safety Office (TN HSO); Washington Traffic Safety Commission (WA TSC); Wyoming Department of Transportation (WY DOT); and joint submission by the Departments of Transportation of Idaho, Montana, North Dakota, South Dakota and Wyoming (5-State DOTs).[1] Six of these commenters (Kentucky Office of Highway Safety, Michigan Office of Highway Safety Planning, Ohio Highway Safety Office, Pennsylvania Highway Safety Office, Rhode Island Office on Highway Safety, South Carolina Department of Public Safety—Office of Highway Safety and Justice Programs) stated that they supported the GHSA comments without further explanation. Several other commenters, particularly State Highway Safety Offices (HSOs), also supported the comments from GHSA.

NHTSA received communications directly from other members of the public. (*See* letter from National Motorists Association (NMA); letter to Office of the Secretary docket from GHSA; joint letter from Coalition of Ignition Interlock Manufacturers and Intoximeters, Inc.; and email from Insurance Institute for Highway Safety.) Because of the substantive nature of these communications, NHTSA added them to the docket for this rule. GHSA asked to meet with NHTSA's Acting Deputy Administrator regarding the grant programs and, in an August 1, 2017 meeting, reiterated concerns raised in its earlier docketed comments. NHTSA added a summary of this meeting to the docket. Finally, on February 23 and April 27, 2017, NHTSA conducted two webinars in partnership with GHSA to provide guidance to States in preparing their fiscal year (FY) 2018 applications, as that application deadline came before this final rule could be issued. NHTSA added the slides from both webinars to the docket.

Many State HSOs identified various requirements in the IFR as burdensome. NHTSA has taken a fresh look at program requirements in light of these comments, as it was not our intent to impose undue burdens that would needlessly impede the hard work of traffic safety. In publishing the IFR, we strived to reduce burdens where possible, seeking to achieve an appropriate balance between the minimum information needed to ensure proper stewardship of funds and States' need for flexibility and efficiency in the use of their limited resources. In today's action, after careful review of these comments, we adopt some recommendations, clarify some requirements where we believe the concern about burdens was based on misunderstandings, and explain the importance of the requirement to safety objectives, statutory requirements, or accountability needs where we decline to adopt a comment.

In this preamble, NHTSA addresses all comments and identifies any changes made to the IFR's regulatory text. In addition, NHTSA makes several technical corrections to cross-references and other non-substantive editorial corrections. For ease of reference, the preamble identifies in parentheses within each subheading and at appropriate places in the explanatory paragraphs the CFR citation for the corresponding regulatory text.

IV. General Provisions (Subpart A)

A. Agency's Authority To Implement Through Rulemaking

A number of commenters stated that additional requirements in the IFR were not required by the FAST Act, and therefore NHTSA did not have authority to make these changes. (*See, e.g.,* DE OHS, GHSA, MT DOT, NCSL, WY DOT, 5-State DOTs.) In fact, the FAST Act (and previous authorizations, by longstanding Congressional practice) required NHTSA to award grants in accordance with regulation, expressing Congress' intent that the details of the grant programs be fleshed out in an implementing rule. The requirements in the IFR (and in this final rule) are within the scope of the FAST Act and in keeping with NHTSA's statutory authority to oversee and implement a Federal grant program.

B. Definitions (23 CFR 1300.3)

CA OTS, CT HSO, GHSA, GU OHS and WA TSC commented about the definition of countermeasure strategy. These commenters asserted that the definition appears to limit the States' ability to use grant funds on innovative safety efforts, and recommended allowing flexibility for innovative countermeasures that were well-reasoned. Most of these commenters asked NHTSA to clarify that the definition allows this flexibility, and GHSA suggested adding a separate definition of ''innovative countermeasure strategies'' for the same reason.

NHTSA agrees with the commenters, and is amending the definition of countermeasure strategy to ''a proven effective *or innovative* countermeasure proposed or implemented with grant funds under 23 U.S.C. Chapter 4 and Section 1906 to address identified problems and meet performance targets.'' (Emphasis added.) It was not our intent to discourage the use of innovative countermeasures, and we noted that point in the preamble to the IFR. We repeat here that innovative countermeasures that may not be fully proven but show promise based on limited practical application are encouraged when a clear data-driven safety need has been identified. With this change in the definition of countermeasure strategy, we are codifying the understanding that innovative countermeasures are acceptable grant activities (without the need for a separate definition of

[1] NHTSA also received a comment from ''Harley Anonymous'' stating that State highway safety grant programs should allow for our highways to be better maintained. Because this comment is outside the scope of the rulemaking, we do not address it here.

''innovative countermeasure strategies''), provided that the innovative countermeasure strategies are justified in accordance with § 1300.11(d)(4).

V. Highway Safety Plan (Subpart B)

A. General

Many commenters were concerned about administrative burdens, including some that were described as duplicative entries in the grant application process. (*See, e.g.,* CA OTS, GU OHS, KY OHS, MD HSO, MN OTS, MT DOT, NCSL, PA HSO, TN HSO, WA TSC, WY DOT.) NHTSA addresses specific concerns about the elements of the HSP under the appropriate heading later. However, NHTSA notes that as a general approach to reducing burdens, we are implementing GMSS, an enhanced administrative and financial electronic system that States will use to submit the HSP, apply for grants, receive grant funds, make HSP amendments, manage grant funds, and invoice expenses. This electronic system will replace the Grants Tracking System currently in use. In the course of preparing this final rule, NHTSA has been mindful of this soon-to-be-deployed new system, so that GMSS will align directly with applicable program requirements. For example, we plan for each discrete field within GMSS to be tied to a specific requirement in the regulation, and are methodically cross-walking and integrating all requirements. NHTSA expects that the new electronic application process will reduce uncertainty among States as to what level of information is required to satisfy application criteria. We believe that GMSS will streamline and simplify the application process, decrease the size of HSPs by eliminating content unnecessary to satisfy 23 CFR part 1300 requirements, and reduce duplicative entries related to grants.

B. Highway Safety Plan Contents

1. Performance Report (23 CFR 1300.11(b))

GHSA commented that ''[e]xpansion of Section 1300.11(b) [requiring a performance report] was not mandated by the FAST Act. This is an enhanced requirement that requires details that are more appropriate for the annual report. At the time the HSP would be submitted, a state may not have a full analysis of the reasons a performance target was missed during the previous year.'' CA OTS, DE OHS, GU OHS, and MD HSO agreed that such information is not available at the time of HSP submission, and some of these commenters suggested including this information in the annual report instead.

The Federal statute does, in fact, require that the HSP contents include ''for the fiscal year preceding the fiscal year to which the plan applies, a report on the State's success in meeting State safety goals and performance targets set forth in the previous year's highway safety plan.'' (23 U.S.C. 402(k)(4)(E).) This language, originally included in MAP–21, is continued without change by the FAST Act. To implement this statutory requirement, the IFR specified ''[a] program-area-level report on the State's progress towards meeting State performance targets from the previous fiscal year's HSP.'' The IFR also required a description of how the State will adjust its upcoming HSP to better meet performance targets, in cases where it has not met those targets.

NHTSA understands that FARS data for the previous year's HSP targets may not be available to assist in the required evaluation at the time of HSP submission, as some commenters have asserted. However, as we noted in the preamble to the IFR, NHTSA is simply requiring States to submit a high-level review of their progress in meeting performance targets to satisfy the statutory requirement, and States should provide a qualitative description of that progress when FARS data are not yet available. We further clarified during webinars that the performance report in § 1300.11(b) is an in-process program area assessment of the State's progress toward meeting performance targets identified in the preceding year's HSP, and that States may use their own more current data (in lieu of FARS data) to fulfill the requirements of § 1300.11(b). NHTSA encourages States to use additional non-fatality data sources and information to assess progress toward meeting previously established performance targets. This general level of information is not unduly burdensome, is specifically called for by the Federal statute, and is critical to the successful development of the HSP itself.

However, NHTSA agrees with commenters that the description of how the State will adjust its upcoming HSP to better meet targets that were missed is best provided in the annual report. Consequently, we are deleting the requirement to document it in the HSP at the time of submission and adding the requirement to include it as part of the annual report. (*See* § 1300.35(a).) Nevertheless, States should continuously evaluate their HSPs and change them as appropriate to meet the goal of saving lives and preventing injuries.

2. Performance Plan (23 CFR 1300.11(c))

Beginning with FY 2018 HSPs, the IFR required States to submit targets using a five-year rolling average for three performance measures common to both NHTSA and FHWA (total fatalities, serious injuries and fatality rates) and to identify identical performance targets for these common performance measures. DE OHS agreed in principle with standardizing these performance measures, but worried (in connection with the five-year rolling average) that ''the unintended consequence is constantly creating a moving target'' with likely further target changes. GHSA asserted that the common performance measures with FHWA use different baseline-setting methods, making it impossible for the SHSP, HSP and HSIP to be completely aligned on performance.

NHTSA agrees with the concerns of these commenters. In today's action, we are removing the requirement for States to provide documentation of current safety levels (baselines) for common performance measures in the HSP. NHTSA believes that this requirement caused confusion between NHTSA's and FHWA's performance measure baseline requirements and distracted some States from fully linking performance targets to activities.[2] States will continue to report identical targets for common performance measures, consistent with FHWA's rulemaking on performance measures [3] and NHTSA's regulation. In this context, States do not necessarily use baselines to set performance targets. Rather, baselines provide a point of reference regarding a State's performance target. States should review data sets and trends and consider a variety of internal and external factors (such as vehicle miles traveled, State laws, and investments) in setting their targets. Targets should be data-driven, realistic, and attainable, and they should guide program investments. The elimination of the requirement for documentation of current safety levels in the performance plan should alleviate the concerns of these commenters. The final rule continues the requirement for States to provide a description and analysis of

[2] Under FHWA's regulation, a State is determined to meet or make significant progress toward its targets when targets are actually met or the outcome is better than the State's baseline safety performance. At the time of HSP submission, FARS data are not available for the final year of the baseline period, but it is required under FHWA's regulation. Therefore, States were required to use different FARS data in their HSP than in their HSIP.

[3] National Performance Management Measures: Highway Safety Improvement Program, 81 FR 13882, Mar. 15, 2016.

their overall highway safety problems in the highway safety planning process section. (*See* § 1300.11(a).)

An individual commenter stated that more guidance is needed for an evidence-based performance plan, and questioned the need to cross-reference that plan in the HSP and in applicable Section 405 grant applications. Sample evidence-based performance plans are not available as guidance because such plans are inherently State-specific. However, Regional Offices are available to provide technical assistance to State HSOs in this area. As we noted in the IFR, MAP–21 and the FAST Act created greater linkages between the HSP and Section 405 grants. Allowing States to cross-reference planned activities already described in the HSP to apply for Section 405 grants, in lieu of requiring them to separately describe them again, is intended to alleviate the burden of separate (and, in some cases, redundant) application requirements, by creating a fully integrated single application for highway safety grants. (*See* discussion in Section V.B.3.) NHTSA declines to make changes to the rule in response to this comment.

NMA commented that the highway safety programs should be evaluated with safety performance metrics, not activity-based goals such as ticket quotas. NMA suggested that existing grants focus on enhancing driver education programs, encourage advanced driver skills for training novice drivers, and require States to reevaluate and optimize posted highway speed limits.[4] The Federal statute requires States to engage in ''sustained enforcement of statutes addressing impaired driving, occupant protection, and driving in excess of posted speed limits'' as a condition of receiving Section 402 funds. (23 U.S.C. 402(b).) The Federal statute further requires that HSPs be based on performance measures developed by NHTSA and GHSA in the report ''Traffic Safety Performance Measures for States and Federal Agencies'' (DOT HS 811 025). (*See* 23 U.S.C. 402(k).) That report includes activity measures related to seat belt citations, impaired driving arrests and speeding citations. Finally, the Federal statute requires NHTSA to implement and the States to participate in not less than three national high-visibility enforcement campaigns every year related to impaired driving and occupant protection. (*See* 23 U.S.C. 402(b); 23 U.S.C. 404.) NHTSA may not waive these statutory requirements. Moreover, decades of research demonstrate that one of the most effective highway safety programs is high-visibility enforcement, which combines public outreach and education with focused enforcement of traffic safety laws, such as laws requiring seat belt use or prohibiting drunk driving. NHTSA notes that States are not required to submit a target for citations and arrests in the HSP, and in fact, no State submitted a target for violations and arrests in its grant applications. NHTSA makes no change to rule in response to this comment.

3. Highway Safety Program Area Problem Identification, Countermeasure Strategies, Planned Activities and Funding (23 CFR 1300.11(d))

The IFR provided that for each countermeasure strategy, the HSP must include project-level information, including identification of project name and description, subrecipient/contractor, funding sources, funding amounts, amount for match, indirect cost, local benefit and maintenance of effort (as applicable), project number, and funding code. NHTSA received the most comments regarding this requirement. (*See, e.g.,* CA OTS, CT HSO, DE OHS, GHSA, GU OHS, MD HSO, MN OTS, MT DOT, NY GTSC, TN HSO, WY DOT, 5-State DOTs.) Commenters stated that the request for detailed project information was a significant and burdensome change.[5] They noted that the HSP is a planning document for the upcoming year that is produced months in advance, when States have clarity on general program direction but not on project details because States have not yet negotiated with subrecipients on grant proposals. They stated that imposing this level of detail would require substantial updates and revisions to the HSP as information changes after initial HSP development.

NHTSA appreciates this feedback. We understand the commenters' point that, at the time of HSP submission, States may not have information about the discrete projects that are to be placed under agreement, as project negotiations may still be unfolding and may even continue throughout the grant year. In response to these concerns, NHTSA is making changes in the level of detail required to be reported about projects at the HSP submission stage. Today's action changes the granularity of reporting, by clarifying that States are not expected to identify discrete formalized projects with executed agreements at the time of HSP submission.[6] Consistent with that approach, NHTSA is reducing the items required to be reported under § 1300.11(d)(2), as further described below.

However, NHTSA is not removing in its entirety the requirement to provide, at the HSP submission stage, details about activities the State is planning to undertake. In view of the recent Federal statutory change introducing a performance-measures-driven process,[7] States *do* need to identify their planned activities (*i.e.*, types of projects they plan to conduct) in sufficient detail in the HSP to show how they plan to meet their performance targets. The broad program-level descriptions contained in HSPs submitted in earlier years under different Federal authorizing legislation do not provide sufficient information to determine whether a State's chosen performance targets are reasonable and data-driven. Of equal importance, the IFR's streamlined approach of allowing States to point to activities already identified in the HSP to satisfy Section 405 grant application requirements would be undermined if insufficient detail is provided in the HSP, jeopardizing a State's qualification for those grants. Therefore, NHTSA is retaining the requirement for States to provide, at the time of HSP submission, a robust description of their *planned activities,* and within those planned activities to identify the Federal funding source (*i.e.*, Section 402, 405, 1906), eligible use of funds (formerly referred to as program funding code), intended subrecipients, and at the aggregate level, good faith estimates of funding amount, match, and local benefit. NHTSA is deleting the requirement for States to report maintenance of effort, indirect cost, and project number. This level of detail is the minimum necessary to adequately convey the State's plans and priorities for distribution of grant funds and to support the submission requirements aligning Section 405 grant applications with the HSP contents. NHTSA is confident that this more generalized level of information is readily available to a State by the time of HSP submission, in the exercise of successful planning. In today's action,

[4] NMA also recommended using grant funds for infrastructure improvements to improve highway safety. We do not address this comment as the Federal statute does not permit NHTSA grant funds to be used for road construction projects.

[5] For example, MN OTS stated that reporting details at the subrecipient level for each project will greatly increase the amount of work.

[6] However, States will be required to report discrete project-level information as project agreements are executed during the grant year, as such information is necessary for adequate tracking of expenditures and therefore a precondition for payment. These requirements are discussed later, under the sections for amendments to the HSP (§ 1300.32) and vouchers (§ 1300.33).

[7] The Federal requirement for performance measures applied to State Highway Safety Plans beginning in FY 2014 under MAP–21.

NHTSA amends § 1300.11(d)(2) accordingly to reflect these changes and is also making corresponding changes to the level of information required in § 1300.11(e) Teen Traffic Safety Program.[8] NHTSA is making conforming amendments throughout part 1300, including the definition of Highway Safety Plan, the definition of project, and the application requirements for Section 405 and Section 1906 grants, to reflect this understanding that States will provide information about ''planned activities'' (rather than specific projects) at the time of HSP submission. Later in this preamble, NHTSA explains that States must amend their HSPs to include specific information about project agreements. (*See* § 1300.32.)

As an illustration of this process, NHTSA provides the following example. If a State's problem analysis shows an overrepresentation of unrestrained passenger vehicle occupant fatalities in the mostly rural southeastern corridor of the State, and the State has chosen high-visibility enforcement of its occupant protection laws as a countermeasure strategy, the State need not identify discrete projects under agreement with every law enforcement agency to which grant funds are to be offered. Rather, the State must generally describe the planned activities (*e.g.*, intent to fund overtime law enforcement of occupant protection laws in the 10 local jurisdictions surrounding X city that show the lowest percent of occupant protection restraints, based on State data), and provide the required aggregate estimates.[9] The State must provide a robust description of the types of projects it intends to enter into, demonstrating support for the chosen countermeasure strategy and evidence that it relates to the State's problem identification, which will in turn help the State meet its performance target. Following HSP approval, States are expected to develop specific project agreements fitting within the general description of these planned activities, and these project agreements will be reported as HSP amendments and form the basis for the payment of vouchers. (*See* §§ 1300.32 and 1300.33.) Given the annual nature of the HSP, States should develop and enter into project agreements early in the grant year so that they have sufficient time to execute projects to meet their annual performance targets.

DE OHS stated that it was an unnecessary administrative burden to require data analysis to support the effectiveness of already proven countermeasures in § 1300.11(d)(3). The Federal statute requires ''data and data analysis supporting the effectiveness of proposed countermeasures.'' (23 U.S.C. 402(k)(4)(C).) NHTSA agrees that the effectiveness of proven countermeasures is already known, that data and data analysis are well-established for these countermeasures, and that further information is unnecessary in these cases. Therefore, NHTSA is removing this requirement for proven countermeasures, and requiring only that States explain their rationale for selecting the countermeasure and allocating grant funds. States must, however, include additional justification for innovative countermeasures, as provided in § 1300.11(d)(4), such as research, evaluation and/or substantive anecdotal evidence to demonstrate their potential. NHTSA is changing the rule accordingly.

CA OTS, GHSA and GU OHS commented that the IFR expanded on the requirements for a traffic safety enforcement program (TSEP). The IFR set forth the requirement for an evidence-based traffic safety enforcement program (TSEP) by allowing States to cross-reference projects in the HSP that collectively constitute the State's data-driven and evidence-based TSEP. This was a change from the previous requirement for a narrative description of the TSEP in the HSP. In the IFR, NHTSA explained that allowing States to cross-reference projects already identified under countermeasure strategies was intended to alleviate the burden of duplicative entries.

As noted earlier, the Federal statute requires that States maintain activities for ''*sustained* enforcement of statutes addressing impaired driving, occupant protection, and driving in excess of posted speed limits.'' (23 U.S.C. 402(b) (emphasis added).) Many activities a State conducts with Federal funds include traffic safety enforcement, and the category of the subrecipient is generally finite and known (*i.e.*, law enforcement agencies). These same activities also form the basis of various Section 405 requirements (*e.g.*, occupant protection plan, seat belt enforcement criteria, high risk population countermeasure programs criteria, impaired driving plan). The IFR allowed States to point to these projects in the TSEP to support other parts of their applications, thereby reducing duplicative data entry. However, with the revision noted earlier (from projects to planned activities), NHTSA believes that the burden will be reduced. NHTSA also expects that the implementation of GMSS will further reduce the burden by allowing States to link planned activities that constitute the TSEP.

CA OTS, GHSA and GU OHS stated that requiring States to continually adjust plans to update TSEP activities is burdensome. The IFR required States to describe how they plan to ''monitor the effectiveness of enforcement activities, make ongoing adjustments *as warranted by data,* and update the countermeasure strategies and projects in the HSP, *as applicable*.'' (emphasis added.) This IFR provision did not require the State to continually adjust TSEP activities, but only *as warranted by data.* As a general matter, NHTSA does not expect that States will need to adjust TSEP activities continuously in an annual HSP. However, the HSP is not a static plan, and States should be prepared to address highway safety problems as the need arises.[10] NHTSA declines to amend this requirement.

MN OTS asked whether areas ''most at risk'' in the TSEP were defined by absolute numbers of fatalities or by over-representation in fatality rates. NHTSA defers to the States to make this determination as part of their problem identification process. Generally, States rely on a variety of data sources, including State-specific data, for problem identification. Whatever the source, the State's process for problem identification must be documented in the HSP pursuant to § 1300.11. NHTSA encourages States to seek technical guidance from Regional Offices for questions regarding this requirement. Accordingly, NHTSA makes no changes to the rule in response to this comment.

The IFR continued the statutory requirement that States provide assurances that they will implement activities in support of national high-visibility law enforcement mobilizations coordinated by the Secretary of Transportation. (*See* 23 U.S.C. 402(b).) In addition to providing such assurances, States must describe in their HSP the planned high-visibility enforcement strategies to support national mobilizations for the upcoming grant year and provide information on those activities. CA OTS, GHSA, GU OHS and MN OTS commented about the requirement in § 1300.11(d)(6) to submit information regarding mobilization participation. These

[8] In striking this balance to reduce burdens at the application stage, NHTSA is mindful that many other Federal grant programs require up-front details of specific project agreements.

[9] States are to provide good faith estimates of funding amount, match, and local benefit at the planned activities. (*See* § 1300.11(d)(2).)

[10] However, States will need to amend their HSP when they execute or change a project agreement.

commenters stated that specific metrics from high-visibility enforcement campaigns are not available at the time of HSP development and should be eliminated from the HSP application requirement. In the April 27, 2017 webinar, NHTSA explained that we were seeking data from prior year mobilizations to support the State's planned participation in upcoming national campaigns. However, in response to these comments, NHTSA is deleting the requirement to provide these metrics in the HSP submission. Because we believe that such metrics contain information that is important for evaluating a State's participation in the national campaigns, we are moving this requirement to the annual report in § 1300.35. This will lessen the up-front burden, while still generating data that is important to highway safety planning.

WA TSC commented that many local agencies voiced concern that the dates of the mobilizations were not relevant to their jurisdictions, but that funds were needed at large local events and activities. The Federal statute requires NHTSA to conduct three national campaigns and States to participate in these national campaigns. (*See* 23 U.S.C. 402(b); 23 U.S.C. 404.) NHTSA understands that the dates for these three campaigns may not be of similar relevance for every local jurisdiction across the nation. However, State HSOs may use Federal funds to support local events and activities in addition to participating in the national events at other times of the year. NHTSA supports the use of Federal funds on high-visibility enforcement, which is one of the most effective countermeasure strategies. No changes to the rule are made in response to this comment.

4. Certifications and Assurances (23 CFR 1300.11(g); Appendix A)

Each fiscal year, the Governor's Representative (GR) for Highway Safety must sign the Certifications and Assurances (C & A) set forth in Appendix A to Part 1300, affirming that the State complies with all requirements, including applicable Federal statutes and regulations, that are in effect during the grant period. Requirements that also apply to subrecipients are noted under the applicable provisions in the C & A.

GHSA and the NY GTSC expressed concern about the revised nondiscrimination provisions in the C & A. GHSA suggested that these revised provisions, such as the requirement that States include specific nondiscrimination language in every contract and funding agreement, exceed current Federal and State [11] requirements. GHSA asked NHTSA to explain and justify these changes, which the NY GTSC characterized as burdensome.

NHTSA modified the language in the C & A's nondiscrimination provisions to ensure that NHTSA grantees understand the full scope of responsibilities required of a U.S. Department of Transportation (DOT) grantee in order to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), as implemented by DOT's Title VI regulation, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 (49 CFR part 21). These revisions did not expand or otherwise change the legal obligations that have always applied to NHTSA grantees under Title VI and DOT's regulation, including the flow-down requirement for States to insert non-discrimination language in their funding agreements—they simply clarify those obligations.

The IFR provided NHTSA with an opportunity to update the assurance language to better detail existing requirements in DOT's Title VI regulation and Order. Compliance with these well-established Title VI requirements is a precondition of receiving a grant. It is a universal Federal requirement, and not a likely source of undue burden on State funding recipients, which for decades have included similar assurance language covering a wide range of ''flow down'' obligations under other Federal laws in their Federally assisted agreements (*e.g.,* Buy America Act, Hatch Act, the Anti-Lobbying Act, Debarment and Suspension Requirements). NHTSA declines to amend the rule in response to these comments.

In this final rule, NHTSA is also providing a general update to the certification regarding suspension and debarment. The purpose of the update is to use terms such as ''primary tier'' that are consistent with the suspension and debarment regulation at 2 CFR part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement); to make clear the existing responsibilities of Federal grantees to ensure that its principals are not suspended, debarred or otherwise ineligible to participate in covered transactions such as grants; and to provide the current web address where suspension and debarment information is available. The update does not create new substantive requirements for grantees.

Finally, NHTSA is amending the C & A regarding seat belt use policy as the information referenced in the C & A, such as Buckle Up America, is no longer available on NHTSA's website. This, too, is a non-substantive change.

C. Special Funding Conditions for Section 402 Grants (23 CFR 1300.13)

CA OTS and GHSA asserted that State HSOs would need additional Federal funding to modify existing electronic grant systems and increased personnel to track and verify maintenance of effort at the project level. NHTSA understands that State HSOs may need additional resources to modify their electronic grant systems and to handle administrative tasks related to the vouchering process. In response to these concerns, NHTSA is increasing the percentage States may use for Planning and Administration (P & A) activities from 13 percent to 15 percent in the final rule.[12] (*See* § 1300.13(a)(1) and Appendix D.) NHTSA encourages States to use the additional P & A funding to update their electronic systems, as necessary, to work with GMSS. Such updates can be expected to further reduce burdens on States.

The FAST Act added a requirement that States that have installed automated traffic enforcement systems must conduct and submit to NHTSA a biennial survey, which must then be made available on a website of the Department of Transportation. NHTSA codified this statutory requirement in the IFR. NHTSA received comments from CA OTS, CO DOT, DE OHS, GHSA, GU OHS, MD HSO, NY GTSC, TN HSO and WA TSC that this requirement was too burdensome and that NHTSA should provide guidance to make it less burdensome. MD HSO requested a specific survey form to provide uniform data across States. GHSA noted that as currently provided, States will need to include lists of and information on all systems in the State. GHSA also asked for ''the specific definition of 'automated traffic enforcement systems'.'' [13]

[11] Note that State law requirements are not relevant to the legal obligations created under Title VI.

[12] The 50 percent match requirement will continue to apply to all P & A expenses, in accordance with Appendix D.

[13] GHSA asked other questions, such as which details would need to be provided in the list, whether the systems must be listed by intersection or would the number of units in a political subdivision be sufficient, what data points would be required to account for transparency, accountability and safety, what points should be included in the required comparison of systems to

Continued

The FAST Act defines ''automated traffic enforcement system'' as ''any camera which captures an image of a vehicle for the purposes only of red light and speed enforcement, and does not include hand held radar and other devices operated by law enforcement officers to make an on-the-scene traffic stop, issue a traffic citation, or other enforcement action at the time of the violation.'' (23 U.S.C. 402(c)(4)(B).) This statutory definition is clear and unambiguous and does not require further interpretation. Accordingly, NHTSA makes no changes to the rule in response to this comment.

In response to the other questions from GHSA about what to report and concerns from commenters that the requirement is too burdensome, NHTSA notes that the FAST Act identifies with specificity the contents of the survey [14] and that Congress has directed States with automated traffic enforcement systems to provide this information. Accordingly, in the final rule, NHTSA adopts the statutory language without change.

D. Review and Approval Procedures (23 CFR 1300.14)

The IFR continued the language from the MAP–21 rule that States must respond ''promptly'' to NHTSA's questions about State grant applications. NHTSA received comments from CA OTS, CNMI DPS–HSO, GHSA, GU OHS and an individual commenter that the word ''promptly'' was ambiguous and a more definitive time frame was needed. Since the inception of the statutory requirement for a single application process for FY 2014 applications, NHTSA's practice has been to seek clarifying information from States regarding their application, when necessary,[15] to provide the greatest opportunity for States to qualify for grants. With the new FAST Act requirement reducing the time for HSP approval from 60 days to 45 days, the amount of time NHTSA can provide States to respond to clarifying questions has been significantly reduced.

The questions NHTSA asks vary from program to program and from State to State, with some questions requiring more comprehensive responses and others requiring simple responses. In seeking clarifying information from States, NHTSA strives to provide as much time as possible for States to respond to the questions. As these are formula grant programs, award determinations and funding distribution amounts for each of the grant programs cannot be made until all issues are resolved. NHTSA believes that it is unfair to delay these determinations, affecting *all* States, due to unresolved issues in some States, and especially in view of the new 45-day statutory review deadline. For this reason, we ask all States to take special care in their applications to minimize the need for clarification, and to respond ''promptly'' to any request for clarifying information. In individual requests, NHTSA provides a deadline for States to respond depending on the complexity of the question and the time remaining to complete application review. NHTSA declines to amend the regulation to provide a specific timeframe, as this would reduce flexibility, and might compromise a State's opportunity to demonstrate compliance.

VI. National Priority Safety Program and Racial Profiling Data Collection Grants (Subpart C)

Advocates stated that some of the changes to the highway safety grant program requirements were excessively lenient and weakened the program by allowing States to qualify with sub-optimal provisions and laws. As Advocates did not specifically identify which provisions it believed were sub-optimal, NHTSA is unable to address the comment. We note, however, that in the case of law-based grants (*e.g.,* ignition interlock, distracted driving, graduated driver licensing), NHTSA's implementation was strictly in accordance with the Federal statute. Where the Federal statute permitted leniency (*e.g.,* secondary enforcement for special distracted driving grants in FY 2017), NHTSA implemented that provision without change.

In the IFR, NHTSA included Appendix B as the required application format for National Priority Safety Program Grants and Racial Profiling Data Collection grants. NHTSA expects to implement GMSS before FY 2019 applications are due. Parts 1 through 10 of Appendix B—Application Requirements for Section 405 and 1906 Grants will be systematically captured and organized within GMSS. However, under the GMSS process, States will still be required to upload a signed copy of Appendix B, certifying that the GR has reviewed the information submitted within GMSS in support of the State's application for 23 U.S.C. 405 and Section 1906 grants and that funds will be used in accordance with statutory requirements. In the final rule, NHTSA is also correcting language in Appendix B to mirror the regulatory text.

A. Maintenance of Effort (23 CFR 1300.21, 1300.22 and 1300.23)

Under the FAST Act, in order to receive a grant for occupant protection programs, impaired driving programs and traffic safety information system improvement programs, States are required to provide a certification that the lead State agency is maintaining its aggregate expenditures for those programs at or above the average level of such expenditures in FY 2014 and FY 2015—the ''maintenance of effort'' (MOE) requirement. This is a statutory change from the earlier requirement to maintain such expenditures from ''all State and local sources.'' As a result of the FAST Act change, States no longer have to certify that they are maintaining these expenditures across all State agencies and at the local level, a significant reduction in administrative burden. Instead, the FAST Act limits the inquiry and certification to expenditures by the ''lead State agency.'' The IFR implemented this revised certification requirement without change.

CA OTS, CNMI DPS, GHSA, and GU OHS submitted similar comments requesting that NHTSA define the term ''lead State agency'' as the HSO in each State. NHTSA declines to do so, as this would be inconsistent with the Federal statute. The FAST Act requires States to certify that ''the lead State agency responsible for programs described in [sections identifying the relevant Federal grants] is maintaining aggregate expenditures at or above the average level of such expenditures in the 2 fiscal years prior to the date of enactment of the FAST Act.'' (23 U.S.C. 405(a)(9).)

This language does not provide NHTSA with authority to specify the lead State agency, nor is NHTSA well-situated to do so. Designating one common agency in all States as the lead State agency ignores the diverse subject areas involved and the likeliness that States assign responsibility and expenditure authority for those many areas in different ways, depending on

DOT guidelines, what if the information such as that from a local unit of government is not made available to the SHSO, and how should mobile systems be evaluated?

[14] Specifically, the survey must include a list of automated traffic enforcement systems in the State; adequate data to measure the transparency, accountability, and safety attributes of each automated traffic enforcement system; and a comparison of each automated traffic enforcement system with Speed Enforcement Camera Systems Operational guidelines (DOT HS 810 916, March 2008); and Red Light Camera Systems Operational Guidelines (FHWA–SA–06–002, January 2005).

[15] For example, clarifying or additional information is necessary to assist in determining compliance when a State has submitted an incomplete grant application, an incorrect or incomplete citation to its qualifying State laws, or failed to make a required certification. In connection with FY 2018 applications, NHTSA asked more than 250 questions from States before NHTSA could complete application reviews and grant determinations.

State government structures or State laws and procedures. As a related point, NHTSA is aware that some State HSOs are funded exclusively with Federal grant funds, and in such cases, would not make any ''aggregate expenditures'' of State funds in the identified covered areas—such HSOs could not reasonably be identified as the lead State agency without rendering the FAST Act MOE requirement meaningless. The statute does not support the restrictive approach being sought by these commenters, and NHTSA declines to remove the responsibility for this determination from the State, where it properly resides. More specifically, each State must select the lead State agencies and provide the required certifications. NHTSA makes no changes to the process identified in the IFR.

GHSA asserted that NHTSA ''arbitrarily limited states to one designation [of lead State agency] until the next reauthorization.'' While it is true that the IFR does not contemplate a change in lead State agency designation, that result is dictated by the Federal statute, which specifies a fixed baseline for maintenance of effort calculations, determined on the basis of expenditures in the two fiscal years prior to the date of enactment of the FAST Act. Once identified, this baseline is not subject to change, and NHTSA does not have the authority under the statute to allow another approach.[16]

MN OTS and an individual commenter requested assistance in understanding how to apply the term ''lead State agency.'' GHSA quoted FAST Act conference report language stating the intent to provide ''additional flexibility to allow states to certify compliance with maintenance of effort requirements. Therefore, the conferees expect that NHTSA should reasonably defer to state interpretations and analyses that underpin such certifications.''

As guidance in applying the lead State agency to the MOE requirement, NHTSA points to the April 27, 2017 webinar, during which we identified three factors that a State should consider in selecting lead State agencies. In an ideal process, a State would make an assessment and selection based on the following criteria: State expenditures (the State agency that spends the most State funding in the program area); program involvement (the State agency that participates in significant decisions affecting the program area); and overall leadership (the State agency that exhibits the most control or authority over the program area either as directed in law or by determination of senior government officials (e.g., the Governor)). Consistent with the statement of the conferees, NHTSA will defer to a State's reasonable determination of lead State agencies regardless of the documented criteria used. A GR using the criteria identified here to document the choice would ensure that a reasonable selection has been made.

As a steward of Federal funds, NHTSA has a continuing responsibility to ensure that States meet grant requirements, including the reduced but still-existing MOE requirements under the FAST Act. NHTSA wants to assist States in meeting these requirements up front to avoid potential repayment issues later. Under FAST Act requirements, States are responsible for identifying lead State agencies for the covered areas, for performing the necessary baseline calculations to identify the level of State expenditures that must be maintained during the grant year, and for monitoring activities to ensure that lead State agencies maintain required expenditures. Therefore, while NHTSA will accept an executed certification submitted in the application process, States should retain adequate documentation of their process for audit and oversight purposes and make the documentation available to Regional Administrators upon request.

An individual commenter requested confirmation that fiscal years 2014 and 2015 would continue to be used as the baseline years in MOE determinations under the FAST Act. The baseline years—the years used to determine the average level of expenditures in each program area—are specified in the Federal statute as the two fiscal years prior to the date of enactment of the FAST Act, which occurred in fiscal year 2016. Accordingly, NHTSA confirms that fiscal years 2014 and 2015 will be used as the baseline for determining maintenance of effort compliance.

B. Occupant Protection Grants (23 CFR 1300.21)

1. Child Restraint Inspection Stations (23 CFR 1300.21(d)(3))

The FAST Act continued the MAP–21 requirement that States have ''an active network of child restraint inspection stations.'' In the IFR, NHTSA was guided by earlier State concerns that submission of comprehensive lists of child restraint inspection stations was burdensome and unnecessary. NHTSA's intent in the IFR was to achieve a balance between burdens and the need to ensure that inspection stations and events were addressing populations where occupant protection issues persist, such as those in rural areas and at-risk groups. Therefore, the IFR directed the States to include a table in their HSP identifying where inspection stations are located, what population groups they serve—urban, rural, or at-risk, and certifying that they will be staffed with nationally certified child passenger safety (CPS) technicians.

Some commenters asserted that NHTSA's changes were burdensome and that States would have difficulty including the table with the required information. CA OTS, GHSA, GU DPS and MN DPS asserted that States would be unable to provide complete demographic information on the populations served or to certify to CPS technician staffing for all inspection stations and events throughout the State. According to these commenters, some of these stations and events are activities that do not involve the State HSO, and therefore, the State does not have adequate information about participation, staffing and timing. These commenters propose that NHTSA require States to list and certify only to inspection stations and events for which States have grant activity.

MN DPS asked how it would be expected to define which events serve rural, urban, or at-risk populations, as the State would not ask participants about income or racial background or support organizations that asked such questions. GHSA indicated that the IFR preamble provides that States must indicate where stations and events are located, but that the regulatory text and Appendix B specify that the table need only provide the total number of stations/events and the total number that serve rural and urban areas and high risk populations. GHSA proposes that NHTSA follow the regulatory text, with States listing only summary total numbers.

NHTSA does not require States to report child restraint activities unrelated to their grants and sponsored activities. However, States must be able to demonstrate an ''active network''. To do so, States may provide the required information and certification for inspection stations and events that they sponsor or support and/or provide such information for non-State sponsored or supported activities, as necessary, to demonstrate an active network of child restraint inspection stations or events.

[16] NHTSA recognizes that a State may on occasion reorganize governmental units, which could result in a fundamental shifting of roles and responsibilities for various programs. While such a State may identify a different lead State agency going forward, the statutorily specified baseline will remain the same as first reported. Absent a shift in roles and responsibilities, NHTSA expects that States will not change their lead State agency designations.

In either case, the State must certify that these inspection stations and events are staffed with at least one nationally certified CPS technician. NHTSA also clarifies that it is not requesting detailed demographic information for each inspection station—just the State's problem-identification-driven determination of the population intended to be served—and there is no expectation that attendees would be surveyed for demographic details.

NHTSA is amending the IFR to clarify the level of information to be provided. Under the final rule, a State must identify in the HSP countermeasure strategies and planned activities demonstrating an active network of child passenger safety inspection stations and/or inspection events based on the State's problem identification. As part of the State's problem identification process, the description should also include information on the geographic problem areas in the State where the countermeasure strategies and activities are planned, but does not require the State to identify the location of each inspection station or event. At a minimum, the countermeasure strategies and planned activities must include *estimates* for: (1) The total number of planned inspection stations and events during the grant year; and (2) within that total, the number of planned stations and events serving each of the following population categories: Urban, rural, and at-risk. Where at-risk is specified, States must further specify the *particular* at-risk populations (*e.g.,* low-income, ethnic minority). These requirements are necessary to ensure that States submit sufficient detail about planned activities to demonstrate a program that is based on problem identification. A single numeric total for inspection stations, without information on general location or population served, does not provide evidence that States are addressing the emerging areas that they, themselves, have identified as presenting safety challenges during their highway safety planning process. This level of detail is also necessary to demonstrate an ''active network of inspection stations,'' as required by the Federal statute.

As individual project agreements are executed to fulfill this requirement, the HSP must be amended to reflect them (as explained later), and Regional Administrators will review these project agreements to ensure that, together, they evidence an ''active network'' of child restraint inspection stations. NHTSA is retaining the requirement for States to certify that all stations and events identified by the State as its active network will be staffed by CPS technicians. Upcoming changes to the GMSS application system for FY 2019 should further simplify this process.

2. Child Passenger Safety Technicians (23 CFR 1300.21(d)(4))

The FAST Act continued the MAP–21 requirement that States have a plan to recruit, train and maintain a sufficient number of CPS technicians. The IFR allowed States to document this information in a table and submit it as part of the annual HSP, in lieu of a separate submission setting forth a detailed plan. In the table, States were required to submit the number of classes to be held, their location, and the estimated numbers of trainees needed to ensure full coverage of child passenger inspection stations and events by nationally certified CPS technicians. NHTSA intended that eliminating the requirement for the detailed plan would reduce burdens.

MN DPS commented that it would not be able to obtain demographic information about technicians. During the FY 2018 application process, a number of States asserted similarly that they would not have these specific class details at the time of application. MN DPS asked for more clarity on the meaning of a ''sufficient number'' of child passenger safety technicians. Finally, MN DPS stated that it would be easier to provide narrative information on the recruiting plan than to list class and attendee information, and noted that this requirement is duplicative because NHTSA asks for it under both the Section 402 and the Section 405 applications.

As an integral part of the HSP planning process, States must have information about their training plans for CPS technicians for the upcoming grant cycle at the time of HSP submission. This information is also necessary for a State to qualify for a Section 405 Occupant Protection grant, whether it is a high or lower seat belt use rate State. NHTSA declines to further define the term ''sufficient number.'' What is a ''sufficient number'' of inspection stations (and their appropriate distribution to address safety needs), is dependent on the problem identification process, and will vary based on unique circumstances in each State. That is why NHTSA places strong emphasis on the State's problem identification and selection of countermeasure strategies.

In keeping with the problem identification process, NHTSA is clarifying that the requirement is for States to identify in the HSP countermeasure strategies and planned activities for recruiting, training and maintaining a sufficient number of CPS technicians based on the State's problem identification. At a minimum, the State must submit an estimate of the total classes to be held and the estimated total number of CPS technicians to be trained in the upcoming grant year to ensure coverage of child restraint inspection stations and events by CPS technicians. As part of the State's problem identification process, the description should also include information on the geographic problem areas in the State where the countermeasure strategies and activities are planned, but does not require the State to identify each class or its location at this time. As in the case for child restraint inspection stations, discussed above, the HSP must be amended as individual project agreements are executed to fulfill this requirement, and Regional Administrators will review these project agreements to ensure that, together, they evidence a sufficient number of CPS technicians to meet State needs under the problem identification process. Upcoming changes to the GMSS application system for FY 2019 should further simplify this process, facilitating the linkage of information in the HSP with information needed to meet this requirement.

NHTSA does not intend to impose duplicative requirements. In fact, a guiding principle in the drafting of the IFR was to remove duplicative requirements, allowing States to point to sections of the HSP where information has already been provided. The Section 405 statute specifically requires States to submit a plan for recruitment, training and retention of CPS technicians. To the extent that a State chooses to provide *all* of the information required here in the body of the HSP as part of its Section 402 program, the State need not repeat it again elsewhere—the IFR provided that the State need only identify where the information is located in the HSP, and NHTSA is not changing that flexibility.

3. Seat Belt Enforcement (23 CFR 1300.21(e)(3))

The IFR set forth the criterion requiring a State to conduct sustained (on-going and periodic) seat belt enforcement at a defined level of participation during the year based on problem identification in the State. States are required to show that enforcement activity involves law enforcement covering areas where at least 70 percent of unrestrained fatalities occur. States are already required to include in the HSP an evidence-based traffic safety

enforcement program and planned high-visibility enforcement strategies to support national mobilizations (§ 1300.11(d)(5) and (6)), and this criterion is consistent with that requirement.

5-State DOTs commented that using unrestrained fatalities as the only metric would be problematic because resource constraints make it difficult to secure law enforcement participation in all areas. 5-State DOTs stated that the population metric used under the MAP–21 rulemaking (70 percent of the State's population) is more flexible and that there is no rationale for the change under the IFR. MD DOT and MN DPS stated that the geographic area under the unrestrained fatalities metric would be difficult to define. MD DOT also noted that using occupant fatalities alone in determining areas of enforcement creates the possibility of basing projects on small data sets that do not always paint a clear picture of the problem. MD DOT asserted that highway safety programs are generally based on data that includes both fatal and serious injury crashes to compile a more definitive illustration of where a specific problem area exists, and recommended that this section capture the data sets from which performance measures are actually determined—fatal and serious injury crashes. An individual commenter asked why NHTSA selected 70 percent for the metric.

NHTSA declines to change the metric to ''70 percent of the State's population.'' As noted in the IFR, a metric that is defined by the location of the problems sought to be addressed is based on a problem identification approach. States are already required under Section 402 to use problem identification when they develop their occupant protection countermeasures for HSPs each year. The statutory purpose of increasing occupant protection through these programs is best effectuated when States are targeting their problem areas rather than simply following a population-based approach. However, NHTSA agrees with MD DOT that including serious injuries as well as fatalities is fully consistent with the problem identification process and may in fact add to the value of the process. For this reason, but also cognizant that some States may not have data on unrestrained serious injury crashes, NHTSA amends the IFR to permit the use of either (1) fatalities or (2) both fatalities and serious injuries as the unrestrained population metric.

NHTSA does not believe that this metric (with the change noted above) is problematic for States to address in their law enforcement efforts. States are not required under this criterion to have full law enforcement participation or to provide a detailed accounting of the geographic area covered by law enforcement. NHTSA understands that State and local law enforcement face challenges that are unique to each State, and that all resources may not be available in all areas. However, State law enforcement resources should be targeted to areas experiencing the problems—that is the core of the problem identification process.

C. State Traffic Safety Information System Improvements Grants (23 CFR 1300.22)

1. Traffic Records Coordinating Committee (TRCC) Requirement (23 CFR 1300.22(b)(1))

The IFR required States to provide the dates for three meetings that were held during the preceding fiscal year in order to ensure that States meet the statutory requirement that the TRCC meet three times a year. GHSA asserted that the regulatory text requires the submission of three proposed TRCC meeting dates while the preamble to the IFR indicates that States are not required to submit those proposed meeting dates. GHSA requested that NHTSA implement the language in the preamble because it is less burdensome. This concern appears to be a misunderstanding of the requirement. The regulatory text requires States to submit ''[a]t least three meeting dates of the TRCC during the 12 months immediately *preceding* the application due date.'' (Emphasis added.) No change to the regulation is required.

2. Quantifiable and Measurable Progress Requirement (23 CFR 1300.22(b)(3))

The Federal statute requires that States demonstrate quantitative progress in a data program attribute for a core highway safety database. CA OTS, DE OHS, GHSA, and an individual commenter stated that the requirement to provide a written description of performance measures with supporting documentation requires significant time and resources from State applicants. The IFR requirement (written description and supporting documentation to demonstrate quantitative improvement) has been in place since the MAP–21 rule. NHTSA does not believe it is unduly burdensome, and it is necessary for NHTSA to ensure that States meet the eligibility requirement created by Congress. NHTSA declines to amend the language.

CA OTS, GHSA, and GU OHS expressed concern that States that do not submit voluntary interim progress reports documenting performance measures will be found to be delinquent in stewardship of the program. NHTSA recommends submission of interim progress reports as a best practice to give States additional opportunities to receive NHTSA feedback and improve their applications prior to submission. However, the decision to submit such a report is purely voluntary, and the choice not to submit the report does not lead to any consequences for a State.

D. Impaired Driving Countermeasures Grants (23 CFR 1300.23)

1. Basic Impaired Driving Grants (23 CFR 1300.23(d), (e), and (f))

In the IFR, NHTSA eliminated several elements that were part of the grant application process under the MAP–21 rule. This streamlining resulted in the reduced requirement that the State submit only a single document (other than certifications and assurances)—a Statewide impaired driving plan—to demonstrate compliance with the Federal statute. GHSA asserted that this application process created ''additional data collection and reporting requirements for mid- and high-range States,'' stating that these were not required under the FAST Act and should be revised or deleted. CA OTS agreed, and sought to have the ''additional administrative burden'' removed.

The IFR requirement is consistent with the Federal statute, which conditions the award of grants to mid-range and high-range States on the convening of a Statewide impaired driving task force to develop a Statewide impaired driving plan. In the IFR, NHTSA set minimal application requirements for States to demonstrate that they convened the statutorily-required task force and developed the statutorily-required plan. To receive a grant, a State must include a narrative statement explaining the authority of its task force to operate and develop and approve the plan; the identification of task force members; and a strategic component that covers certain impaired driving areas based on NHTSA's Impaired Driving Guideline No. 8–a planning guideline that has been in place for decades and is familiar to all States as a tool used in the Section 402 program.[17] For a high-range State, the document also needs to include, on the basis of an assessment required under

[17] The Federal statute requires State highway safety programs to comply with Uniform Guidelines promulgated by NHTSA. (*See* 23 U.S.C. 402(a)(2).)

the Federal statute, sections addressing assessment recommendations and providing a detailed plan for spending funds on impaired driving activities. (*See* 23 U.S.C. 405(d)(3)(C).)

The IFR closely adhered to the statutory requirements, providing for additional context and information only where necessary to ensure that the mandated task forces and plans create a basis for serious consideration of impaired driving problems in a State. As neither of the commenters provided specifics about what they viewed as burdensome, NHTSA declines to make changes to these requirements.

Although NHTSA is not changing the requirements and is not defining a specific development process that States must use, we restate here the description provided in the IFR preamble of an optimal process. Such a process would involve a 10- to 15-member task force from different impaired driving disciplines meeting on a regular basis (at least initially) to review and understand the requirements, including the referenced Guideline for impaired driving plans, and to apply the principles of the Guideline to the State's impaired driving issues. The result should be a comprehensive strategic plan that forms the State's basis to address impaired driving issues. In contrast, a process that organizes a task force just days before the application deadline or that produces a plan consisting of only a list of activities or failing to cover the specified impaired driving areas would jeopardize the receipt of a grant under this section.

2. Alcohol-Ignition Interlock Law Grants (23 CFR 1300.23(g))

The IFR implemented a separate grant program for States that adopt and enforce mandatory alcohol-ignition interlock laws covering all individuals convicted of a DUI offense. The IFR repeated the three exceptions specified in the FAST Act that permit a convicted individual to drive a vehicle without an interlock. Specifically, a State's law may include exceptions from mandatory interlock use if—(1) an individual is required to drive an employer's motor vehicle in the course and scope of employment, provided the business entity that owns the vehicle is not owned or controlled by the individual; (2) an individual is certified in writing by a physician as being unable to provide a deep lung breath sample for analysis by an ignition interlock device; or (3) a State-certified ignition interlock provider is not available within 100 miles of the individual's residence.

NSC encouraged NHTSA to retain these ''three important grant exceptions'' to the requirements in the final rule. As the Federal statute mandates allowing these three exceptions, NHTSA must and will continue to allow them as part of the review process to determine whether a State's law meets the requirements.

3. 24–7 Sobriety Program Grants (23 CFR 1300.23(h))

The IFR implemented the statutory requirement that States meet two separate requirements for a 24–7 sobriety grant. The first requirement mandates that a State enact and enforce a law that requires all individuals convicted of driving under the influence of alcohol or of driving while intoxicated to receive a restriction on driving privileges for at least 30 days. The second requirement mandates that a State provide a 24–7 sobriety program.

AIIPA urged NHTSA to link the 24–7 grant program ''with a requirement to install and maintain installation of a state approved ignition interlock device.'' AIIPA asserted that the combined testing requirements of a 24–7 sobriety program and an ignition interlock device provide better protection than would the sobriety program alone. The Coalition of Ignition Interlock Manufacturers and Intoximeters jointly provided a similar comment.[18] NHTSA agrees with the commenters that employing a range of strategies to monitor offenders can identify program violators more effectively than using a single strategy. However, the Federal statute identifies the elements of compliance for ignition interlock and 24–7 sobriety program grants that a State must meet, and NHTSA does not have authority to take other approaches. Therefore, NHTSA declines to make interlock use a mandatory component of a 24–7 sobriety program grant or to combine the elements of both grant programs as the basis for compliance.

Intoximeters indicated its support for twice-per-day in-person breath testing at 12-hour intervals as the primary test method required under the grant. In its view, this test method is able to provide for quick sanctioning ''in the shortest period of time because the individual has appeared at the test site to submit to the test before law enforcement.'' NHTSA agrees that in-person testing allows for quick sanctioning of offenders, and States are encouraged to include this approach as part of the testing options available under a 24–7 sobriety program. However, the Federal statute allows States to comply using a variety of test methods besides twice-per-day testing. Such methods include continuous transdermal alcohol monitoring via an electronic monitoring device and alternative methods approved by NHTSA. The statute also does not create a preference for one test method over another. Although twice-per-day testing is a valuable strategy for 24–7 sobriety programs, it may not be practical to use in every situation depending on the offender's location, the number of offenders that a law enforcement agency may be required to monitor, or some other reason. Based on the flexibility afforded by the Federal statute, NHTSA declines to specify a single test method that must be used under the program.

For separate reasons, NHTSA believes that a flexible approach to testing is preferable to a rigid one that limits compliance options. Adopting a limiting approach could throw current State laws or programs out of compliance and prevent States from qualifying for a grant. Highly successful and well-established programs employ multiple test methods to monitor offenders. Such methods include twice-per-day testing at a location, urinalysis, drug patches, electronic alcohol monitoring devices, ignition interlock monitoring (provided the interlock is able to require tests twice a day without vehicle operation), and mobile alcohol breath testing. As long as a test method results in violators being identified in a reasonably swift fashion, NHTSA will accept its use by a State in a 24–7 sobriety program. Consequently, the final rule revises the permissible test methods under the program definition to identify additional test methods that may be used.

NHTSA does not intend to reduce flexibility, however, and a State may use a NHTSA-approved test method that is not identified in the regulation in fashioning its program, provided it aligns with the deterrence model that requires *swift and certain* sanctions for noncompliance. This approach is consistent with the Federal statute, which specifies that NHTSA has the discretion to approve other test methods.

With this understanding of approved test methods, States must take steps to identify the specific test methods they permit to be used to monitor offenders in their programs and clarify the frequency and time periods of those test methods. Nonspecific test methods or methods where determining test

[18] This comment raised other issues beyond the scope of this rule, such as what mandates a court should impose and the conditions under which they should be imposed. We do not address these issues here.

frequency is impossible or uncertain will not meet the definition of a 24–7 sobriety program under this section.

Intoximeters requested that NHTSA incorporate into the final rule the traditional principles of ''swift and certain'' deterrence noted in the IFR preamble as a basis for ensuring that State test methods allow for immediate sanctions of program violators. The identification of the deterrence model in the IFR preamble was intended as a general guideline to be used by States to ensure that their programs are successful. It is not intended to limit testing methods to only those that provide for immediate sanctioning. As NHTSA noted earlier, the statutory definition of a 24–7 sobriety program provides for more flexibility. In this final rule, NHTSA clarifies that test methods must be specified and that test frequency should be identifiable based on the test method used. We do not believe that the general deterrence model noted in the IFR preamble needs to be more specifically incorporated into the regulation.

Intoximeters commented that the ''data driven measures'' that are part of separate requirements for submitting a HSP under Section 402 should be incorporated into requirements for receiving a 24–7 sobriety program grant. The FAST Act creates specific requirements that States must meet in order to receive a 24–7 sobriety program grant. Adding the measures Intoximeters identifies to the 24–7 sobriety program grant requirements would alter the defined basis for receiving a grant under the statute. Although NHTSA encourages States to implement and review their 24–7 sobriety programs using the data-driven requirements and performance measures generally, NHTSA declines to make their use mandatory to receive a grant.

4. Use of Grant Funds (23 CFR 1300.23(j))

The FAST Act specifies the eligible uses of the grant funds, and the IFR codified those uses without change. Intoximeters asked whether certain expenditures are allowed under the Federal statute's general language allowing States to use grant funds for ''costs associated with a 24–7 sobriety program.'' Specifically, it asked whether the costs of ''24/7 program coordinators as well as computer or breath testing, transdermal testing equipment qualify for use of grant funds.'' In addition, with the understanding that many offenders pay the costs associated with a 24–7 sobriety program, Intoximeters asked ''whether there are limitations on the use of funds to purchase equipment or services that are used to generate income and potentially profits.'' The statute makes clear that grant funds are available to cover the costs of a 24–7 program, and this may include associated equipment and services. When the use of Federal grant funds generates income, special Federal rules apply. As States are the recipients of these funds, NHTSA believes that they are best situated to consider and evaluate issues related to the use of grant funds; States are encouraged to contact their respective Regional Offices as specific questions arise.

In the IFR, NHTSA inadvertently did not amend one of the eligible use of funds to reflect changes in the FAST Act. We update the rule to reflect the change. (*See* § 1300.23(j)(1)(ii).)

E. Distracted Driving Grants (23 CFR 1300.24)

NSC encouraged NHTSA to retain flexibilities such as by removing the requirement for escalating fines, allowing States to administratively certify to testing for distracted driving issues and establishing ''consolation'' grants. (NHTSA interprets ''consolation'' grants as the Special Distracted Driving Grants established under the FAST Act.) The ''flexibilities'' described by NSC are already afforded by the Federal statute, and NHTSA adopted these provisions without change in the IFR. Advocates commented that allowing States to qualify for grants with secondary enforcement laws weakened the distracted driving program. The FAST Act specifically permitted States to qualify for Special Distracted Driving grants in FY 2017 with secondary enforcement laws, and NHTSA adopted this provision without change in the IFR. (Note that the FAST Act made Special Distracted Grants available only for fiscal years 2017 and 2018. Because these grants are no longer available, NHTSA is removing the regulatory provisions related to Special Distracted Driving grants. (§ 1300.24(e) and (f).))

F. Motorcyclist Safety Grants (23 CFR 1300.25)

1. Motorcycle Awareness Program and Impaired Driving Program Data Requirements (23 CFR 1300.25(f) and 23 CFR 1300.25(h))

The Motorcycle Awareness Program criterion and the Impaired Driving Program criterion in the IFR required States to use State data consistent with § 1300.11 (providing for project-level information at the time of HSP submission) to support their performance targets and countermeasure strategies. CA OTS, 5-State DOTs, and GHSA recommended eliminating the requirement to provide crash data at the project level. These commenters asserted that States do not have such data at the time of grant application.

As NHTSA explained in the discussion under § 1300.11(d)(2), we agree that States may not have completed negotiations on project agreements at the time of HSP submission, and we have therefore removed the requirement for States to report discrete projects in the HSP, and instead require them to report planned activities. However, States must and do have access to crash data that will support the performance measures and countermeasure strategies under these two criteria. States continually collect crash data to identify problem areas and track trends in traffic safety. Moreover, for these criteria, the IFR provided ample flexibility—specifically, it allowed States to demonstrate compliance by using the most recent year for which final State crash data are available, but no later than three calendar years prior to the application due date. In view of this significant flexibility, we decline to eliminate the requirement to provide crash data under these criteria. The requirement is fundamental to problem identification and to the development of countermeasure strategies in the HSP.

2. Motorcycle Rider Training Course (23 CFR 1300.25(e))

MN DPS commented that the IFR unduly limits the number of entry-level rider training courses to four specified curricula. In fact, the IFR substantially simplified the requirement, while preserving the flexibility MN DPS desires. It replaced the requirement for States to submit documentation detailing their motorcycle rider training course with a simple certification from the GR. In the certification, the GR must simply identify the head of the designated State authority having jurisdiction over motorcyclist safety issues and certify that that official has approved and the State has adopted and uses one of four identified training programs.[19] NHTSA chose this approach to alleviate burdens in the vast majority of cases because almost all States use one of these four well-established and effective training programs, obviating the need for additional justification. However, the

[19] The four training programs are: The Motorcycle Safety Foundation (MSF) Basic Rider Course, TEAM OREGON Basic Rider Training (TEAM OREGON), Idaho STAR Basic I (Idaho STAR), or the California Motorcyclist Safety Program Motorcyclist Training Course (California).

IFR permitted an alternative option to allow a training course that is not one of the four identified in the regulation. Under that alternative, a State may develop a motorcycle rider training course that meets its unique regional needs and may use such a training course after approval by NHTSA that it meets the Model National Standards for Entry-Level Motorcycle Rider Training. Given this flexibility, NHTSA declines to make any changes to the rule.

CA OTS, GHSA and 5-State DOTs urged NHTSA to retain the option either to conduct training in a majority of counties or political subdivisions in the State or to conduct training in a majority of counties or political subdivisions that account for a majority of registered motorcyclists, as existed prior to the IFR. These commenters claimed that States lose flexibility in allocating very limited funds when restricted to the single option in the IFR. They asserted that, as long as a State provides justification for the selected sites, this flexibility would permit a State to consolidate training locations for multiple jurisdictions to reduce costs yet still reach the motorcycle riders of those jurisdictions.

The IFR required the State to offer at least one motorcycle rider training course in counties or political subdivisions that collectively account for a majority of the State's registered motorcycles. NHTSA removed the option of offering the training course in a majority of counties or political subdivisions for two reasons. First, it did not ensure geographically that the statutory requirement for a *Statewide* motorcycle rider training program would be achieved, potentially prejudicing rural areas. More significantly, it decoupled the training from the targeted population—it is important for training to be delivered in locations that serve populations where motorcycles are in use—not simply in large population centers.

The IFR's approach did not require training to be offered in *all* counties or political jurisdictions in the State, nor did it require that *only* those jurisdictions with most of the motorcycle registrations be included. States have the flexibility to offer training in any combination of counties or political jurisdictions and to consolidate training sites as they desire, as long as they meet the requirement that training is offered in counties or political jurisdictions that *collectively* account for a majority of the State's registered motorcycles. (The commenters acknowledged that many States use the majority of registered motorcycles approach.) Because NHTSA believes that the IFR requirement achieves important safety objectives while allowing ample flexibility, we decline to make changes to the rule.

3. Motorcyclist Awareness Program (23 CFR 1300.25(f))

The Federal statute requires the Motorcyclist Awareness Program to be ''developed by, or in coordination with, the designated State authority having jurisdiction over motorcyclist safety issues . . .'' The IFR made changes to streamline submission requirements from what was previously required. The IFR required a simple certification from the GR, identifying the head of the designated State authority having jurisdiction over motorcyclist safety issues and certifying that the State's motorcyclist awareness program was developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues. The IFR eliminated the requirement for a detailed strategic communications plan, instead requiring implementation of a data-driven State awareness program (using State crash data) that targets problem areas. The IFR required the State to submit in its HSP a performance measure and performance targets with a list of countermeasure strategies and projects that will be deployed to meet these targets. The State must select countermeasure strategies and projects implementing the motorist awareness activities based on the geographic location of crashes involving a serious or fatal injury.

CA OTS, GHSA, and 5-State DOTs urged NHTSA to eliminate the requirement to implement countermeasure strategies and projects in a ''majority of counties or political subdivisions where there is at least one motorcycle crash causing serious or fatal injury.'' These commenters sought restoration of the requirement under the MAP–21 rule allowing for awareness programs in a majority of counties or political subdivisions with the largest number of motorcycle crashes.

The IFR did not focus on all motorcycle crashes, choosing instead the approach of encouraging States to focus on data-driven identification of traffic safety problems and countermeasure strategies that target those specific problems. In NHTSA's view, the previous approach of including all motorcycle crashes dilutes the effectiveness of data-driven problem identification and countermeasure strategies, because some of these crashes may not rise to an identifiable problem related to motorcyclist awareness. The purpose of the awareness program is to make other motorists aware of motorcyclists.

After careful consideration, however, NHTSA recognizes that using the metric of crashes involving a fatality or serious injury also may not properly capture awareness concerns, reducing the effectiveness of countermeasure strategies relying on such data. We believe that motorcyclist awareness issues are best aligned with multi-vehicle crashes involving motorcycles, and that such multi-vehicle crashes are a better proxy for estimating motorist error. Balancing these considerations, we are amending the rule to require the motorcyclist awareness program to be conducted ''in the majority of counties or political subdivisions where the incidence of crashes involving a motorcycle and another motor vehicle is highest.'' NHTSA believes that this approach largely addresses the commenters' concerns about the crash population to consider, while also more strategically addressing the awareness problem. It should also reduce the geographic population under consideration, alleviating those concerns. With this change, States will be required to submit data identifying the jurisdictions that have the highest incidence of multi-vehicle motorcyclist-related crashes, and to conduct awareness activities in those areas.

The targeting of more focused geographic areas where the data indicate that awareness is an issue will provide States with more flexibility to tailor countermeasure strategies with appropriate levels of ''message intensity,'' resulting in a better use of scarce resources across a likely smaller geographic range, rather than in areas where awareness problems do not pose concerns. Accordingly, we amend the rule to reflect this change and to replace the reference to projects with planned activities.

4. Minor Corrections to the IFR

NHTSA is correcting two minor inconsistencies between the Motorcycle Safety regulatory text and Appendix B for Reduction of Fatalities and Crashes Involving Motorcycles and Reduction of Fatalities and Accidents Involving Impaired Motorcyclists criteria. For Reduction of Fatalities and Crashes Involving Motorcycles and Reduction of Fatalities and Accidents Involving Impaired Motorcyclists criteria, we are adding language in the regulatory text to require the State to submit a description of its methods for collecting and analyzing its data. This information is needed for NHTSA to confirm the validity of the crash data, and was

inadvertently omitted from the IFR regulatory text.

G. State Graduated Driver Licensing Grant (23 CFR 1300.26)

The FAST Act reset the State GDL incentive grant program introduced by MAP–21 (codified at 23 U.S.C. 405(g)) by significantly amending the statutory compliance criteria. In response to the IFR, an individual commenter stated that it was very difficult for small States to qualify for a GDL grant due to the legislative challenges they face. She recommended a ''step-in program'' to make compliance easier in the earlier years. The Federal statute does not authorize NHTSA to establish a phase-in period—all statutory requirements must be met to qualify for the GDL grant. NHTSA makes no changes to the rule in response to this comment.

1. Learner's Permit Stage (Only) (23 CFR 1300.26(d))

The only comments concerned the requirement that the learner's permit holder either (1) complete a State-certified driver education or training course or (2) receive at least 50 hours of behind-the-wheel training,[20] with at least 10 of those hours at night, with a licensed driver who is at least 21 years of age or is a State-certified driving instructor. (*See* § 1300.26(d)(5).) Advocates cited to the finding by the Highway Loss Data Institute that increasing the supervised driving requirement to 40 hours was associated with a 10 percent lower rate of insurance collision claims among 16- to 17-year-old drivers. (Trempel, Rebecca E. *Graduated Driver Licensing Laws and Insurance Collision Claim Frequencies of Teenage Drivers,* HLDI, November, 2009.) Advocates requested that the requirement be changed to include both driver education and a minimum of 50 hours of behind-the-wheel training. In contrast, NSC encouraged NHTSA to retain the language specifying that only one of the two requirements need be satisfied, seeking to enable more States to qualify for the grants. The plain language of the FAST Act is clear—a State is eligible for a grant as long as it provides for *either* completion of a State-certified driver education or training course *or* completion of at least 50 hours of behind-the-wheel training (with at least 10 of those hours at night). NHTSA does not have the authority to deviate from this statutory requirement. NHTSA makes no changes to the rule.

2. Learner's Permit Stage and Intermediate Stage (23 CFR 1300.26(d)–(e))

The FAST Act required the delay of issuance of an unrestricted driver's license (*i.e.,* extension of the learner's permit and/or intermediate stage) if the driver is ''convicted of a driving-related offense . . . including . . . misrepresentation of the individual's age.'' (23 U.S.C. 405(g)(2)(iii)(II).) This statutory language made clear that the offenses at issue must be ''driving-related.'' The IFR did not correctly implement this provision because it stated the provision as ''a driving-related offense *or* misrepresentation of the driver's true age'' (emphasis added), imposing a stricter requirement by implying that the offense of misrepresentation of age need not be driving-related. To correct this unintended inaccuracy, in the final rule NHTSA is striking the words ''or misrepresentation of the driver's true age'' where they appear in the requirements for the two stages and adding it to the definition of ''driving-related offense.''

NHTSA is making a non-substantive revision to the distracted driving component of the GDL program in the learner's permit and intermediate stages, by moving the language regarding the violation being a primary offense to a new section that applies the provision globally to all components of both stages. (*See* § 1300.26(d)(6) and (e)(5).) This revision is purely organizational and has no effect on the operation of this component.

3. Primary Enforcement (23 CFR 1300.26(f))

The Insurance Institute for Highway Safety (IIHS) asked whether night and passenger restrictions must be enforced on a primary basis. Although the IFR was not explicit on this point (except that the distracted driving component of the GDL program included primary enforcement language to ensure alignment with the separate distracted driving grant program), that was the intent and consistent with the Federal statute. In response to the comment, NHTSA is adding a provision in the final rule specifying that the driving restrictions of the learner's permit and intermediate stages must be enforced as primary offenses.

4. Exceptions to a State's GDL Program (23 CFR 1300.26(g))

NHTSA is making one change to the limited exception allowing States to issue a permit or license when demonstrable hardship would result from its denial. NHTSA no longer requires the driver to start with the learner's permit stage, as some drivers may have already completed that stage in another State. However, a hardship license holder seeking to obtain an unrestricted driver's license will continue to be required to participate in the State's GDL program, beginning at the appropriate stage, prior to being issued such a license. NHTSA is making this change in recognition of the variability in State GDL laws and the reality that drivers at various stages in a State's GDL process relocate across State lines.

H. Nonmotorized Safety Grants (23 CFR 1300.27)

NHTSA received one comment from an individual recommending additional criteria or options for States to qualify for nonmotorized grants. The FAST Act prescribed the criteria for these grants—eligibility is limited to States whose annual combined pedestrian and bicyclist fatalities exceed 15 percent of their total annual crash fatalities. NHTSA does not have the authority to alter this requirement. NHTSA makes no changes to the rule.

VII. Administration of Highway Safety Grants, Annual Reconciliation and Non-Compliance (Subparts D, E and F)

A. Amendments to Highway Safety Plans (23 CFR 1300.32)

As discussed in Section V.B.3. of this preamble, NHTSA is removing the requirement to report information about specific project agreements at the time of HSP submission. However, as States execute their HSPs and formalize projects during the course of the grant year, States must amend their HSPs to identify and provide details about these project agreements. Specifically, States must provide project agreement numbers, subrecipient(s), amount of Federal funds, source of funds, and eligible use of funds (formerly referred to as program funding code). We are amending the regulatory text to provide that the State must amend the HSP as project agreements are finalized, but before performance under the project agreement begins. This is to avoid the situation where a State incurs costs under a project agreement and the Regional Administrator determines that the project agreement does not align with the HSP. States must also update this information when it changes. This information is necessary both to ensure that NHTSA has an adequate audit trail to track grant expenditures and also to

[20] Behind-the-wheel training refers to actual instructional driving time during which the novice driver operates a vehicle (*e.g.,* off-street, on-street, on-highway) and is guided by a licensed driver or instructor in the front passenger seat. Observation is not included in behind-the-wheel time.

ensure that the specific projects called for under various Section 405 grants for which a State has applied and been approved are performed. More specifically, as a fundamental part of accountability for Federal funds, NHTSA must have the ability to determine, when paying for State grant expenses, the specific project agreement under which the expenses were incurred.[21] Additionally, because applying for Section 405 and 1906 grants under the IFR is now possible by identifying a particular section of the HSP, and NHTSA has reduced the project-level detail required to be provided at the time of HSP submission, States must follow through and enter into project agreements for which they provided reduced detail in the HSP to demonstrate they are following through on their commitment made at the time of application for Section 405 and 1906 grants. NHTSA Regional Administrators will review these HSP amendments adding project agreements for alignment with the approved HSP and the Section 405 grants for which a State was approved, and the project agreements will form the basis for payment of vouchers, as described below. Accordingly, we amend this section to reflect these changes.

MN OTS stated that its project numbers are in a specific format, and that restructuring the project numbers and tracking by project number would require a restructuring of its grant system. The IFR does not impose a specific format for project numbers—States may use whatever format they wish that allows them to track and account for Federally-funded projects.[22] To remove any concern and confusion, NHTSA is changing the term ''project number'' to ''project agreement number,'' and amending the definition in the final rule to ''a unique *State generated* identifier assigned to each project agreement in the Highway Safety Plan'' (emphasis added) to make clear that States may use their own numbering system. (*See* § 1300.3.)

[21] For this reason, the project agreement number (along with other particulars) is required to be reported here and also later when vouchers are submitted (as discussed under ''Vouchers and Project Agreements''). Without this information, NHTSA would be unable to align specific grant expenditures charged under a voucher with actual work performed under a project agreement, a necessary component of any audit process. This level of detail is already required to be collected by the State in connection with sub-awards under 2 CFR 200.331, so it should not create any additional burden.

[22] States that make awards to subrecipients are already required to assign a unique identifier for each sub-award. (*See* 2 CFR 200.331(a).)

B. Vouchers and Project Agreements (23 CFR 1300.33)

Most of these requirements remained unchanged in the IFR from the requirements under the MAP–21 rule, except for non-substantive updates to cross-references and terms. However, in order to improve oversight of Federal grant funds, the IFR required States to identify specific project-level information in their vouchers, including project numbers, amount of indirect costs, amount of planning and administration costs, and program funding codes, in addition to the amount of Federal funds, local benefit and matching rate.

Because NHTSA is now requiring some of this specific project agreement information to be submitted in amendments to the HSP, as discussed in the preceding section, we are deleting unnecessary duplicative entries related to voucher contents in § 1300.33. Accordingly, vouchers must now identify only the project agreement numbers of the activities for which work was performed, the amount of Federal funds up to the amount identified in § 1300.32(b), the amount of Federal funds allocated to local benefit, and the matching rate (breaking down these items by project agreement number where multiple projects are being reported on one voucher).

NHTSA is actively working to program GMSS to populate a number of fields, such as project agreement number and eligible use of funds, to facilitate and streamline this process.

C. Annual Report (23 CFR 1300.35)

The IFR retained much of the annual report requirements from the MAP–21 rule. However, NHTSA made two additions, one to require a description of the State's evidence-based enforcement program activities and the other to require an explanation of reasons for projects that were not implemented. CA OTS, CNMI DPS–HSO, CT HSO, DE OHS, GHSA, GU OHS, and NY GTSC commented that the requirement to explain the reasons why projects were not implemented could be burdensome, depending on the level of detail required. To clarify, the explanation for projects that were not implemented is intended to be a high-level summary. There may be compelling reasons why a State may not have implemented some planned activities from the HSP, and it is important for States to assess these reasons and use this information to identify issues and trends as part of their overall highway safety planning process. With this clarification about the level of reporting expected, NHTSA declines to make changes to the final rule except to replace the reference to projects with planned activities.

Earlier in this preamble NHTSA explained that it was removing two requirements from inclusion in the HSP: (1) The requirement for States to include, in the Performance Report section of the HSP, a description of upcoming adjustments if a performance target was missed (*see* Section V.B.1.); and the requirement to include specific metrics from high-visibility enforcement campaigns (*see* Section V.B.3.). NHTSA agreed with commenters that this information would be more appropriate to provide in the annual report. Accordingly, the final rule now requires this information in the annual report.

D. Expiration of the Highway Safety Plan (23 CFR 1300.40)

In the IFR, States had 90 days from the end of the fiscal year to submit final vouchers, with an additional extension limited to 30 days in extraordinary circumstances. CT HSO, GHSA and NY GTSC objected to limiting extensions to 30 days. NY GTSC recommended 45, 60 or 90 days. HSPs expire on September 30, at the end of each fiscal year. States have three months from that date to voucher for costs incurred under that HSP, and an additional month in extraordinary circumstances. NHTSA does not believe that a recurring annual program requires more than one-third of a year to accommodate an orderly closeout of HSP activities for an individual grant cycle. States are encouraged to work with subrecipients to improve their highway safety planning and administration efforts for effective and efficient use of Federal funds, as required in § 1300.4. NHTSA makes no changes to the rule in response to these comments.

E. Disposition of Unexpended Balances (23 CFR 1300.41)

The IFR retained many provisions from the MAP–21 rule, but conformed the treatment of carry-forward funds to the revised HSP content requirements. As NHTSA noted in the IFR, a fundamental expectation of Congress is that funds made available to States will be used promptly and effectively to address the highway safety problems for which they were authorized. Section 402, 405 and 1906 grant funds are authorized for apportionment or allocation each fiscal year. Because these grant funds are made available each fiscal year, States should strive to use them to carry out an annual highway safety program during the fiscal year of the grant.

CA OTS, DE OHS, GHSA, GU OHS, MN OTS and NY GTSC asked for clarification or modification of the requirement to assign all funds to specific project agreements. MN OTS stated that it would not be able to obligate carry forward funds by year to specific projects in the HSP, noting that the HSP is completed six months before the exact amount of carry-forward money is finalized. These commenters stated that this type of information is not available at the time of HSP submission. In view of the changes to project-level reporting discussed earlier in this preamble (*see* Section V.B.3.), NHTSA is making conforming changes to this section by deleting the requirement that all carry-forward highway safety grant funds be assigned to specific projects.

F. Sanctions—Risk Assessment and Non-Compliance (23 CFR 1300.52)

CA OTS, GHSA, and GU OHS expressed concern that the requirement that States ''effectively implement statutory, regulatory, and other requirements imposed on non-Federal entities'' is too subjective, and requested a more objective risk evaluation factor. The requirements in § 1300.52 incorporate the risk assessment requirements laid out in the OMB Circular (2 CFR part 200). The requirement to ''effectively implement statutory, regulatory, and other requirements'' is found in 2 CFR 200.205(c)(5) and is a fundamental component of Federal grant law. NHTSA believes that States have an adequate comfort level with the meaning of the term ''effectively,'' and declines to further clarify the term used by the Office of Management and Budget in the circular.

VIII. Regulatory Analyses and Notices

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, and DOT Regulatory Policies and Procedures [TBD OMB Designation]

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866 or Executive Order 13563. This action makes changes to the uniform procedures implementing State highway safety grant programs, as a result of enactment of the Fixing America's Surface Transportation Act (FAST Act). While this final rule would establish minimum criteria for highway safety grants, most of the criteria are based on statute. NHTSA has no discretion over the grant amounts, and its implementation authority is limited. Therefore, this rulemaking has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures and the policies of the Office of Management and Budget.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act (SBREFA) amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that an action would not have a significant economic impact on a substantial number of small entities.

Under the grant programs impacted by today's action, States will receive funds if they meet the application and qualification requirements. These grant programs will affect only State governments, which are not considered to be small entities as that term is defined by the RFA. Therefore, I certify that this action will not have a significant impact on a substantial number of small entities and find that the preparation of a Regulatory Flexibility Analysis is unnecessary.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' 64 FR 43255 (August 10, 1999). ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, an agency may not issue a regulation with Federalism implications that imposes substantial direct compliance costs and that is not required by statute unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local governments in the process of developing the proposed regulation. An agency also may not issue a regulation with Federalism implications that preempts a State law without consulting with State and local officials.

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132, and has determined that this final rule would not have sufficient federalism implications as defined in the order to warrant formal consultation with State and local officials or the preparation of a federalism summary impact statement. However, NHTSA continues to engage with State representatives regarding general implementation of the FAST Act, including these grant programs, and expects to continue these informal dialogues.

D. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988 (61 FR 4729 (February 7, 1996)), ''Civil Justice Reform,'' the agency has considered whether this proposed rule would have any retroactive effect. I conclude that it would not have any retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), as implemented by the Office of Management and Budget (OMB) in 5 CFR part 1320, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The grant application requirements in this rulemaking are considered to be a collection of information subject to requirements of the PRA. The agency will publish separate **Federal Register** Notices (60-day and 30-day) when we submit the information collection request to OMB for approval.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment

of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). This rulemaking would not meet the definition of a Federal mandate because the resulting annual State expenditures would not exceed the minimum threshold. The program is voluntary and States that choose to apply and qualify would receive grant funds.

G. National Environmental Policy Act

NHTSA has considered the impacts of this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that this rulemaking would not have a significant impact on the quality of the human environment.

H. Executive Order 13211 (Energy Effects)

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) Is determined to be economically significant as defined under Executive Order 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not likely to have a significantly adverse effect on the supply of, distribution of, or use of energy. This rulemaking has not been designated as a significant energy action. Accordingly, this rulemaking is not subject to Executive Order 13211.

I. Executive Order 13175 (Consultation and Coordination With Indian Tribes)

The agency has analyzed this rulemaking under Executive Order 13175, and has determined that today's action would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

J. Executive Order 13045 (Protection of Children)

Executive Order 13045 applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the proposed regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us. NHTSA certifies that this rule would not concern an environmental health or safety risk that might disproportionately affect children.

K. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions. The FAST Act requires NHTSA to award highway safety grants pursuant to rulemaking. (Section 4001(d), FAST Act.) The Regulatory Information Service Center publishes the Unified Agenda in or about April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

L. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

Executive Order 13771 titled ''Reducing Regulation and Controlling Regulatory Costs,'' directs that, unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed. In addition, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs. Only those rules deemed significant under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' are subject to these requirements. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

List of Subjects in 23 CFR Part 1300

Administrative practice and procedure, Alcohol abuse, Drug abuse, Grant programs—transportation, Highway safety, Intergovernmental relations, Motor vehicles—motorcycles, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, under the authority of 23 U.S.C. 401 *et seq.,* the National Highway Traffic Safety Administration revises 23 CFR part 1300 to read as follows:

PART 1300—UNIFORM PROCEDURES FOR STATE HIGHWAY SAFETY GRANT PROGRAMS

Subpart A—General

Subpart B—Highway Safety Plan

Subpart C—National Priority Safety Program and Racial Profiling Data Collection Grants

Subpart D—Administration of the Highway Safety Grants

Subpart E—Annual Reconciliation

Subpart F—Non-Compliance

Authority: 23 U.S.C. 402; 23 U.S.C. 405; Sec. 1906, Pub. L. 109–59, 119 Stat. 1468, as amended by Sec. 4011, Pub. L. 114–94, 129 Stat. 1512; delegation of authority at 49 CFR 1.95.

Subpart A—General

§ 1300.1 Purpose.

This part establishes uniform procedures for State highway safety programs authorized under 23 U.S.C. Chapter 4 and Sec. 1906, Public Law 109–59, as amended by Sec. 4011, Public Law 114–94.

§ 1300.2 [Reserved].

§ 1300.3 Definitions.

As used in this part—

Annual Report File (ARF) means FARS data that are published annually, but prior to final FARS data.

Carry-forward funds means those funds that a State has not expended on projects in the fiscal year in which they were apportioned or allocated, that are within the period of availability, and that are being brought forward and made available for expenditure in a subsequent fiscal year.

Contract authority means the statutory language that authorizes an agency to incur an obligation without the need for a prior appropriation or further action from Congress and which, when exercised, creates a binding obligation on the United States for which Congress must make subsequent liquidating appropriations.

Countermeasure strategy means a proven effective or innovative countermeasure proposed or implemented with grant funds under 23 U.S.C. Chapter 4 or Section 1906 to address identified problems and meet performance targets. Examples of proven effective countermeasures include high-visibility occupant protection enforcement, DUI courts, or alcohol screening and brief intervention programs.

Data-driven means informed by a systematic review and analysis of quality data sources when making decisions related to planning, target establishment, resource allocation and implementation.

Evidence-based means based on approaches that are proven effective with consistent results when making decisions related to countermeasure strategies and projects.

Fatality Analysis Reporting System (FARS) means the nationwide census providing yearly public data regarding fatal injuries suffered in motor vehicle traffic crashes, as published by NHTSA.

Fatality rate means the ratio of the number of fatalities (as defined in this section) to the number of vehicle miles traveled (VMT) (expressed in 100 million VMT) in a calendar year, based on the data reported in the FARS database.

Final FARS means the FARS data that replace the annual report file and contain additional cases or updates that became available after the annual report file was released.

Fiscal year means the Federal fiscal year, consisting of the 12 months beginning each October 1 and ending the following September 30.

Five-year (5-year) rolling average means the average of five individual points of data from five consecutive calendar years (*e.g.*, the 5-year rolling average of the annual fatality rate).

Governor means the Governor of any of the fifty States, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, the Mayor of the District of Columbia, or, for the application of this part to Indian Country as provided in 23 U.S.C. 402(h), the Secretary of the Interior.

Governor's Representative for Highway Safety means the official appointed by the Governor to implement the State's highway safety program or, for the application of this part to Indian Country as provided in 23 U.S.C. 402(h), an official of the Bureau of Indian Affairs or other Department of Interior official who is duly designated by the Secretary of the Interior to implement the Indian highway safety program.

Highway Safety Plan (HSP) means the document that the State submits each fiscal year as its application for highway safety grants (and amends as necessary), which describes the State's performance targets, the countermeasure strategies and activities the State plans to implement, the resources from all sources the State plans to use to achieve its highway safety performance targets.

Highway safety program means the planning, strategies and performance measures, and general oversight and management of highway safety strategies and projects by the State either directly or through subrecipients to address highway safety problems in the State, as defined in the annual Highway Safety Plan and any amendments.

NHTSA means the National Highway Traffic Safety Administration.

Number of fatalities means the total number of persons suffering fatal injuries in a motor vehicle traffic crash during a calendar year, based on data reported in the FARS database.

Number of serious injuries means the total number of persons suffering at least one serious injury for each separate motor vehicle traffic crash during a calendar year, as reported by the State, where the crash involves a motor vehicle traveling on a public road.

Performance measure means a metric that is used to establish targets and to assess progress toward meeting the established targets.

Performance target means a quantifiable level of performance or a goal, expressed as a value, to be achieved within a specified time period.

Problem identification means the data collection and analysis process for identifying areas of the State, types of crashes, or types of populations (*e.g.*, high-risk populations) that present specific safety challenges to efforts to improve a specific program area.

Program area means any of the national priority safety program areas identified in 23 U.S.C. 405 or a program area identified by a State in the Highway Safety Plan as encompassing a major highway safety problem in the State and for which documented effective countermeasure strategies have been identified or projected by analysis to be effective.

Project means a discrete effort involving identified subrecipients or contractors to be implemented with grant funds under 23 U.S.C. Chapter 4 or Section 1906 and that addresses countermeasure strategies identified in the Highway Safety Plan.

Project agreement means a written agreement at the State level or between the State and a subrecipient or contractor under which the State agrees to perform a project or to provide Federal funds in exchange for the subrecipient's or contractor's performance of a project that supports the highway safety program.

Project agreement number means a unique State-generated identifier assigned to each project agreement.

Public road means any road under the jurisdiction of and maintained by a public authority and open to public travel.

Section 402 means section 402 of title 23 of the United States Code.

Section 405 means section 405 of title 23 of the United States Code.

Section 1906 means Sec. 1906, Public Law 109–59, as amended by Sec. 4011, Public Law 114–94.

Serious injuries means, until April 15, 2019, injuries classified as ''A'' on the KABCO scale through the use of the conversion tables developed by NHTSA, and thereafter, ''suspected serious injury (A)'' as defined in the Model Minimum

Uniform Crash Criteria (MMUCC) Guideline, 4th Edition.

State means, except as provided in § 1300.25(b), any of the fifty States of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or, for the application of this part to Indian Country as provided in 23 U.S.C. 402(h), the Secretary of the Interior.

State highway safety improvement program (HSIP) means the program defined in 23 U.S.C. 148(a)(10).

State strategic highway safety plan (SHSP) means the plan defined in 23 U.S.C. 148(a)(11).

§ 1300.4 State Highway Safety Agency—authority and functions.

(a) *In general.* In order for a State to receive grant funds under this part, the Governor shall exercise responsibility for the highway safety program by appointing a Governor's Representative for Highway Safety who shall be responsible for a State Highway Safety Agency that has adequate powers and is suitably equipped and organized to carry out the State's highway safety program.

(b) *Authority.* Each State Highway Safety Agency shall be authorized to—

(1) Develop and execute the Highway Safety Plan and highway safety program in the State;

(2) Manage Federal grant funds effectively and efficiently and in accordance with all Federal and State requirements;

(3) Obtain information about highway safety programs and projects administered by other State and local agencies;

(4) Maintain or have access to information contained in State highway safety data systems, including crash, citation or adjudication, emergency medical services/injury surveillance, roadway and vehicle record keeping systems, and driver license data;

(5) Periodically review and comment to the Governor on the effectiveness of programs to improve highway safety in the State from all funding sources that the State plans to use for such purposes;

(6) Provide financial and technical assistance to other State agencies and political subdivisions to develop and carry out highway safety strategies and projects; and

(7) Establish and maintain adequate staffing to effectively plan, manage, and provide oversight of projects approved in the HSP and to properly administer the expenditure of Federal grant funds.

(c) *Functions.* Each State Highway Safety Agency shall—

(1) Develop and prepare the HSP based on evaluation of highway safety data, including crash fatalities and injuries, roadway, driver and other data sources to identify safety problems within the State;

(2) Establish projects to be funded within the State under 23 U.S.C. Chapter 4 based on identified safety problems and priorities and projects under Section 1906;

(3) Conduct a risk assessment of subrecipients and monitor subrecipients based on risk, as provided in 2 CFR 200.331;

(4) Provide direction, information and assistance to subrecipients concerning highway safety grants, procedures for participation, development of projects and applicable Federal and State regulations and policies;

(5) Encourage and assist subrecipients to improve their highway safety planning and administration efforts;

(6) Review and approve, and evaluate the implementation and effectiveness of, State and local highway safety programs and projects from all funding sources that the State plans to use under the HSP, and approve and monitor the expenditure of grant funds awarded under 23 U.S.C. Chapter 4 and Section 1906;

(7) Assess program performance through analysis of highway safety data and data-driven performance measures;

(8) Ensure that the State highway safety program meets the requirements of 23 U.S.C. Chapter 4, Section 1906 and applicable Federal and State laws, including but not limited to the standards for financial management systems required under 2 CFR 200.302 and internal controls required under 2 CFR 200.303;

(9) Ensure that all legally required audits of the financial operations of the State Highway Safety Agency and of the use of highway safety grant funds are conducted;

(10) Track and maintain current knowledge of changes in State statutes or regulations that could affect State qualification for highway safety grants or transfer programs;

(11) Coordinate the HSP and highway safety data collection and information systems activities with other federally and non-federally supported programs relating to or affecting highway safety, including the State SHSP as defined in 23 U.S.C. 148(a); and

(12) Administer Federal grant funds in accordance with Federal and State requirements, including 2 CFR parts 200 and 1201.

§ 1300.5 Due dates—interpretation.

If any deadline or due date in this part falls on a Saturday, Sunday or Federal holiday, the applicable deadline or due date shall be the next business day.

Subpart B—Highway Safety Plan

§ 1300.10 General.

To apply for any highway safety grant under 23 U.S.C. Chapter 4 and Section 1906, a State shall submit electronically a Highway Safety Plan meeting the requirements of this subpart.

§ 1300.11 Contents.

The State's Highway Safety Plan documents a State's highway safety program that is data-driven in establishing performance targets and selecting the countermeasure strategies, planned activities and projects to meet performance targets. Each fiscal year, the State shall submit a HSP, consisting of the following components:

(a) *Highway safety planning process.* (1) Description of the data sources and processes used by the State to identify its highway safety problems, describe its highway safety performance measures, establish its performance targets, and develop and select evidence-based countermeasure strategies and projects to address its problems and achieve its performance targets;

(2) Identification of the participants in the processes (*e.g.,* highway safety committees, program stakeholders, community and constituent groups);

(3) Description and analysis of the State's overall highway safety problems as identified through an analysis of data, including but not limited to fatality, injury, enforcement, and judicial data, to be used as a basis for setting performance targets, selecting countermeasure strategies, and developing projects;

(4) Discussion of the methods for project selection (*e.g.,* constituent outreach, public meetings, solicitation of proposals);

(5) List of information and data sources consulted; and

(6) Description of the outcomes from the coordination of the HSP, data collection, and information systems with the State SHSP.

(b) *Performance report.* A program-area-level report on the State's progress towards meeting State performance targets from the previous fiscal year's HSP.

(c) *Performance plan.* (1) List of quantifiable and measurable highway safety performance targets that are data-driven, consistent with the Uniform Guidelines for Highway Safety Programs and based on highway safety problems

identified by the State during the planning process conducted under paragraph (a) of this section.

(2) All performance measures developed by NHTSA in collaboration with the Governors Highway Safety Association (''Traffic Safety Performance Measures for States and Federal Agencies'' (DOT HS 811 025)), as revised in accordance with 23 U.S.C. 402(k)(5) and published in the **Federal Register**, which must be used as minimum measures in developing the performance targets identified in paragraph (c)(1) of this section, provided that—

(i) At least one performance measure and performance target that is data-driven shall be provided for each program area that enables the State to track progress toward meeting the quantifiable annual target;

(ii) For each program area performance measure, the State shall provide—

(A) Quantifiable performance targets; and

(B) Justification for each performance target that explains how the target is data-driven, including a discussion of the factors that influenced the performance target selection; and

(iii) State HSP performance targets are identical to the State DOT targets for common performance measures (fatality, fatality rate, and serious injuries) reported in the HSIP annual report, as coordinated through the State SHSP. These performance measures shall be based on a 5-year rolling average that is calculated by adding the number of fatalities or number of serious injuries as it pertains to the performance measure for the most recent 5 consecutive calendar years ending in the year for which the targets are established. The ARF may be used, but only if final FARS is not yet available. The sum of the fatalities or sum of serious injuries is divided by five and then rounded to the tenth decimal place for fatality or serious injury numbers and rounded to the thousandth decimal place for fatality rates.

(3) Additional performance measures not included under paragraph (c)(2) of this section. For program areas where performance measures have not been jointly developed (*e.g.*, distracted driving, drug-impaired driving) for which States are using HSP funds, the State shall develop its own performance measures and performance targets that are data-driven, and shall provide the same information as required under paragraph (c)(2) of this section.

(d) *Highway safety program area problem identification, countermeasure strategies, planned activities and funding.* (1) Description of each program area countermeasure strategy that will help the State complete its program and achieve specific performance targets described in paragraph (c) of this section, including, at a minimum—

(i) An assessment of the overall projected traffic safety impacts of the countermeasure strategies chosen and of the planned activities to be funded; and

(ii) A description of the linkage between program area problem identification data, performance targets, identified countermeasure strategies and allocation of funds to planned activities.

(2) Description of each planned activity within the countermeasure strategies in paragraph (d)(1) of this section that the State plans to implement to reach the performance targets identified in paragraph (c) of this section, including, at a minimum—

(i) A list and description of the planned activities that the State will conduct to support the countermeasure strategies within each program area to address its problems and achieve its performance targets; and

(ii) For each planned activity (*i.e.,* types of projects the State *plans* to conduct), a description, including intended subrecipients, Federal funding source, eligible use of funds, and estimates of funding amounts, amount for match and local benefit.

(3) Rationale for selecting the countermeasure strategy and funding allocation for each planned activity described in paragraph (d)(2) of this section (e.g., program assessment recommendations, participation in national mobilizations, emerging issues). The State may also include information on the cost effectiveness of proposed countermeasure strategies, if such information is available.

(4) For innovative countermeasure strategies (*i.e.,* countermeasure strategies that are not evidence-based), justification supporting the countermeasure strategy, including research, evaluation and/or substantive anecdotal evidence, that supports the potential of the proposed innovative countermeasure strategy.

(5) Evidence-based traffic safety enforcement program (TSEP) to prevent traffic violations, crashes, and crash fatalities and injuries in areas most at risk for such incidents, provided that—

(i) The State shall identify the planned activities that collectively constitute a data-driven TSEP and include—

(A) An analysis of crashes, crash fatalities, and injuries in areas of highest risk; and

(B) An explanation of the deployment of resources based on that analysis.

(ii) The State shall describe how it plans to monitor the effectiveness of enforcement activities, make ongoing adjustments as warranted by data, and update the countermeasure strategies and planned activities in the HSP, as applicable, in accordance with this part.

(6) The planned high-visibility enforcement (HVE) strategies to support national mobilizations. The State shall implement activities in support of national highway safety goals to reduce motor-vehicle-related fatalities that also reflect the primary data-related crash factors within the State, as identified by the State highway safety planning process, including participation in the national high-visibility law enforcement mobilizations in accordance with 23 U.S.C. 404. The planned high-visibility enforcement strategies to support the national mobilizations shall include not less than three mobilization campaigns in each fiscal year to reduce alcohol-impaired or drug-impaired operation of motor vehicles and increase use of seatbelts by occupants of motor vehicles.

(e) *Teen Traffic Safety Program.* If the State elects to include the Teen Traffic Safety Program authorized under 23 U.S.C. 402(m), a description of planned activities, including the amount and types of Federal funding requested, the State match, local benefit as applicable, appropriate eligible use of funds, and applicable performance target that the State will conduct as part of the Teen Traffic Safety Program—a Statewide program to improve traffic safety for teen drivers. Planned activities must meet the eligible use requirements of 23 U.S.C. 402(m)(2).

(f) *Certifications and assurances.* The Certifications and Assurances for 23 U.S.C. Chapter 4 and Section 1906 grants contained in appendix A, signed by the Governor's Representative for Highway Safety, certifying to the HSP application contents and performance conditions and providing assurances that the State will comply with applicable laws, and financial and programmatic requirements.

(g) *Section 405 grant and racial profiling data collection grant application.* Application for any of the national priority safety program grants and the racial profiling data collection grant, in accordance with the requirements of subpart C and as provided in Appendix B, signed by the Governor's Representative for Highway Safety.

§ 1300.12 Due date for submission.

(a) A State shall submit its Highway Safety Plan electronically to NHTSA no later than 11:59 p.m. EDT on July 1 preceding the fiscal year to which the HSP applies.

(b) Failure to meet this deadline may result in delayed approval and funding of a State's Section 402 grant or disqualification from receiving a Section 405 or racial profiling data collection grant.

§ 1300.13 Special funding conditions for Section 402 Grants.

The State's highway safety program under Section 402 shall be subject to the following conditions, and approval under § 1300.14 of this part shall be deemed to incorporate these conditions:

(a) *Planning and administration (P & A) costs.* (1) Federal participation in P & A activities shall not exceed 50 percent of the total cost of such activities, or the applicable sliding scale rate in accordance with 23 U.S.C. 120. The Federal contribution for P & A activities shall not exceed 15 percent of the total funds the State receives under Section 402. In accordance with 23 U.S.C. 120(i), the Federal share payable for projects in the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands shall be 100 percent. The Indian Country, as defined by 23 U.S.C. 402(h), is exempt from the provisions of P & A requirements. NHTSA funds shall be used only to fund P & A activities attributable to NHTSA programs. Determinations of P & A shall be in accordance with the provisions of Appendix D.

(2) P & A tasks and related costs shall be described in the P & A module of the State's Highway Safety Plan. The State's matching share shall be determined on the basis of the total P & A costs in the module.

(b) *Prohibition on use of grant funds to check for helmet usage.* Grant funds under this part shall not be used for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

(c) *Prohibition on use of grant funds for automated traffic enforcement systems.* The State may not expend funds apportioned to the State under Section 402 to carry out a program to purchase, operate, or maintain an automated traffic enforcement system. The term ''automated traffic enforcement system'' includes any camera that captures an image of a vehicle for the purposes only of red light and speed enforcement, and does not include hand held radar and other devices operated by law enforcement officers to make an on-the-scene traffic stop, issue a traffic citation, or other enforcement action at the time of the violation.

(d) *Biennial survey of State automated traffic enforcement systems.* (1) Beginning with fiscal year 2018 Highway Safety Plans and biennially thereafter, the State must either—

(i) Certify, as provided in Appendix A, that automated traffic enforcement systems are not used on any public road in the State; or

(ii)(A) Conduct a survey during the fiscal year of the grant meeting the requirements of paragraph (d)(2) of this section and provide assurances, as provided in Appendix A, that it will do so; and

(B) Submit the survey results to the NHTSA Regional Office no later than March 1 of the fiscal year of the grant.

(2) *Survey contents.* The survey shall include information about automated traffic enforcement systems installed in the State. The survey shall include:

(i) List of automated traffic enforcement systems in the State;

(ii) Adequate data to measure the transparency, accountability, and safety attributes of each automated traffic enforcement system; and

(iii) Comparison of each automated traffic enforcement system with—

(A) ''Speed Enforcement Camera Systems Operational Guidelines'' (DOT HS 810 916); and

(B) ''Red Light Camera Systems Operational Guidelines'' (FHWA–SA–05–002).

§ 1300.14 Review and approval procedures.

(a) *General.* Upon receipt and initial review of the Highway Safety Plan, NHTSA may request additional information from a State to ensure compliance with the requirements of this part. Failure to respond promptly to a request for additional information concerning the Section 402 grant application may result in delayed approval and funding of a State's Section 402 grant. Failure to respond promptly to a request for additional information concerning a Section 405 or Section 1906 grant application may result in a State's disqualification from consideration for a Section 405 or Section 1906 grant.

(b) *Approval or disapproval of Highway Safety Plan.* Within 45 days after receipt of the HSP under this subpart—

(1) For Section 402 grants, the Regional Administrator shall issue—

(i) A letter of approval, with conditions, if any, to the Governor's Representative for Highway Safety; or

(ii) A letter of disapproval to the Governor's Representative for Highway Safety informing the State of the reasons for disapproval and requiring resubmission of the HSP with proposed revisions necessary for approval.

(2) For Section 405 and Section 1906 grants, the NHTSA Administrator shall notify States in writing of grant awards and specify any conditions or limitations imposed by law on the use of funds.

(c) *Resubmission of disapproved Highway Safety Plan.* The Regional Administrator shall issue a letter of approval or disapproval within 30 days after receipt of a revised HSP resubmitted as provided in paragraph (b)(1)(ii) of this section.

§ 1300.15 Apportionment and obligation of Federal funds.

(a) Except as provided in paragraph (b) of this section, on October 1 of each fiscal year, or soon thereafter, the NHTSA Administrator shall, in writing, distribute funds available for obligation under 23 U.S.C. Chapter 4 and Section 1906 to the States and specify any conditions or limitations imposed by law on the use of the funds.

(b) In the event that authorizations exist but no applicable appropriation act has been enacted by October 1 of a fiscal year, the NHTSA Administrator may, in writing, distribute a part of the funds authorized under 23 U.S.C. Chapter 4 and Section 1906 contract authority to the States to ensure program continuity, and in that event shall specify any conditions or limitations imposed by law on the use of the funds. Upon appropriation of grant funds, the NHTSA Administrator shall, in writing, promptly adjust the obligation limitation and specify any conditions or limitations imposed by law on the use of the funds.

(c) Funds distributed under paragraph (a) or (b) of this section shall be available for expenditure by the States to satisfy the Federal share of expenses under the approved Highway Safety Plan, and shall constitute a contractual obligation of the Federal Government, subject to any conditions or limitations identified in the distributing document. Such funds shall be available for expenditure by the States as provided in § 1300.41(b), after which the funds shall lapse.

(d) Notwithstanding the provisions of paragraph (c) of this section, payment of State expenses of 23 U.S.C. Chapter 4 or Section 1906 funds shall be contingent upon the State's submission of up-to-date information about approved projects in the HSP, in accordance with §§ 1300.11(d) and 1300.32.

Subpart C—National Priority Safety Program and Racial Profiling Data Collection Grants

§ 1300.20 General.

(a) *Scope.* This subpart establishes criteria, in accordance with Section 405 for awarding grants to States that adopt and implement programs and statutes to address national priorities for reducing highway deaths and injuries and, in accordance with Section 1906, for awarding grants to States that maintain and allow public inspection of race and ethnic information on motor vehicle stops.

(b) *Definitions.* As used in this subpart—

Blood alcohol concentration or *BAC* means grams of alcohol per deciliter or 100 milliliters blood, or grams of alcohol per 210 liters of breath.

Majority means greater than 50 percent.

Passenger motor vehicle means a passenger car, pickup truck, van, minivan or sport utility vehicle with a gross vehicle weight rating of less than 10,000 pounds.

Personal wireless communications device means a device through which personal wireless services (commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services) are transmitted, but does not include a global navigation satellite system receiver used for positioning, emergency notification, or navigation purposes.

Primary offense means an offense for which a law enforcement officer may stop a vehicle and issue a citation in the absence of evidence of another offense.

(c) *Eligibility and application*—(1) *Eligibility.* Except as provided in § 1300.25(c), the 50 States, the District of Columbia, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam and the U.S. Virgin Islands are each eligible to apply for grants identified under this subpart.

(2) *Application.* For all grants under Section 405 and Section 1906—

(i) The Governor's Representative for Highway Safety, on behalf of the State, shall sign and submit with the Highway Safety Plan, the information required under Appendix B—Application Requirements for Section 405 and Section 1906 Grants.

(ii) If the State is relying on specific elements of the HSP as part of its application materials for grants under this subpart, the State shall identify the specific location in the HSP.

(d) *Qualification based on State statutes.* Whenever a qualifying State statute is the basis for a grant awarded under this subpart, such statute shall have been enacted by the application due date and be in effect and enforced, without interruption, by the beginning of and throughout the fiscal year of the grant award.

(e) *Award determinations and transfer of funds.* (1) Except as provided in § 1300.26(h), the amount of a grant awarded to a State in a fiscal year under Section 405 or Section 1906 shall be in proportion to the amount each such State received under Section 402 for fiscal year 2009.

(2) Notwithstanding paragraph (e)(1) of this section, and except as provided in §§ 1300.25(k) and 1300.28(c)(2), a grant awarded to a State in a fiscal year under Section 405 may not exceed 10 percent of the total amount made available for that subsection for that fiscal year.

(3) If it is determined after review of applications that funds for a grant program under Section 405 will not all be distributed, such funds shall be transferred to Section 402 and shall be distributed in proportion to the amount each State received under Section 402 for fiscal year 2009 to ensure, to the maximum extent practicable, that all funding is distributed.

(f) *Matching.* (1) Except as provided in paragraph (f)(2) of this section, the Federal share of the costs of activities or programs funded with grants awarded under this subpart may not exceed 80 percent.

(2) The Federal share of the costs of activities or programs funded with grants awarded to the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands shall be 100 percent.

§ 1300.21 Occupant protection grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(b), for awarding grants to States that adopt and implement effective occupant protection programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles.

(b) *Definitions.* As used in this section—

Child restraint means any device (including a child safety seat, booster seat used in conjunction with 3-point belts, or harness, but excluding seat belts) that is designed for use in a motor vehicle to restrain, seat, or position a child who weighs 65 pounds (30 kilograms) or less and that meets the Federal motor vehicle safety standard prescribed by NHTSA for child restraints.

High seat belt use rate State means a State that has an observed seat belt use rate of 90.0 percent or higher (not rounded) based on validated data from the State survey of seat belt use conducted during the previous calendar year, in accordance with the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR part 1340 (*e.g.*, for a grant application submitted on July 1, 2016, the ''previous calendar year'' would be 2015).

Lower seat belt use rate State means a State that has an observed seat belt use rate below 90.0 percent (not rounded) based on validated data from the State survey of seat belt use conducted during the previous calendar year, in accordance with the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR part 1340 (*e.g.*, for a grant application submitted on July 1, 2016, the ''previous calendar year'' would be 2015).

Seat belt means, with respect to open-body motor vehicles, including convertibles, an occupant restraint system consisting of a lap belt or a lap belt and a detachable shoulder belt, and with respect to other motor vehicles, an occupant restraint system consisting of integrated lap and shoulder belts.

(c) *Eligibility determination.* A State is eligible to apply for a grant under this section as a high seat belt use rate State or as a lower seat belt use rate State, in accordance with paragraph (d) or (e) of this section, as applicable.

(d) *Qualification criteria for a high seat belt use rate State.* To qualify for an Occupant Protection Grant in a fiscal year, a high seat belt use rate State (as determined by NHTSA) shall submit as part of its HSP the following documentation, in accordance with Part 1 of Appendix B:

(1) *Occupant protection plan.* State occupant protection program area plan that identifies the safety problems to be addressed, performance measures and targets, and the countermeasure strategies and planned activities the State will implement to address those problems, at the level of detail required under § 1300.11(c) and (d).

(2) *Participation in Click-it-or-Ticket national mobilization.* Description of the State's planned participation in the Click it or Ticket national mobilization, including a list of participating agencies during the fiscal year of the grant, as required under § 1300.11(d)(6);

(3) *Child restraint inspection stations.* (i) Countermeasure strategies and planned activities, at the level of detail required under § 1300.11(d), demonstrating an active network of child passenger safety inspection stations and/or inspection events based on the State's problem identification. The description must include estimates

for the following requirements in the upcoming fiscal year:

(A) The total number of planned inspection stations and/or events in the State; and

(B) Within the total in paragraph (d)(3)(i)(A) of this section, the number of planned inspection stations and/or inspection events serving each of the following population categories: urban, rural, and at-risk.

(ii) Certification, signed by the Governor's Representative for Highway Safety, that the inspection stations/events are staffed with at least one current nationally Certified Child Passenger Safety Technician.

(4) *Child passenger safety technicians.* Countermeasure strategies and planned activities, at the level of detail required under § 1300.11(d), for recruiting, training and maintaining a sufficient number of child passenger safety technicians based on the State's problem identification. The description must include, at a minimum, an estimate of the total number of classes and the estimated total number of technicians to be trained in the upcoming fiscal year to ensure coverage of child passenger safety inspection stations and inspection events by nationally Certified Child Passenger Safety Technicians.

(5) *Maintenance of effort.* The assurance in Part 1 of Appendix B that the lead State agency responsible for occupant protection programs shall maintain its aggregate expenditures for occupant protection programs at or above the average level of such expenditures in fiscal years 2014 and 2015.

(e) *Qualification criteria for a lower seat belt use rate State.* To qualify for an Occupant Protection Grant in a fiscal year, a lower seat belt use rate State (as determined by NHTSA) shall satisfy all the requirements of paragraph (d) of this section, and submit as part of its HSP documentation demonstrating that it meets at least three of the following additional criteria, in accordance with Part 1 of Appendix B:

(1) *Primary enforcement seat belt use statute.* The State shall provide legal citations to the State law demonstrating that the State has enacted and is enforcing occupant protection statutes that make a violation of the requirement to be secured in a seat belt or child restraint a primary offense.

(2) *Occupant protection statute.* The State shall provide legal citations to State law demonstrating that the State has enacted and is enforcing occupant protection statutes that:

(i) Require—

(A) Each occupant riding in a passenger motor vehicle who is under eight years of age, weighs less than 65 pounds and is less than four feet, nine inches in height to be secured in an age-appropriate child restraint;

(B) Each occupant riding in a passenger motor vehicle other than an occupant identified in paragraph (e)(2)(i)(A) of this section to be secured in a seat belt or age-appropriate child restraint;

(C) A minimum fine of $25 per unrestrained occupant for a violation of the occupant protection statutes described in paragraph (e)(2)(i) of this section.

(ii) Notwithstanding paragraph (e)(2)(i) of this section, permit no exception from coverage except for—

(A) Drivers, but not passengers, of postal, utility, and commercial vehicles that make frequent stops in the course of their business;

(B) Persons who are unable to wear a seat belt or child restraint because of a medical condition, provided there is written documentation from a physician;

(C) Persons who are unable to wear a seat belt or child restraint because all other seating positions are occupied by persons properly restrained in seat belts or child restraints;

(D) Emergency vehicle operators and passengers in emergency vehicles during an emergency;

(E) Persons riding in seating positions or vehicles not required by Federal Motor Vehicle Safety Standards to be equipped with seat belts; or

(F) Passengers in public and livery conveyances.

(3) *Seat belt enforcement.* The State shall identify the countermeasure strategies and planned activities, at the level of detail required under § 1300.11(d)(5), demonstrating that the State conducts sustained enforcement (*i.e.,* a program of recurring efforts throughout the fiscal year of the grant to promote seat belt and child restraint enforcement), and that based on the State's problem identification, involves law enforcement agencies responsible for seat belt enforcement in geographic areas in which at least 70 percent of either the State's unrestrained passenger vehicle occupant fatalities occurred or combined fatalities and serious injuries occurred.

(4) *High risk population countermeasure programs.* The State shall identify the countermeasure strategies and planned activities, at the level of detail required under § 1300.11(d), demonstrating that the State will implement data-driven programs to improve seat belt and child restraint use for at least two of the following at-risk populations:

(i) Drivers on rural roadways;

(ii) Unrestrained nighttime drivers;

(iii) Teenage drivers;

(iv) Other high-risk populations identified in the occupant protection program area plan required under paragraph (d)(1) of this section.

(5) *Comprehensive occupant protection program.* The State shall submit the following:

(i) Date of NHTSA-facilitated program assessment that was conducted within five years prior to the application due date that evaluates the occupant protection program for elements designed to increase seat belt use in the State;

(ii) Multi-year strategic plan based on input from Statewide stakeholders (task force) under which the State developed—

(A) *Data-driven performance targets* to improve occupant protection in the State, at the level of detail required under § 1300.11(c);

(B) *Countermeasure strategies* (such as enforcement, education, communication, policies/legislation, partnerships/outreach) designed to achieve the performance targets of the strategic plan, at the level of detail required under § 1300.11(d);

(C) *A program management strategy* that provides leadership and identifies the State official responsible for implementing various aspects of the multi-year strategic plan; and

(D) *An enforcement strategy* that includes activities such as encouraging seat belt use policies for law enforcement agencies, vigorous enforcement of seat belt and child safety seat statutes, and accurate reporting of occupant protection system information on police accident report forms, at the level of detail required under § 1300.11(d)(5).

(iii) The name and title of the State's designated occupant protection coordinator responsible for managing the occupant protection program in the State, including developing the occupant protection program area of the HSP and overseeing the execution of the projects designated in the HSP; and

(iv) A list that contains the names, titles and organizations of the Statewide occupant protection task force membership that includes agencies and organizations that can help develop, implement, enforce and evaluate occupant protection programs.

(6) *Occupant protection program assessment.* The State shall identify the date of the NHTSA-facilitated assessment of all elements of its occupant protection program, which

must have been conducted within three years prior to the application due date.

(f) *Use of grant funds*—(1) *Eligible uses.* Except as provided in paragraph (f)(2) of this section, a State may use grant funds awarded under 23 U.S.C. 405(b) for the following programs or purposes only:

(i) To support high-visibility enforcement mobilizations, including paid media that emphasizes publicity for the program, and law enforcement;

(ii) To train occupant protection safety professionals, police officers, fire and emergency medical personnel, educators, and parents concerning all aspects of the use of child restraints and occupant protection;

(iii) To educate the public concerning the proper use and installation of child restraints, including related equipment and information systems;

(iv) To provide community child passenger safety services, including programs about proper seating positions for children and how to reduce the improper use of child restraints;

(v) To establish and maintain information systems containing data about occupant protection, including the collection and administration of child passenger safety and occupant protection surveys; or

(vi) To purchase and distribute child restraints to low-income families, provided that not more than five percent of the funds received in a fiscal year are used for such purpose.

(2) *Special rule—high seat belt use rate States.* Notwithstanding paragraph (f)(1) of this section, a State that qualifies for grant funds as a high seat belt use rate State may elect to use up to 100 percent of grant funds awarded under this section for any eligible project or activity under Section 402.

§ 1300.22 State Traffic safety information system improvements grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(c), for grants to States to develop and implement effective programs that improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of State safety data needed to identify priorities for Federal, State, and local highway and traffic safety programs; evaluate the effectiveness of such efforts; link State data systems, including traffic records and systems that contain medical, roadway, and economic data; improve the compatibility and interoperability of State data systems with national data systems and the data systems of other States; and enhance the agency's ability to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances.

(b) *Qualification criteria.* To qualify for a grant under this section in a fiscal year, a State shall submit as part of its HSP the following documentation, in accordance with part 2 of appendix B:

(1) *Traffic records coordinating committee (TRCC).* The State shall submit—

(i) At least three meeting dates of the TRCC during the 12 months immediately preceding the application due date;

(ii) Name and title of the State's Traffic Records Coordinator;

(iii) List of TRCC members by name, title, home organization and the core safety database represented, provided that at a minimum, at least one member represents each of the following core safety databases:

(A) Crash;

(B) Citation or adjudication;

(C) Driver;

(D) Emergency medical services or injury surveillance system;

(E) Roadway; and

(F) Vehicle.

(2) *State traffic records strategic plan.* The State shall submit a Strategic Plan, approved by the TRCC, that—

(i) Describes specific, quantifiable and measurable improvements, as described in paragraph (b)(3) of this section, that are anticipated in the State's core safety databases, including crash, citation or adjudication, driver, emergency medical services or injury surveillance system, roadway, and vehicle databases;

(ii) Includes a list of all recommendations from its most recent highway safety data and traffic records system assessment;

(iii) Identifies which recommendations identified under paragraph (b)(2)(ii) of this section the State intends to address in the fiscal year, the countermeasure strategies and planned activities, at the level of detail required under § 1300.11(d), that implement each recommendation, and the performance measures to be used to demonstrate quantifiable and measurable progress; and

(iv) Identifies which recommendations identified under paragraph (b)(2)(ii) of this section the State does not intend to address in the fiscal year and explains the reason for not implementing the recommendations.

(3) *Quantitative improvement.* The State shall demonstrate quantitative improvement in the data attribute of accuracy, completeness, timeliness, uniformity, accessibility or integration of a core database by providing—

(i) A written description of the performance measures that clearly identifies which performance attribute for which core database the State is relying on to demonstrate progress using the methodology set forth in the ''Model Performance Measures for State Traffic Records Systems'' (DOT HS 811 441), as updated; and

(ii) Supporting documentation covering a contiguous 12-month performance period starting no earlier than April 1 of the calendar year prior to the application due date, that demonstrates quantitative improvement when compared to the comparable 12-month baseline period.

(4) *State highway safety data and traffic records system assessment.* The State shall identify the date of the assessment of the State's highway safety data and traffic records system that was conducted or updated within the five years prior to the application due date and that complies with the procedures and methodologies outlined in NHTSA's ''Traffic Records Highway Safety Program Advisory'' (DOT HS 811 644), as updated.

(c) *Requirement for maintenance of effort.* The State shall submit the assurance in part 2 of appendix B that the lead State agency responsible for State traffic safety information system improvements programs shall maintain its aggregate expenditures for State traffic safety information system improvements programs at or above the average level of such expenditures in fiscal years 2014 and 2015.

(d) *Use of grant funds.* A State may use grant funds awarded under 23 U.S.C. 405(c) to make quantifiable, measurable progress improvements in the accuracy, completeness, timeliness, uniformity, accessibility or integration of data in a core highway safety database.

§ 1300.23 Impaired driving countermeasures grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(d), for awarding grants to States that adopt and implement effective programs to reduce traffic safety problems resulting from individuals driving motor vehicles while under the influence of alcohol, drugs, or the combination of alcohol and drugs; that enact alcohol-ignition interlock laws; or that implement 24–7 sobriety programs.

(b) *Definitions.* As used in this section—

24–7 sobriety program means a State law or program that authorizes a State court or an agency with jurisdiction, as a condition of bond, sentence, probation, parole, or work permit, to require an individual who was arrested for, pleads guilty to or was convicted of

driving under the influence of alcohol or drugs to—

(i) Abstain totally from alcohol or drugs for a period of time; and

(ii) Be subject to testing for alcohol or drugs at least twice per day at a testing location, by continuous transdermal alcohol monitoring via an electronic monitoring device, by drug patch, by urinalysis, by ignition interlock monitoring (provided the interlock is able to require tests twice a day without vehicle operation), by other types of electronic monitoring, or by an alternative method approved by NHTSA.

Alcohol means wine, beer, and distilled spirits.

Average impaired driving fatality rate means the number of fatalities in motor vehicle crashes involving a driver with a blood alcohol concentration of at least 0.08 percent for every 100,000,000 vehicle miles traveled, based on the most recently reported three calendar years of final data from the FARS.

Assessment means a NHTSA-facilitated process that employs a team of subject matter experts to conduct a comprehensive review of a specific highway safety program in a State.

Driving under the influence of alcohol, drugs, or a combination of alcohol and drugs means operating a vehicle while the alcohol and/or drug concentration in the blood or breath, as determined by chemical or other tests, equals or exceeds the level established by the State, or is equivalent to the standard offense, for driving under the influence of alcohol or drugs in the State.

Driving While Intoxicated (DWI) Court means a court that specializes in cases involving driving while intoxicated and abides by the Ten Guiding Principles of DWI Courts in effect on the date of the grant, as established by the National Center for DWI Courts.

Drugs means controlled substances, as that term is defined under section 102(6) of the Controlled Substances Act, 21 U.S.C. 802(6).

High-range State means a State that has an average impaired driving fatality rate of 0.60 or higher.

High-visibility enforcement efforts means participation in national impaired driving law enforcement campaigns organized by NHTSA, participation in impaired driving law enforcement campaigns organized by the State, or the use of sobriety checkpoints and/or saturation patrols conducted in a highly visible manner and supported by publicity through paid or earned media.

Low-range State means a State that has an average impaired driving fatality rate of 0.30 or lower.

Mid-range State means a State that has an average impaired driving fatality rate that is higher than 0.30 and lower than 0.60.

Restriction on driving privileges means any type of State-imposed limitation, such as a license revocation or suspension, location restriction, alcohol-ignition interlock device, or alcohol use prohibition.

Saturation patrol means a law enforcement activity during which enhanced levels of law enforcement are conducted in a concentrated geographic area (or areas) for the purpose of detecting drivers operating motor vehicles while impaired by alcohol and/or other drugs.

Sobriety checkpoint means a law enforcement activity during which law enforcement officials stop motor vehicles on a non-discriminatory, lawful basis for the purpose of determining whether the operators of such motor vehicles are driving while impaired by alcohol and/or other drugs.

Standard offense for driving under the influence of alcohol or drugs means the offense described in a State's statute that makes it a criminal offense to operate a motor vehicle while under the influence of alcohol or drugs, but does not require a measurement of alcohol or drug content.

(c) *Eligibility determination.* A State is eligible to apply for a grant under this section as a low-range State, a mid-range State or a high-range State, in accordance with paragraph (d), (e), or (f) of this section, as applicable. Independent of qualification on the basis of range, a State may also qualify for separate grants under this section as a State with an alcohol-ignition interlock law, as provided in paragraph (g) of this section, or as a State with a 24–7 sobriety program, as provided in paragraph (h) of this section.

(d) *Qualification criteria for a low-range State.* To qualify for an Impaired Driving Countermeasures Grant in a fiscal year, a low-range State (as determined by NHTSA) shall submit as part of its HSP the assurances in part 3 of Appendix B that—

(1) The State shall use the funds awarded under 23 U.S.C. 405(d)(1) only for the implementation and enforcement of programs authorized in paragraph (j) of this section; and

(2) The lead State agency responsible for impaired driving programs shall maintain its aggregate expenditures for impaired driving programs at or above the average level of such expenditures in fiscal years 2014 and 2015.

(e) *Qualification criteria for a mid-range State.* (1) To qualify for an Impaired Driving Countermeasures Grant in a fiscal year, a mid-range State (as determined by NHTSA) shall submit as part of its HSP the assurances required in paragraph (d) of this section and a copy of a Statewide impaired driving plan that contains the following information, in accordance with part 3 of appendix B:

(i) Section that describes the authority and basis for the operation of the Statewide impaired driving task force, including the process used to develop and approve the plan and date of approval;

(ii) List that contains names, titles and organizations of all task force members, provided that the task force includes key stakeholders from the State highway safety agency, law enforcement and the criminal justice system (*e.g.,* prosecution, adjudication, probation) and, as determined appropriate by the State, representatives from areas such as 24–7 sobriety programs, driver licensing, treatment and rehabilitation, ignition interlock programs, data and traffic records, public health and communication;

(iii) Strategic plan based on the most recent version of Highway Safety Program Guideline No. 8—Impaired Driving, which, at a minimum, covers the following—

(A) Prevention;

(B) Criminal justice system;

(C) Communication programs;

(D) Alcohol and other drug misuse, including screening, treatment, assessment and rehabilitation; and

(E) Program evaluation and data.

(2) *Previously submitted plan.* A mid-range State that has received a grant for a previously submitted Statewide impaired driving plan under paragraph (e)(1) or (f)(1) of this section that was developed and approved within three years prior to the application due date may, in lieu of submitting the plan required under paragraph (e)(1) of this section, submit the assurances required in paragraph (d) of this section and a separate assurance that the State continues to use the previously submitted plan.

(f) *Qualification criteria for a high-range State.* (1) To qualify for an Impaired Driving Countermeasures Grant in a fiscal year, a high-range State (as determined by NHTSA) shall submit as part of its HSP the assurances required in paragraph (d) of this section, the date of a NHTSA-facilitated assessment of the State's impaired driving program conducted within three years prior to the application due date, a copy of a Statewide impaired driving

plan that contains the information required in paragraphs (e)(1)(i) through (iii) of this section and that includes the following additional information, in accordance with part 3 of appendix B:

(i) Review that addresses in each plan area any related recommendations from the assessment of the State's impaired driving program;

(ii) Planned activities, in detail, for spending grant funds on impaired driving activities listed in paragraph (j)(4) of this section that must include high-visibility enforcement efforts, at the level of detail required under § 1300.11(d); and

(iii) Description of how the spending supports the State's impaired driving program and achievement of its performance targets, at the level of detail required under § 1300.11(d).

(2) *Previously submitted plans.* If a high-range State has received a grant for a previously submitted Statewide impaired driving plan under paragraph (f)(1) of this section, in order to receive a grant, the State may submit the assurances required in paragraph (d) of this section, and provide updates to its Statewide impaired driving plan that meet the requirements of paragraphs (e)(1)(i) through (iii) of this section and updates to its assessment review and spending plan that meet the requirements of paragraphs (f)(1)(i) through (iii) of this section.

(g) *Grants to States with Alcohol-Ignition Interlock Laws.* (1) To qualify for an alcohol-ignition interlock law grant, a State shall submit as part of its HSP legal citation(s), in accordance with part 4 of appendix B, to State statute demonstrating that the State has enacted and is enforcing a statute that requires all individuals convicted of driving under the influence of alcohol or of driving while intoxicated to drive only motor vehicles with alcohol-ignition interlocks for an authorized period of not less than 6 months.

(2) *Permitted exceptions.* A State statute providing for the following exceptions, and no others, shall not be deemed out of compliance with the requirements of paragraph (g)(1) of this section:

(i) The individual is required to operate an employer's motor vehicle in the course and scope of employment and the business entity that owns the vehicle is not owned or controlled by the individual;

(ii) The individual is certified in writing by a physician as being unable to provide a deep lung breath sample for analysis by an ignition interlock device; or

(iii) A State-certified ignition interlock provider is not available within 100 miles of the individual's residence.

(h) *Grants to States with a 24–7 Sobriety Program.* To qualify for a 24–7 Sobriety program grant, a State shall submit the following as part of its HSP, in accordance with part 5 of appendix B:

(1) Legal citation(s) to State statute demonstrating that the State has enacted and is enforcing a statute that requires all individuals convicted of driving under the influence of alcohol or of driving while intoxicated to receive a restriction on driving privileges, unless an exception in paragraph (g)(2) of this section applies, for a period of not less than 30 days; and

(2) Legal citation(s) to State statute or submission of State program information that authorizes a Statewide 24–7 sobriety program.

(i) *Award.* (1) The amount available for grants under paragraphs (d) through (f) of this section shall be determined based on the total amount of eligible States for these grants and after deduction of the amounts necessary to fund grants under 23 U.S.C. 405(d)(6).

(2) The amount available for grants under 23 U.S.C. 405(d)(6)(A) shall not exceed 12 percent of the total amount made available to States under 23 U.S.C. 405(d) for the fiscal year.

(3) The amount available for grants under 23 U.S.C. 405(d)(6)(B) shall not exceed 3 percent of the total amount made available to States under 23 U.S.C. 405(d) for the fiscal year.

(j) *Use of grant funds*—(1) *Eligible uses.* Except as provided in paragraphs (j)(2) through (5) of this section, a State may use grant funds awarded under 23 U.S.C. 405(d) only for the following programs:

(i) High-visibility enforcement efforts;

(ii) Hiring a full-time or part-time impaired driving coordinator of the State's activities to address the enforcement and adjudication of laws regarding driving while impaired by alcohol, drugs or the combination of alcohol and drugs;

(iii) Court support of high-visibility enforcement efforts, training and education of criminal justice professionals (including law enforcement, prosecutors, judges, and probation officers) to assist such professionals in handling impaired driving cases, hiring traffic safety resource prosecutors, hiring judicial outreach liaisons, and establishing driving while intoxicated courts;

(iv) Alcohol ignition interlock programs;

(v) Improving blood-alcohol concentration testing and reporting;

(vi) Paid and earned media in support of high-visibility enforcement of impaired driving laws, and conducting standardized field sobriety training, advanced roadside impaired driving evaluation training, and drug recognition expert training for law enforcement, and equipment and related expenditures used in connection with impaired driving enforcement;

(vii) Training on the use of alcohol and drug screening and brief intervention;

(viii) Training for and implementation of impaired driving assessment programs or other tools designed to increase the probability of identifying the recidivism risk of a person convicted of driving under the influence of alcohol, drugs, or a combination of alcohol and drugs and to determine the most effective mental health or substance abuse treatment or sanction that will reduce such risk;

(ix) Developing impaired driving information systems; or

(x) Costs associated with a 24–7 sobriety program.

(2) *Special rule—low-range States.* Notwithstanding paragraph (j)(1) of this section, a State that qualifies for grant funds as a low-range State may elect to use—

(i) Grant funds awarded under 23 U.S.C. 405(d) for programs designed to reduce impaired driving based on problem identification, in accordance with § 1300.11; and

(ii) Up to 50 percent of grant funds awarded under 23 U.S.C. 405(d) for any eligible project or activity under Section 402.

(3) *Special rule—mid-range States.* Notwithstanding paragraph (j)(1) of this section, a State that qualifies for grant funds as a mid-range State may elect to use grant funds awarded under 23 U.S.C. 405(d) for programs designed to reduce impaired driving based on problem identification in accordance with § 1300.11, provided the State receives advance approval from NHTSA.

(4) *Special rule—high-range States.* Notwithstanding paragraph (j)(1) of this section, a high-range State may use grant funds awarded under 23 U.S.C. 405(d) only for—

(i) High-visibility enforcement efforts; and

(ii) Any of the eligible uses described in paragraph (j)(1) of this section or programs designed to reduce impaired driving based on problem identification, in accordance with § 1300.11, if all proposed uses are described in a Statewide impaired driving plan submitted to and approved by NHTSA

in accordance with paragraph (f) of this section.

(5) *Special rule—States with Alcohol-Ignition Interlock Laws or 24–7 Sobriety Programs.* Notwithstanding paragraph (j)(1) of this section, a State may elect to use grant funds awarded under 23 U.S.C. 405(d)(6) for any eligible project or activity under Section 402.

§ 1300.24 Distracted driving grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(e), for awarding grants to States that enact and enforce a statute prohibiting distracted driving.

(b) *Definitions.* As used in this section—

Driving means operating a motor vehicle on a public road, and does not include operating a motor vehicle when the vehicle has pulled over to the side of, or off, an active roadway and has stopped in a location where it can safely remain stationary.

Texting means reading from or manually entering data into a personal wireless communications device, including doing so for the purpose of SMS texting, e-mailing, instant messaging, or engaging in any other form of electronic data retrieval or electronic data communication.

(c) *Qualification criteria for a Comprehensive Distracted Driving Grant.* To qualify for a Comprehensive Distracted Driving Grant in a fiscal year, a State shall submit as part of its HSP, in accordance with Part 6 of Appendix B—

(1) Sample distracted driving questions from the State's driver's license examination; and

(2) Legal citations to the State statute demonstrating compliance with the following requirements:

(i) *Prohibition on texting while driving.* The State statute shall—

(A) Prohibit all drivers from texting through a personal wireless communications device while driving;

(B) Make a violation of the statute a primary offense;

(C) Establish a minimum fine of $25 for a violation of the statute; and

(D) Not include an exemption that specifically allows a driver to text through a personal wireless communication device while stopped in traffic.

(ii) *Prohibition on youth cell phone use while driving.* The State statute shall—

(A) Prohibit a driver who is younger than 18 years of age or in the learner's permit or intermediate license stage set forth in § 1300.26(d) and (e) from using a personal wireless communications device while driving;

(B) Make a violation of the statute a primary offense;

(C) Establish a minimum fine of $25 for a violation of the statute; and

(D) Not include an exemption that specifically allows a driver to text through a personal wireless communication device while stopped in traffic.

(iii) *Permitted exceptions.* A State statute providing for the following exceptions, and no others, shall not be deemed out of compliance with the requirements of this section:

(A) A driver who uses a personal wireless communications device to contact emergency services;

(B) Emergency services personnel who use a personal wireless communications device while operating an emergency services vehicle and engaged in the performance of their duties as emergency services personnel; or

(C) An individual employed as a commercial motor vehicle driver or a school bus driver who uses a personal wireless communications device within the scope of such individual's employment if such use is permitted under the regulations promulgated pursuant to 49 U.S.C. 31136.

(d) *Use of funds for Comprehensive Distracted Driving Grants*—(1) *Eligible uses.* Except as provided in paragraphs (d)(2) and (3) of this section, a State may use grant funds awarded under 23 U.S.C. 405(e)(1) only to educate the public through advertising that contains information about the dangers of texting or using a cell phone while driving, for traffic signs that notify drivers about the distracted driving law of the State, or for law enforcement costs related to the enforcement of the distracted driving law.

(2) *Special rule.* Notwithstanding paragraph (d)(1) of this section, a State may elect to use up to 50 percent of the grant funds awarded under 23 U.S.C. 405(e)(1) for any eligible project or activity under Section 402.

(3) *Special rule—MMUCC conforming States.* Notwithstanding paragraphs (d)(1) and (2) of this section, a State may use up to 75 percent of amounts received under 23 U.S.C. 405(e)(1) for any eligible project or activity under Section 402 if the State has conformed its distracted driving data to the most recent Model Minimum Uniform Crash Criteria (MMUCC). To demonstrate conformance with MMUCC, the State shall submit within 30 days after notification of award, the NHTSA-developed MMUCC Mapping spreadsheet, as described in ''Mapping to MMUCC: A process for comparing police crash reports and state crash databases to the Model Minimum Uniform Crash Criteria'' (DOT HS 812 184), as updated.

(e)–(f) [Reserved]

§ 1300.25 Motorcyclist safety grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(f), for awarding grants to States that adopt and implement effective programs to reduce the number of single-vehicle and multiple-vehicle crashes involving motorcyclists.

(b) *Definitions.* As used in this section—

Data State means a State that does not have a statute or regulation requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs but can show through data and/or documentation from official records that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs were, in fact, used for motorcycle training and safety programs, without diversion.

Impaired means alcohol-impaired or drug-impaired as defined by State law, provided that the State's legal alcohol-impairment level does not exceed .08 BAC.

Law State means a State that has a statute or regulation requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs and no statute or regulation diverting any of those fees.

Motorcycle means a motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

State means any of the 50 States, the District of Columbia, and Puerto Rico.

(c) *Eligibility.* The 50 States, the District of Columbia and Puerto Rico are eligible to apply for a Motorcyclist Safety Grant.

(d) *Qualification criteria.* To qualify for a Motorcyclist Safety Grant in a fiscal year, a State shall submit as part of its HSP documentation demonstrating compliance with at least two of the criteria in paragraphs (e) through (j) of this section.

(e) *Motorcycle rider training course.* A State shall have an effective motorcycle rider training course that is offered throughout the State and that provides a formal program of instruction in accident avoidance and other safety-oriented operational skills to

motorcyclists. To demonstrate compliance with this criterion, the State shall submit, in accordance with part 7 of appendix B—

(1) A certification identifying the head of the designated State authority over motorcyclist safety issues and stating that the head of the designated State authority over motorcyclist safety issues has approved and the State has adopted one of the following introductory rider curricula:

(i) Motorcycle Safety Foundation Basic Rider Course;

(ii) TEAM OREGON Basic Rider Training;

(iii) Idaho STAR Basic I;

(iv) California Motorcyclist Safety Program Motorcyclist Training Course;

(v) A curriculum that has been approved by the designated State authority and NHTSA as meeting NHTSA's Model National Standards for Entry-Level Motorcycle Rider Training; and

(2) A list of the counties or political subdivisions in the State where motorcycle rider training courses will be conducted during the fiscal year of the grant and the number of registered motorcycles in each such county or political subdivision according to official State motor vehicle records, provided the State must offer at least one motorcycle rider training course in counties or political subdivisions that collectively account for a majority of the State's registered motorcycles.

(f) *Motorcyclist awareness program.* A State shall have an effective Statewide program to enhance motorist awareness of the presence of motorcyclists on or near roadways and safe driving practices that avoid injuries to motorcyclists. To demonstrate compliance with this criterion, the State shall submit, in accordance with part 7 of appendix B—

(1) A certification identifying head of the designated State authority over motorcyclist safety issues and stating that the State's motorcyclist awareness program was developed by or in coordination with the designated State authority over motorcyclist safety issues; and

(2) One or more performance measures and corresponding performance targets developed for motorcycle awareness at the level of detail required under § 1300.11(c) that identifies, using State crash data, the counties or political subdivisions within the State with the highest number of motorcycle crashes involving a motorcycle and another motor vehicle. Such data shall be from the most recent calendar year for which final State crash data are available, but data no older than three calendar years prior to the application due date (*e.g.,* for a grant application submitted on July 1, 2016, a State shall provide calendar year 2015 data, if available, and may not provide data older than calendar year 2013); and

(3) Countermeasure strategies and planned activities, at the level of detail required under § 1300.11(d), demonstrating that the State will implement data-driven programs in a majority of counties or political subdivisions where the incidence of crashes involving a motorcycle and another motor vehicle is highest. The State shall submit a list of counties or political subdivisions in the State ranked in order of the highest to lowest number of crashes involving a motorcycle and another motor vehicle per county or political subdivision. Such data shall be from the most recent calendar year for which final State crash data are available, but data no older than three calendar years prior to the application due date (*e.g.,* for a grant application submitted on July 1, 2016, a State shall provide calendar year 2015 data, if available, and may not provide data older than calendar year 2013). The State shall select countermeasure strategies and planned activities to address the State's motorcycle safety problem areas in order to meet the performance targets identified in paragraph (f)(2) of this section.

(g) *Reduction of fatalities and crashes involving motorcycles.* A State shall demonstrate a reduction for the preceding calendar year in the number of motorcyclist fatalities and in the rate of motor vehicle crashes involving motorcycles in the State (expressed as a function of 10,000 registered motorcycle registrations), as computed by NHTSA. To demonstrate compliance a State shall, in accordance with part 7 of appendix B—

(1) Submit in its HSP, State data and a description of the State's methods for collecting and analyzing the data, showing the total number of motor vehicle crashes involving motorcycles in the State for the most recent calendar year for which final State crash data are available, but data no older than three calendar years prior to the application due date and the same type of data for the calendar year immediately prior to that calendar year (*e.g.,* for a grant application submitted on July 1, 2016, the State shall submit calendar year 2015 data and 2014 data, if both data are available, and may not provide data older than calendar year 2013 and 2012, to determine the rate);

(2) Experience a reduction of at least one in the number of motorcyclist fatalities for the most recent calendar year for which final FARS data are available as compared to the final FARS data for the calendar year immediately prior to that year; and

(3) Based on State crash data expressed as a function of 10,000 motorcycle registrations (using FHWA motorcycle registration data), experience at least a whole number reduction in the rate of crashes involving motorcycles for the most recent calendar year for which final State crash data are available, but data no older than three calendar years prior to the application due date, as compared to the calendar year immediately prior to that year.

(h) *Impaired driving program.* A State shall implement a Statewide program to reduce impaired driving, including specific measures to reduce impaired motorcycle operation. The State shall submit, in accordance with part 7 of appendix B—

(1) One or more performance measures and corresponding performance targets developed to reduce impaired motorcycle operation at the level of detail required under § 1300.11(c). Each performance measure and performance target shall identify the impaired motorcycle operation problem area to be addressed. Problem identification must include an analysis of motorcycle crashes involving an impaired operator by county or political subdivision in the State; and

(2) Countermeasure strategies and planned activities, at the level of detail required under § 1300.11(d), demonstrating that the State will implement data-driven programs designed to reach motorcyclists in those jurisdictions where the incidence of motorcycle crashes involving an impaired operator is highest (*i.e.,* the majority of counties or political subdivisions in the State with the highest numbers of motorcycle crashes involving an impaired operator) based upon State data. Such data shall be from the most recent calendar year for which final State crash data are available, but data no older than three calendar years prior to the application due date (*e.g.,* for a grant application submitted on July 1, 2016, a State shall provide calendar year 2015 data, if available, and may not provide data older than calendar year 2013). Countermeasure strategies and planned activities shall prioritize the State's impaired motorcycle problem areas to meet the performance targets identified in paragraph (h)(1).

(i) *Reduction of fatalities and accidents involving impaired motorcyclists.* A State shall demonstrate a reduction for the preceding calendar year in the number of fatalities and in

the rate of reported crashes involving alcohol-impaired and drug-impaired motorcycle operators (expressed as a function of 10,000 motorcycle registrations), as computed by NHTSA. The State shall, in accordance with part 7 of appendix B—

(1) Submit in its HSP, State data and a description of the State's methods for collecting and analyzing the data, showing the total number of reported crashes involving alcohol-and drug-impaired motorcycle operators in the State for the most recent calendar year for which final State crash data are available, but data no older than three calendar years prior to the application due date and the same type of data for the calendar year immediately prior to that year (*e.g.,* for a grant application submitted on July 1, 2016, the State shall submit calendar year 2015 data and 2014 data, if both data are available, and may not provide data older than calendar year 2013 and 2012, to determine the rate);

(2) Experience a reduction of at least one in the number of fatalities involving alcohol-impaired and drug-impaired motorcycle operators for the most recent calendar year for which final FARS data are available as compared to the final FARS data for the calendar year immediately prior to that year; and

(3) Based on State crash data expressed as a function of 10,000 motorcycle registrations (using FHWA motorcycle registration data), experience at least a whole number reduction in the rate of reported crashes involving alcohol- and drug-impaired motorcycle operators for the most recent calendar year for which final State crash data are available, but data no older than three calendar years prior to the application due date, as compared to the calendar year immediately prior to that year.

(j) *Use of fees collected from motorcyclists for motorcycle programs.* A State shall have a process under which all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are used for motorcycle training and safety programs. A State may qualify under this criterion as either a Law State or a Data State.

(1) To demonstrate compliance as a Law State, the State shall submit, in accordance with part 7 of appendix B, the legal citation to the statutes or regulations requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs and the legal citations to the State's current fiscal year appropriation (or preceding fiscal year appropriation, if the State has not enacted a law at the time of the State's application) appropriating all such fees to motorcycle training and safety programs.

(2) To demonstrate compliance as a Data State, the State shall submit, in accordance with part 7 of appendix B, data or documentation from official records from the previous State fiscal year showing that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs were, in fact, used for motorcycle training and safety programs. Such data or documentation shall show that revenues collected for the purposes of funding motorcycle training and safety programs were placed into a distinct account and expended only for motorcycle training and safety programs.

(k) *Award limitation.* A grant awarded under 23 U.S.C. 405(f) may not exceed 25 percent of the amount apportioned to the State for fiscal year 2009 under Section 402.

(l) *Use of grant funds*—(1) *Eligible uses.* Except as provided in paragraph (l)(2) of this section, a State may use grant funds awarded under 23 U.S.C. 405(f) only for motorcyclist safety training and motorcyclist awareness programs, including—

(i) Improvements to motorcyclist safety training curricula;

(ii) Improvements in program delivery of motorcycle training to both urban and rural areas, including—

(A) Procurement or repair of practice motorcycles;

(B) Instructional materials;

(C) Mobile training units; and

(D) Leasing or purchasing facilities for closed-course motorcycle skill training;

(iii) Measures designed to increase the recruitment or retention of motorcyclist safety training instructors; or

(iv) Public awareness, public service announcements, and other outreach programs to enhance driver awareness of motorcyclists, including ''share-the-road'' safety messages developed using Share-the-Road model language available on NHTSA's website at *http://www.trafficsafetymarketing.gov.*

(2) *Special rule—low fatality States.* Notwithstanding paragraph (l)(1) of this section, a State may elect to use up to 50 percent of grant funds awarded under 23 U.S.C. 405(f) for any eligible project or activity under Section 402 if the State is in the lowest 25 percent of all States for motorcycle deaths per 10,000 motorcycle registrations (using FHWA motorcycle registration data) based on the most recent calendar year for which final FARS data are available, as determined by NHTSA.

(3) *Suballocation of funds.* A State that receives a grant under this section may suballocate funds from the grant to a nonprofit organization incorporated in that State to carry out grant activities under this section.

§ 1300.26 State graduated driver licensing incentive grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(g), for awarding grants to States that adopt and implement a graduated driver's licensing statute that requires novice drivers younger than 18 years of age to comply with a 2-stage licensing process prior to receiving an unrestricted driver's license.

(b) *Definitions.* As used in this section—

Driving-related offense means any offense under State or local law relating to the use or operation of a motor vehicle, including but not limited to driving while intoxicated, misrepresentation of the individual's age, reckless driving, driving without wearing a seat belt, child restraint violation, speeding, prohibited use of a personal wireless communications device, violation of the driving-related restrictions applicable to the stages of the graduated driver's licensing process set forth in paragraphs (d) and (e) of this section, and moving violations. The term does not include offenses related to motor vehicle registration, insurance, parking, or the presence or functionality of motor vehicle equipment.

Licensed driver means an individual who possesses a valid unrestricted driver's license.

Unrestricted driver's license means full, non-provisional driver's licensure to operate a motor vehicle on public roadways.

(c) *Qualification criteria—General.* To qualify for a State Graduated Driver Licensing Incentive Grant in a fiscal year, a State shall provide as part of its HSP legal citations to State statute demonstrating compliance with the requirements provided in paragraphs (d), (e), and (f) of this section, in accordance with part 8 of appendix B.

(d) *Learner's permit stage.* A State's graduated driver's licensing statute shall include a learner's permit stage that—

(1) Applies to any driver, prior to being issued by the State any permit, license, or endorsement to operate a motor vehicle on public roadways other than a learner's permit, who—

(i) Is younger than 18 years of age; and

(ii) Has not been issued an intermediate license or unrestricted driver's license by any State;

(2) Commences only after an applicant for a learner's permit passes a vision test and a knowledge assessment (*e.g.,* written or computerized) covering the rules of the road, signs, and signals;

(3) Is in effect for a period of at least 6 months, and remains in effect until the learner's permit holder—

(i) Reaches at least 16 years of age and enters the intermediate stage; or

(ii) Reaches 18 years of age;

(4) Requires the learner's permit holder to be accompanied and supervised, at all times while operating a motor vehicle, by a licensed driver who is at least 21 years of age or is a State-certified driving instructor;

(5) Requires the learner's permit holder to either—

(i) Complete a State-certified driver education or training course; or

(ii) Receive at least 50 hours of behind-the-wheel training, with at least 10 of those hours at night, with a licensed driver who is at least 21 years of age or is a State-certified driving instructor;

(6) Prohibits the learner's permit holder from using a personal wireless communications device while driving (as defined in § 1300.24(b)), except as permitted under § 1300.24(c)(2)(iii), provided that the State's statute does not include an exemption that specifically allows a driver to text through a personal wireless communication device while stopped in traffic; and

(7) Requires that, in addition to any other penalties imposed by State statute, the duration of the learner's permit stage be extended if the learner's permit holder is convicted of a driving-related offense during the first 6 months of that stage.

(e) *Intermediate stage.* A State's graduated driver's licensing statute shall include an intermediate stage that—

(1) Commences—

(i) After an applicant younger than 18 years of age successfully completes the learner's permit stage;

(ii) Prior to the applicant being issued by the State another permit, license, or endorsement to operate a motor vehicle on public roadways other than an intermediate license; and

(iii) Only after the applicant passes a behind-the-wheel driving skills assessment;

(2) Is in effect for a period of at least 6 months, and remains in effect until the intermediate license holder reaches at least 17 years of age;

(3) Requires the intermediate license holder to be accompanied and supervised, while operating a motor vehicle between the hours of 10:00 p.m. and 5:00 a.m. during the first 6 months of the intermediate stage, by a licensed driver who is at least 21 years of age or is a State-certified driving instructor, except when operating a motor vehicle for the purposes of work, school, religious activities, or emergencies;

(4) Prohibits the intermediate license holder from operating a motor vehicle with more than 1 nonfamilial passenger younger than 21 years of age unless a licensed driver who is at least 21 years of age or is a State-certified driving instructor is in the motor vehicle;

(5) Prohibits the intermediate license holder from using a personal wireless communications device while driving (as defined in § 1300.24(b)), except as permitted under § 1300.24(c)(2)(iii), provided that the State's statute does not include an exemption that specifically allows a driver to text through a personal wireless communication device while stopped in traffic; and

(6) Requires that, in addition to any other penalties imposed by State statute, the duration of the intermediate stage be extended if the intermediate license holder is convicted of a driving-related offense during the first 6 months of that stage.

(f) *Enforcement.* The minimum requirements described in paragraphs (d) and (e) of this section shall be enforced as primary offenses.

(g) *Exceptions.* A State that otherwise meets the minimum requirements set forth in paragraphs (d), (e), and (f) of this section will not be deemed ineligible for a grant under this section if—

(1) The State enacted a statute prior to January 1, 2011, establishing a class of permit or license that allows drivers younger than 18 years of age to operate a motor vehicle—

(i) In connection with work performed on, or for the operation of, a farm owned by family members who are directly related to the applicant or licensee; or

(ii) If demonstrable hardship would result from the denial of a license to the licensee or applicant, provided that the State requires the applicant or licensee to affirmatively and adequately demonstrate unique undue hardship to the individual; and

(2) A driver younger than 18 years of age who possesses only the permit or license described in paragraph (g)(1) of this section and applies for any other permit, license, or endorsement to operate a motor vehicle is subject to the graduated driver's licensing requirements of paragraphs (d), (e), and (f) of this section.

(h) *Award determination.* Subject to § 1300.20(e)(2), the amount of a grant award to a State in a fiscal year under 23 U.S.C. 405(g) shall be in proportion to the amount each such State received under Section 402 for that fiscal year.

(i) *Use of grant funds*—(1) *Eligible uses.* Except as provided in paragraphs (i)(2) and (3) of this section, a State may use grant funds awarded under 23 U.S.C. 405(g) only as follows:

(i) To enforce the State's graduated driver's licensing process;

(ii) To provide training for law enforcement personnel and other relevant State agency personnel relating to the enforcement of the State's graduated driver's licensing process;

(iii) To publish relevant educational materials that pertain directly or indirectly to the State's graduated driver's licensing law;

(iv) To carry out administrative activities to implement the State's graduated driver's licensing process; or

(v) To carry out a teen traffic safety program described in 23 U.S.C. 402(m).

(2) *Special rule.* Notwithstanding paragraph (i)(1) of this section, a State may elect to use up to 75 percent of the grant funds awarded under 23 U.S.C. 405(g) for any eligible project or activity under Section 402.

(3) *Special rule—low fatality States.* Notwithstanding paragraphs (i)(1) and (2) of this section, a State may elect to use up to 100 percent of the grant funds awarded under 23 U.S.C. 405(g) for any eligible project or activity under Section 402 if the State is in the lowest 25 percent of all States for the number of drivers under age 18 involved in fatal crashes in the State as a percentage of the total number of drivers under age 18 in the State, as determined by NHTSA.

§ 1300.27 Nonmotorized safety grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(h), for awarding grants to States for the purpose of decreasing pedestrian and bicyclist fatalities and injuries that result from crashes involving a motor vehicle.

(b) *Eligibility determination.* A State is eligible for a grant under this section if the State's annual combined pedestrian and bicyclist fatalities exceed 15 percent of the State's total annual crash fatalities based on the most recent calendar year for which final FARS data are available, as determined by NHTSA.

(c) *Qualification criteria.* To qualify for a Nonmotorized Safety Grant in a fiscal year, a State meeting the eligibility requirements of paragraph (b) of this section shall submit as part of its HSP the assurances that the State shall use the funds awarded under 23 U.S.C. 405(h) only for the authorized uses identified in paragraph (d) of this

section, in accordance with part 9 of appendix B.

(d) *Use of grant funds.* A State may use grant funds awarded under 23 U.S.C. 405(h) only for—

(1) Training of law enforcement officials on State laws applicable to pedestrian and bicycle safety;

(2) Enforcement mobilizations and campaigns designed to enforce State traffic laws applicable to pedestrian and bicycle safety; or

(3) Public education and awareness programs designed to inform motorists, pedestrians, and bicyclists of State traffic laws applicable to pedestrian and bicycle safety.

§ 1300.28 Racial profiling data collection grants.

(a) *Purpose.* This section establishes criteria, in accordance with Section 1906, for incentive grants to encourage States to maintain and allow public inspection of statistical information on the race and ethnicity of the driver for all motor vehicle stops made on all public roads except those classified as local or minor rural roads.

(b) *Qualification criteria.* To qualify for a Racial Profiling Data Collection Grant in a fiscal year, a State shall submit as part of its HSP, in accordance with part 10 of appendix B—

(1) Official documents (*i.e.,* a law, regulation, binding policy directive, letter from the Governor or court order) that demonstrate that the State maintains and allows public inspection of statistical information on the race and ethnicity of the driver for each motor vehicle stop made by a law enforcement officer on all public roads except those classified as local or minor rural roads; or

(2) The assurances that the State will undertake activities during the fiscal year of the grant to comply with the requirements of paragraph (b)(1) of this section, and countermeasure strategies and planned activities, at the level of detail required under § 1300.11(d), supporting the assurances.

(c) *Limitation.* (1) On or after October 1, 2015, a State may not receive a grant under paragraph (b)(2) of this section in more than 2 fiscal years.

(2) Notwithstanding § 1300.20(e)(2), the total amount of a grant awarded to a State under this section in a fiscal year may not exceed 5 percent of the funds available under this section in the fiscal year.

(d) *Use of grant funds.* A State may use grant funds awarded under Section 1906 only for the costs of—

(1) Collecting and maintaining data on traffic stops; or

(2) Evaluating the results of the data.

Subpart D—Administration of the Highway Safety Grants

§ 1300.30 General.

Subject to the provisions of this subpart, the requirements of 2 CFR parts 200 and 1201 govern the implementation and management of State highway safety programs and projects carried out under 23 U.S.C. Chapter 4 and Section 1906.

§ 1300.31 Equipment.

(a) *Title.* Except as provided in paragraphs (e) and (f) of this section, title to equipment acquired under 23 U.S.C. Chapter 4 and Section 1906 will vest upon acquisition in the State or its subrecipient, as appropriate, subject to the conditions in paragraphs (b) through (d) of this section.

(b) *Use.* All equipment shall be used for the originally authorized grant purposes for as long as needed for those purposes, as determined by the Regional Administrator, and neither the State nor any of its subrecipients or contractors shall encumber the title or interest while such need exists.

(c) *Management and disposition.* Subject to the requirements of paragraphs (b), (d), (e), and (f) of this section, States and their subrecipients and contractors shall manage and dispose of equipment acquired under 23 U.S.C. Chapter 4 and Section 1906 in accordance with State laws and procedures.

(d) *Major purchases and dispositions.* Equipment with a useful life of more than one year and an acquisition cost of $5,000 or more shall be subject to the following requirements—

(1) Purchases shall receive prior written approval from the Regional Administrator;

(2) Dispositions shall receive prior written approval from the Regional Administrator unless the equipment has exceeded its useful life as determined under State law and procedures.

(e) *Right to transfer title.* The Regional Administrator may reserve the right to transfer title to equipment acquired under this part to the Federal Government or to a third party when such third party is eligible under Federal statute. Any such transfer shall be subject to the following requirements:

(1) The equipment shall be identified in the grant or otherwise made known to the State in writing;

(2) The Regional Administrator shall issue disposition instructions within 120 calendar days after the equipment is determined to be no longer needed for highway safety purposes, in the absence of which the State shall follow the applicable procedures in 2 CFR parts 200 and 1201.

(f) *Federally-owned equipment.* In the event a State or its subrecipient is provided federally-owned equipment:

(1) Title shall remain vested in the Federal Government;

(2) Management shall be in accordance with Federal rules and procedures, and an annual inventory listing shall be submitted by the State;

(3) The State or its subrecipient shall request disposition instructions from the Regional Administrator when the item is no longer needed for highway safety purposes.

§ 1300.32 Amendments to Highway Safety Plans—approval by the Regional Administrator.

(a) During the fiscal year of the grant, States may amend the HSP, except performance targets, after approval under § 1300.14. States shall document changes to the HSP electronically.

(b) The State shall amend the HSP, prior to beginning project performance, to provide the following information about each project agreement it enters into:

(1) Project agreement number;

(2) Subrecipient;

(3) Amount of Federal funds; and

(4) Eligible use of funds.

(c) Amendments and changes to the HSP are subject to approval by the Regional Administrator before approval of vouchers for payment. Regional Administrators will disapprove changes and projects that are inconsistent with the HSP or that do not constitute an appropriate use of Federal funds.

§ 1300.33 Vouchers and project agreements.

(a) *General.* Each State shall submit official vouchers for expenses incurred to the Regional Administrator.

(b) *Content of vouchers.* At a minimum, each voucher shall provide the following information, broken down by individual project agreement:

(1) Project agreement number for which work was performed and payment is sought;

(2) Amount of Federal funds sought, up to the amount identified in § 1300.32(b);

(3) Amount of Federal funds allocated to local benefit (provided no less than mid-year (by March 31) and with the final voucher); and

(4) Matching rate (or special matching writeoff used, i.e., sliding scale rate authorized under 23 U.S.C. 120).

(c) *Project agreements.* Copies of each project agreement for which expenses are being claimed under the voucher (and supporting documentation for the

vouchers) shall be made promptly available for review by the Regional Administrator upon request. Each project agreement shall bear the project agreement number to allow the Regional Administrator to match the voucher to the corresponding project.

(d) *Submission requirements.* At a minimum, vouchers shall be submitted to the Regional Administrator on a quarterly basis, no later than 15 working days after the end of each quarter, except that where a State receives funds by electronic transfer at an annualized rate of one million dollars or more, vouchers shall be submitted on a monthly basis, no later than 15 working days after the end of each month. A final voucher for the fiscal year shall be submitted to the Regional Administrator no later than 90 days after the end of the fiscal year, and all unexpended balances shall be carried forward to the next fiscal year unless they have lapsed in accordance with § 1300.41.

(e) *Payment.* (1) Failure to provide the information specified in paragraph (b) of this section shall result in rejection of the voucher.

(2) Vouchers that request payment for projects whose project agreement numbers or amounts claimed do not match the projects or exceed the estimated amount of Federal funds provided under § 1300.32, shall be rejected, in whole or in part, until an amended project and/or estimated amount of Federal funds is submitted to and approved by the Regional Administrator in accordance with § 1300.32.

(3) Failure to meet the deadlines specified in paragraph (d) of this section may result in delayed payment.

§ 1300.34 [Reserved]

§ 1300.35 Annual report.

Within 90 days after the end of the fiscal year, each State shall submit electronically an Annual Report providing—

(a) An assessment of the State's progress in achieving performance targets identified in the prior year HSP, and a description of how the State will adjust its upcoming HSP to better meet performance targets if a State has not met its performance targets;

(b) A description of the projects and activities funded and implemented along with the amount of Federal funds obligated and expended under the prior year HSP;

(c) A description of the State's evidence-based enforcement program activities;

(d) Submission of information regarding mobilization participation (*e.g.,* participating and reporting agencies, enforcement activity, citation information, paid and earned media information);

(e) An explanation of reasons for planned activities that were not implemented; and

(f) A description of how the projects funded under the prior year HSP contributed to meeting the State's highway safety performance targets.

§ 1300.36 Appeals of written decision by a Regional Administrator.

The State shall submit an appeal of any written decision by a Regional Administrator regarding the administration of the grants in writing, signed by the Governor's Representative for Highway Safety, to the Regional Administrator. The Regional Administrator shall promptly forward the appeal to the NHTSA Associate Administrator, Regional Operations and Program Delivery. The decision of the NHTSA Associate Administrator shall be final and shall be transmitted to the Governor's Representative for Highway Safety through the Regional Administrator.

Subpart E—Annual Reconciliation

§ 1300.40 Expiration of the Highway Safety Plan.

(a) The State's Highway Safety Plan for a fiscal year and the State's authority to incur costs under that HSP shall expire on the last day of the fiscal year.

(b) Except as provided in paragraph (c) of this section, each State shall submit a final voucher which satisfies the requirements of § 1300.33(b) within 90 days after the expiration of the HSP. The final voucher constitutes the final financial reconciliation for each fiscal year.

(c) The Regional Administrator may extend the time period for no more than 30 days to submit a final voucher only in extraordinary circumstances. States shall submit a written request for an extension describing the extraordinary circumstances that necessitate an extension. The approval of any such request for extension shall be in writing, shall specify the new deadline for submitting the final voucher, and shall be signed by the Regional Administrator.

§ 1300.41 Disposition of unexpended balances.

(a) *Carry-forward balances.* Except as provided in paragraph (b) of this section, grant funds that remain unexpended at the end of a fiscal year and the expiration of an HSP shall be credited to the State's highway safety account for the new fiscal year, and made immediately available for use by the State, provided the State's new HSP has been approved by the Regional Administrator pursuant to § 1300.14 of this part, including any amendments to the HSP pursuant to § 1300.32.

(b) *Deobligation of funds.* (1) Except as provided in paragraph (b)(2) of this section, unexpended grant funds shall not be available for expenditure beyond the period of three years after the last day of the fiscal year of apportionment or allocation.

(2) NHTSA shall notify States of any such unexpended grant funds no later than 180 days prior to the end of the period of availability specified in paragraph (b)(1) of this section and inform States of the deadline for commitment. States may commit such unexpended grant funds to a specific project by the specified deadline, and shall provide documentary evidence of that commitment, including a copy of an executed project agreement, to the Regional Administrator.

(3) Grant funds committed to a specific project in accordance with paragraph (b)(2) of this section shall remain committed to that project and must be expended by the end of the succeeding fiscal year. The final voucher for that project shall be submitted within 90 days after the end of that fiscal year.

(4) NHTSA shall deobligate unexpended balances at the end of the time period in paragraph (b)(1) or (3) of this section, whichever is applicable, and the funds shall lapse.

§ 1300.42 Post-grant adjustments.

The expiration of an HSP does not affect the ability of NHTSA to disallow costs and recover funds on the basis of a later audit or other review or the State's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

§ 1300.43 Continuing requirements.

Notwithstanding the expiration of an HSP, the provisions in 2 CFR parts 200 and 1201 and 23 CFR part 1300, including but not limited to equipment and audit, continue to apply to the grant funds authorized under 23 U.S.C. Chapter 4 and Section 1906.

Subpart F—Non-Compliance

§ 1300.50 General.

Where a State is found to be in non-compliance with the requirements of the grant programs authorized under 23 U.S.C. Chapter 4 or Section 1906, or with other applicable law, the sanctions in §§ 1300.51 and 1300.52, and any other sanctions or remedies permitted

under Federal law, including the specific conditions of 2 CFR 200.207 and 200.338, may be applied as appropriate.

§ 1300.51 Sanctions—reduction of apportionment.

(a) *Determination of sanctions.* (1) The Administrator shall not apportion any funds under Section 402 to any State that does not have or is not implementing an approved highway safety program.

(2) If the Administrator has apportioned funds under Section 402 to a State and subsequently determines that the State is not implementing an approved highway safety program, the Administrator shall reduce the apportionment by an amount equal to not less than 20 percent, until such time as the Administrator determines that the State is implementing an approved highway safety program. The Administrator shall consider the gravity of the State's failure to implement an approved highway safety program in determining the amount of the reduction.

(i) When the Administrator determines that a State is not implementing an approved highway safety program, the Administrator shall issue to the State an advance notice, advising the State that the Administrator expects to withhold funds from apportionment or reduce the State's apportionment under Section 402. The Administrator shall state the amount of the expected withholding or reduction.

(ii) The State may, within 30 days after its receipt of the advance notice, submit documentation demonstrating that it is implementing an approved highway safety program. Documentation shall be submitted to the NHTSA Administrator, 1200 New Jersey Avenue SE, Washington, DC 20590.

(b) *Apportionment of withheld funds.* (1) If the Administrator concludes that a State has begun implementing an approved highway safety program, the Administrator shall promptly apportion to the State the funds withheld from its apportionment, but not later than July 31 of the fiscal year for which the funds were withheld.

(2)(i) If the Administrator concludes, after reviewing all relevant documentation submitted by the State or if the State has not responded to the advance notice, that the State did not correct its failure to have or implement an approved highway safety program, the Administrator shall issue a final notice, advising the State of the funds being withheld from apportionment or of the reduction of apportionment under Section 402 by July 31 of the fiscal year for which the funds were withheld.

(ii) The Administrator shall reapportion the withheld funds to the other States, in accordance with the formula specified in 23 U.S.C. 402(c), not later than the last day of the fiscal year.

§ 1300.52 Sanctions—risk assessment and non-compliance.

(a) *Risk assessment.* (1) All States receiving funds under the grant programs authorized under 23 U.S.C. Chapter 4 and Section 1906 shall be subject to an assessment of risk by NHTSA. In evaluating risks of a State highway safety program, NHTSA may consider, but is not limited to considering, the following for each State:

(i) Financial stability;

(ii) Quality of management systems and ability to meet management standards prescribed in this part and in 2 CFR part 200;

(iii) History of performance. The applicant's record in managing funds received for grant programs under this part, including findings from Management Reviews;

(iv) Reports and findings from audits performed under 2 CFR part 200, subpart F, or from the reports and findings of any other available audits; and

(v) The State's ability to effectively implement statutory, regulatory, and other requirements imposed on non-Federal entities.

(2) If a State is determined to pose risk, NHTSA may increase monitoring activities and may impose any of the specific conditions of 2 CFR 200.207, as appropriate.

(b) *Non-compliance.* If at any time a State is found to be in non-compliance with the requirements of the grant programs under this part, the requirements of 2 CFR parts 200 and 1201, or with any other applicable law, the actions permitted under 2 CFR 200.207 and 200.338 may be applied as appropriate.

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Appendix A to Part 1300 – Certifications and Assurances for Highway Safety Grants (23 U.S.C. Chapter 4; Sec. 1906, Pub. L. 109-59, As Amended By Sec. 4011, Pub. L. 114-94)

[*Each fiscal year, the Governor's Representative for Highway Safety must sign these Certifications and Assurances affirming that the State complies with all requirements, including applicable Federal statutes and regulations, that are in effect during the grant period. Requirements that also apply to subrecipients are noted under the applicable caption.*]

State: _____ Fiscal Year: _____

By submitting an application for Federal grant funds under 23 U.S.C. Chapter 4 or Section 1906, the State Highway Safety Office acknowledges and agrees to the following conditions and requirements. In my capacity as the Governor's Representative for Highway Safety, I hereby provide the following Certifications and Assurances:

GENERAL REQUIREMENTS

The State will comply with applicable statutes and regulations, including but not limited to:

- 23 U.S.C. Chapter 4 – Highway Safety Act of 1966, as amended
- Sec. 1906, Pub. L. 109-59, as amended by Sec. 4011, Pub. L. 114-94
- 23 CFR part 1300 – Uniform Procedures for State Highway Safety Grant Programs
- 2 CFR part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 2 CFR part 1201 – Department of Transportation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

The State has submitted appropriate documentation for review to the single point of contact designated by the Governor to review Federal programs, as required by Executive Order 12372 (Intergovernmental Review of Federal Programs).

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

The State will comply with FFATA guidance, *OMB Guidance on FFATA Subward and Executive Compensation Reporting,* August 27, 2010, (*https://www.fsrs.gov/documents/OMB_Guidance_on_FFATA_Subaward_and_Executive_Compensation_Reporting_08272010.pdf*) by reporting to FSRS.gov for each sub-grant awarded:

- Name of the entity receiving the award;
- Amount of the award;
- Information on the award including transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance number (where applicable), program source;
- Location of the entity receiving the award and the primary location of performance under the award, including the city, State, congressional district, and country; and an award title descriptive of the purpose of each funding action;
- A unique identifier (DUNS);
- The names and total compensation of the five most highly compensated officers of the entity if:
  (i) the entity in the preceding fiscal year received—
    (I) 80 percent or more of its annual gross revenues in Federal awards;
    (II) $25,000,000 or more in annual gross revenues from Federal awards; and
  (ii) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986;
- Other relevant information specified by OMB guidance.

NONDISCRIMINATION
(applies to subrecipients as well as States)

The State highway safety agency will comply with all Federal statutes and implementing regulations relating to nondiscrimination ("Federal Nondiscrimination Authorities"). These include but are not limited to:

- **Title VI of the Civil Rights Act of 1964** (42 U.S.C. 2000d *et seq.,* 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- **The Uniform Relocation Assistance and Real Property Acquisition Policies** Act of 1970, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- **Federal-Aid Highway Act of 1973**, (23 U.S.C. 324 *et seq.),* **and Title IX of the Education Amendments of 1972**, as amended (20 U.S.C. 1681-1683 and 1685-1686) (prohibit discrimination on the basis of sex);
- **Section 504 of the Rehabilitation Act of 1973**, (29 U.S.C. 794 *et seq.),* as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;
- **The Age Discrimination Act of 1975**, as amended, (42 U.S.C. 6101 *et seq.),* (prohibits discrimination on the basis of age);
- **The Civil Rights Restoration Act of 1987**, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the

programs or activities of the Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);

- **Titles II and III of the Americans with Disabilities Act** (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;
- **Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations** (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and
- **Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency** (guards against Title VI national origin discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR 74087-74100).

The State highway safety agency—

- Will take all measures necessary to ensure that no person in the United States shall, on the grounds of race, color, national origin, disability, sex, age, limited English proficiency, or membership in any other class protected by Federal Nondiscrimination Authorities, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any of its programs or activities, so long as any portion of the program is Federally-assisted;

- Will administer the program in a manner that reasonably ensures that any of its subrecipients, contractors, subcontractors, and consultants receiving Federal financial assistance under this program will comply with all requirements of the Non-Discrimination Authorities identified in this Assurance;

- Agrees to comply (and require its subrecipients, contractors, subcontractors, and consultants to comply) with all applicable provisions of law or regulation governing US DOT's or NHTSA's access to records, accounts, documents, information, facilities, and staff, and to cooperate and comply with any program or compliance reviews, and/or complaint investigations conducted by US DOT or NHTSA under any Federal Nondiscrimination Authority;

- Acknowledges that the United States has a right to seek judicial enforcement with regard to any matter arising under these Non-Discrimination Authorities and this Assurance;

- Agrees to insert in all contracts and funding agreements with other State or private entities the following clause:

"During the performance of this contract/funding agreement, the contractor/funding recipient agrees—

a. To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time;

b. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in appendix B of 49 CFR part 2l and herein;

c. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State highway safety office, US DOT or NHTSA;

d. That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and

e. To insert this clause, including paragraphs (a) through (e), in every subcontract and subagreement and in every solicitation for a subcontract or sub-agreement, that receives Federal funds under this program.

THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 8103)

The State will provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
b. Establishing a drug-free awareness program to inform employees about:
    1. The dangers of drug abuse in the workplace;
    2. The grantee's policy of maintaining a drug-free workplace;
    3. Any available drug counseling, rehabilitation, and employee assistance programs;
    4. The penalties that may be imposed upon employees for drug violations occurring in the workplace;
    5. Making it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
c. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will –

1. Abide by the terms of the statement;
2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

d. Notifying the agency within ten days after receiving notice under subparagraph (c)(2) from an employee or otherwise receiving actual notice of such conviction;
e. Taking one of the following actions, within 30 days of receiving notice under subparagraph (c)(2), with respect to any employee who is so convicted –
    1. Taking appropriate personnel action against such an employee, up to and including termination;
    2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
f. Making a good faith effort to continue to maintain a drug-free workplace through implementation of all of the paragraphs above.

POLITICAL ACTIVITY (HATCH ACT)
(applies to subrecipients as well as States)

The State will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING
(applies to subrecipients as well as States)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

RESTRICTION ON STATE LOBBYING
(applies to subrecipients as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION
(applies to subrecipients as well as States)

Instructions for Primary Tier Participant Certification (States)

1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal

Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.

4. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms *covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded*, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (*https://www.sam.gov/*).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction

with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency may terminate the transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Tier Covered Transactions

(1) The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary tier participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Participant Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier

participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms *covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded*, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (*https://www.sam.gov/*).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BUY AMERICA ACT
(applies to subrecipients as well as States)

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.

PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE
(applies to subrecipients as well as States)

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

POLICY ON SEAT BELT USE

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Grantee is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information and resources on traffic safety programs and policies for employers, please contact the Network of Employers for Traffic Safety (NETS), a public-private partnership dedicated to improving the traffic safety practices of employers and employees. You can download information on seat belt programs, costs of motor vehicle crashes to employers, and other traffic safety initiatives at

www.trafficsafety.org. The NHTSA website (www.nhtsa.gov) also provides information on statistics, campaigns, and program evaluations and references.

POLICY ON BANNING TEXT MESSAGING WHILE DRIVING

In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, States are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or rented vehicles, Government-owned, leased or rented vehicles, or privately-owned vehicles when on official Government business or when performing any work on or behalf of the Government. States are also encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

SECTION 402 REQUIREMENTS

1. To the best of my personal knowledge, the information submitted in the Highway Safety Plan in support of the State's application for a grant under 23 U.S.C. 402 is accurate and complete.

2. The Governor is the responsible official for the administration of the State highway safety program, by appointing a Governor's Representative for Highway Safety who shall be responsible for a State highway safety agency that has adequate powers and is suitably equipped and organized (as evidenced by appropriate oversight procedures governing such areas as procurement, financial administration, and the use, management, and disposition of equipment) to carry out the program. (23 U.S.C. 402(b)(1)(A))

3. The political subdivisions of this State are authorized, as part of the State highway safety program, to carry out within their jurisdictions local highway safety programs which have been approved by the Governor and are in accordance with the uniform guidelines promulgated by the Secretary of Transportation. (23 U.S.C. 402(b)(1)(B))

4. At least 40 percent of all Federal funds apportioned to this State under 23 U.S.C. 402 for this fiscal year will be expended by or for the benefit of political subdivisions of the State in carrying out local highway safety programs (23 U.S.C. 402(b)(1)(C)) or 95 percent by and for the benefit of Indian tribes (23 U.S.C. 402(h)(2)), unless this requirement is waived in writing. (This provision is not applicable to the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.)

5. The State's highway safety program provides adequate and reasonable access for the safe and convenient movement of physically handicapped persons, including those in

wheelchairs, across curbs constructed or replaced on or after July 1, 1976, at all pedestrian crosswalks. (23 U.S.C. 402(b)(1)(D))

6. The State will provide for an evidenced-based traffic safety enforcement program to prevent traffic violations, crashes, and crash fatalities and injuries in areas most at risk for such incidents. (23 U.S.C. 402(b)(1)(E))

7. The State will implement activities in support of national highway safety goals to reduce motor vehicle related fatalities that also reflect the primary data-related crash factors within the State, as identified by the State highway safety planning process, including:
    - Participation in the National high-visibility law enforcement mobilizations as identified annually in the NHTSA Communications Calendar, including not less than 3 mobilization campaigns in each fiscal year to –
        - Reduce alcohol-impaired or drug-impaired operation of motor vehicles; and
        - Increase use of seat belts by occupants of motor vehicles;
    - Submission of information regarding mobilization participation into the HVE Database;
    - Sustained enforcement of statutes addressing impaired driving, occupant protection, and driving in excess of posted speed limits;
    - An annual Statewide seat belt use survey in accordance with 23 CFR part 1340 for the measurement of State seat belt use rates, except for the Secretary of Interior on behalf of Indian tribes;
    - Development of Statewide data systems to provide timely and effective data analysis to support allocation of highway safety resources;
    - Coordination of Highway Safety Plan, data collection, and information systems with the State strategic highway safety plan, as defined in 23 U.S.C. 148(a).

    (23 U.S.C. 402(b)(1)(F))

8. The State will actively encourage all relevant law enforcement agencies in the State to follow the guidelines established for vehicular pursuits issued by the International Association of Chiefs of Police that are currently in effect. (23 U.S.C. 402(j))

9. The State will not expend Section 402 funds to carry out a program to purchase, operate, or maintain an automated traffic enforcement system. (23 U.S.C. 402(c)(4))

The State: **[*CHECK ONLY ONE*]**

□ Certifies that automated traffic enforcement systems are not used on any public road in the State;

OR

□ Is unable to certify that automated traffic enforcement systems are not used on any public road in the State, and therefore will conduct a survey meeting the requirements of 23 U.S.C. 402(c)(4)(C) AND will submit the survey results to the NHTSA Regional Office no later than March 1 of the fiscal year of the grant.

I understand that my statements in support of the State's application for Federal grant funds are statements upon which the Federal Government will rely in determining qualification for grant funds, and that knowing misstatements may be subject to civil or criminal penalties under 18 U.S.C. 1001. I sign these Certifications and Assurances based on personal knowledge, and after appropriate inquiry.

Signature Governor's Representative for Highway Safety Date

Printed name of Governor's Representative for Highway Safety

Appendix B to Part 1300 – Application Requirements for Section 405 and Section 1906 Grants

[*Each fiscal year, to apply for a grant under 23 U.S.C. 405 or Section 1906, Pub. L. 109-59, as amended by Section 4011, Pub. L. 114-94, the State must complete and submit all required information in this appendix, and the Governor's Representative for Highway Safety must sign the Certifications and Assurances.*]

State: _____ Fiscal Year: _____

Instructions: Check the box for each part for which the State is applying for a grant, fill in relevant blanks, and identify the attachment number or page numbers where the requested information appears in the HSP. Attachments may be submitted electronically.

□ PART 1: OCCUPANT PROTECTION GRANTS (23 CFR 1300.21)

[*Check the box above **only** if applying for this grant.*]

All States:

[*Fill in **all** blanks below.*]

- The lead State agency responsible for occupant protection programs will maintain its aggregate expenditures for occupant protection programs at or above the average level of such expenditures in fiscal years 2014 and 2015. (23 U.S.C. 405(a)(9))

- The State's occupant protection program area plan for the upcoming fiscal year is provided in the HSP at _____ (location).

- The State will participate in the Click it or Ticket national mobilization in the fiscal year of the grant. The description of the State's planned participation is provided in the HSP at _____ (location).

- Countermeasure strategies and planned activities demonstrating the State's active network of child restraint inspection stations are provided in the HSP at _____ (location). Such description includes estimates for: (1) the total number of planned inspection stations and events during the upcoming fiscal year; and (2) within that total, the number of planned inspection stations and events serving each of the following population categories: urban, rural, and at-risk. The planned inspection stations/events provided in the HSP are staffed with at least one current nationally Certified Child Passenger Safety Technician.

- Countermeasure strategies and planned activities, as provided in the HSP at _____ (location), that include estimates of the total number of classes and total number of technicians to be trained in the upcoming fiscal year to ensure coverage of child passenger safety inspection stations and inspection events by nationally Certified Child Passenger Safety Technicians.

Lower Seat Belt Use States Only:

[*Check **at least 3 boxes** below and fill in **all** blanks under those checked boxes.*]

□ The State's **primary seat belt use law**, requiring all occupants riding in a passenger motor vehicle to be restrained in a seat belt or a child restraint, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant. **Legal citation(s):**_____ _____.

□ The State's **occupant protection law**, requiring occupants to be secured in a seat belt or age-appropriate child restraint while in a passenger motor vehicle and a minimum fine of $25, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- _____ Requirement for all occupants to be secured in seat belt or age appropriate child restraint;
- _____ Coverage of all passenger motor vehicles;
- _____ Minimum fine of at least $25;
- _____ Exemptions from restraint requirements.

□ The countermeasure strategies and planned activities demonstrating the State's **seat belt enforcement plan** are provided in the HSP at _____ (location).

□ The countermeasure strategies and planned activities demonstrating the State's **high risk population countermeasure program** are provided in the HSP at _____ (location).

□ The State's **comprehensive occupant protection program** is provided as follows:

- Date of NHTSA-facilitated program assessment conducted within 5 years prior to the application date: _____ (date);
- Multi-year strategic plan: HSP at _____ (location);

- The name and title of the State's designated occupant protection coordinator is _____.
  _____
- List that contains the names, titles and organizations of the Statewide occupant protection task force membership: HSP at _____ (location).

□ The State's NHTSA-facilitated **occupant protection program assessment** of all elements of its occupant protection program was conducted on _____ (date) (within 3 years of the application due date);

□ PART 2: STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS GRANTS (23 CFR 1300.22)

[*Check the box above **only** if applying for this grant.*]

All States:

- The lead State agency responsible for traffic safety information system improvement programs will maintain its aggregate expenditures for traffic safety information system improvements programs at or above the average level of such expenditures in fiscal years 2014 and 2015. (23 U.S.C. 405(a)(9))

[*Fill in **all** blank for each bullet below.*]

- A list of at least 3 TRCC meeting dates during the 12 months preceding the application due date is provided in the HSP at _____ (location).

- The name and title of the State's Traffic Records Coordinator is _____
  _____.

- A list of the TRCC members by name, title, home organization and the core safety database represented is provided in the HSP at _____ (location).

- The State Strategic Plan is provided as follows:

  - Description of specific, quantifiable and measurable improvements: HSP at _____ (location);
  - List of all recommendations from most recent assessment: HSP at _____ (location);
  - Recommendations to be addressed, including countermeasure strategies and planned activities and performance measures: HSP at _____ (location);
  - Recommendations not to be addressed, including reasons for not implementing: HSP at _____ (location).

- Written description of the performance measures, and all supporting data, that the State is relying on to demonstrate achievement of the quantitative improvement in the preceding 12 months of the application due date in relation to one or more of the significant data program attributes is provided in the HSP at _____ (location).

- The State's most recent assessment or update of its highway safety data and traffic records system was completed on _____ (date).

□ PART 3: IMPAIRED DRIVING COUNTERMEASURES (23 CFR 1300.23(D)-(F))

[*Check the box above **only** if applying for this grant.*]

All States:

- The lead State agency responsible for impaired driving programs will maintain its aggregate expenditures for impaired driving programs at or above the average level of such expenditures in fiscal years 2014 and 2015.

- The State will use the funds awarded under 23 U.S.C. 405(d) only for the implementation of programs as provided in 23 CFR 1300.23(j).

Mid-Range State Only:

[*Check **one box** below and fill in **all** blanks under that checked box.*]

□ The State submits its Statewide impaired driving plan approved by a Statewide impaired driving task force on _____ (date). Specifically –

- HSP at _____ (location) describes the authority and basis for operation of the Statewide impaired driving task force;
- HSP at _____ (location) contains the list of names, titles and organizations of all task force members;
- the HSP at _____ (location) contains the strategic plan based on Highway Safety Guideline No. 8 – Impaired Driving.

□ The State has previously submitted a Statewide impaired driving plan approved by a Statewide impaired driving task force on _____ (date) and continues to use this plan.

High-Range State Only:

[*Check **one box** below and fill in **all** blanks under that checked box*.]

□ The State submits its Statewide impaired driving plan approved by a Statewide impaired driving task force on _____ (date) that includes a review of a NHTSA-facilitated assessment of the State's impaired driving program conducted on _____ (date). Specifically, –

- HSP at _____ (location) describes the authority and basis for operation of the Statewide impaired driving task force;
- HSP at _____ (location) contains the list of names, titles and organizations of all task force members;
- HSP at _____ (location) contains the strategic plan based on Highway Safety Guideline No. 8 – Impaired Driving;
- HSP at_____ (location) addresses any related recommendations from the assessment of the State's impaired driving program;
- HSP at _____ (location) contains the planned activities, in detail, for spending grant funds;
- HSP at _____ (location) describes how the spending supports the State's impaired driving program and achievement of its performance targets.

□ The State submits an updated Statewide impaired driving plan approved by a Statewide impaired driving task force on _____ (date) and updates its assessment review and spending plan provided in the HSP at _____ (location).

□ PART 4: ALCOHOL-IGNITION INTERLOCK LAWS (23 CFR 1300.23(G))

[*Check the box above **only** if applying for this grant.*]

[*Fill in **all** blanks*.]

The State provides citations to a law that requires all individuals convicted of driving under the influence or of driving while intoxicated to drive only motor vehicles with alcohol-ignition interlocks for a period of 6 months that was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant. **Legal citation(s):** _____ _____.

□ PART 5: 24-7 SOBRIETY PROGRAMS (23 CFR 1300.23(H))

[*Check the box above **only** if applying for this grant.*]

[*Fill in **all** blanks*.]

The State provides citations to a law that requires all individuals convicted of driving under the influence or of driving while intoxicated to receive a restriction on driving privileges that was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant. **Legal citation(s):** _____ _____.

[*Check **at least one of the boxes** below and fill in **all** blanks under that checked box*.]

□ *Law citation.* The State provides citations to a law that authorizes a Statewide 24-7 sobriety program that was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant. **Legal citation(s):** _____ _____.

□ *Program information.* The State provides program information that authorizes a Statewide 24-7 sobriety program. The program information is provided in the HSP at _____ (location).

□ PART 6: DISTRACTED DRIVING GRANTS (23 CFR 1300.24)

[*Check the box above **only** if applying for this grant and fill in **all** blanks.*]

Comprehensive Distracted Driving Grant

- The State provides sample distracted driving questions from the State's driver's license examination in the HSP at _____ (location).

- **Prohibition on Texting While Driving**

  The State's texting ban statute, prohibiting texting while driving and requiring a minimum fine of at least $25, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

  Legal citations:

  - _____ Prohibition on texting while driving;

- _____ Definition of covered wireless communication devices;
- _____ Minimum fine of at least $25 for an offense;
- _____ Exemptions from texting ban.

- **Prohibition on Youth Cell Phone Use While Driving**

  The State's youth cell phone use ban statute, prohibiting youth cell phone use while driving, driver license testing of distracted driving issues and requiring a minimum fine of at least $25, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

  Legal citations:

  - _____ Prohibition on youth cell phone use while driving;
  - _____ Definition of covered wireless communication devices;
  - _____ Minimum fine of at least $25 for an offense;
  - _____ Exemptions from youth cell phone use ban.

- The State has conformed its distracted driving data to the most recent Model Minimum Uniform Crash Criteria (MMUCC) and will provide supporting data (i.e., NHTSA-developed MMUCC Mapping spreadsheet) within 30 days after notification of award.

□ PART 7: MOTORCYCLIST SAFETY GRANTS (23 CFR 1300.25)

[*Check the box above **only** if applying for this grant.*]

[*Check **at least 2 boxes** below and fill in **all** blanks under those checked boxes **only**.*]

□ Motorcycle riding training course:

- The name and organization of the head of the designated State authority over motorcyclist safety issues is _____.

- The head of the designated State authority over motorcyclist safety issues has approved and the State has adopted one of the following introductory rider curricula: [*Check at least one of the following boxes below and fill in any blanks.*]

  □ Motorcycle Safety Foundation Basic Rider Course;

□ TEAM OREGON Basic Rider Training;
□ Idaho STAR Basic I;
□ California Motorcyclist Safety Program Motorcyclist Training Course;
□ Other curriculum that meets NHTSA's Model National Standards for Entry-Level Motorcycle Rider Training and that has been approved by NHTSA.

- In the HSP at _____ (location), a list of counties or political subdivisions in the State where motorcycle rider training courses will be conducted during the fiscal year of the grant AND number of registered motorcycles in each such county or political subdivision according to official State motor vehicle records.

□ **Motorcyclist awareness program:**

- The name and organization of the head of the designated State authority over motorcyclist safety issues is _____.

- The State's motorcyclist awareness program was developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues.

- In the HSP at _____ (location), performance measures and corresponding performance targets developed for motorcycle awareness that identify, using State crash data, the counties or political subdivisions within the State with the highest number of motorcycle crashes involving a motorcycle and another motor vehicle.

- In the HSP at _____ (location), the countermeasure strategies and planned activities demonstrating that the State will implement data-driven programs in a majority of counties or political subdivisions where the incidence of crashes involving a motorcycle and another motor vehicle is highest, and a list that identifies, using State crash data, the counties or political subdivisions within the State ranked in order of the highest to lowest number of crashes involving a motorcycle and another motor vehicle per county or political subdivision.

□ **Reduction of fatalities and crashes involving motorcycles:**

- Data showing the total number of motor vehicle crashes involving motorcycles is provided in the HSP at _____ (location).

- Description of the State's methods for collecting and analyzing data is provided in the HSP at _____ (location).

□ **Impaired driving program:**

- In the HSP at _____ (location), performance measures and corresponding performance targets developed to reduce impaired motorcycle operation.

- In the HSP at _____ (location), countermeasure strategies and planned activities demonstrating that the State will implement data-driven programs designed to reach motorcyclists and motorists in those jurisdictions where the incidence of motorcycle crashes involving an impaired operator is highest (i.e., the majority of counties or political subdivisions in the State with the highest numbers of motorcycle crashes involving an impaired operator) based upon State data.

□ **Reduction of fatalities and accidents involving impaired motorcyclists:**

- Data showing the total number of reported crashes involving alcohol-impaired and drug-impaired motorcycle operators is provided in the HSP at _____ (location).

- Description of the State's methods for collecting and analyzing data is provided in the HSP at _____ (location).

□ **Use of fees collected from motorcyclists for motorcycle programs:**

[*Check **one box only** below and fill in **all** blanks under the checked box **only**.*]

□ Applying as a Law State –

- The State law or regulation requires all fees collected by the State from motorcyclists for the purpose of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs. **Legal citation(s):**_____ _____.

  AND

- The State's law appropriating funds for FY ____ demonstrates that all fees collected by the State from motorcyclists for the purpose of funding motorcycle training and safety programs are spent on motorcycle training and safety programs. **Legal citation(s):**_____ _____.

□ Applying as a Data State –

- Data and/or documentation from official State records from the previous fiscal year showing that **all** fees collected by the State from motorcyclists

for the purpose of funding motorcycle training and safety programs were used for motorcycle training and safety programs is provided in the HSP at _____ (location).

□ PART 8: STATE GRADUATED DRIVER LICENSING INCENTIVE GRANTS (23 CFR 1300.26)

[*Check the box above **only** if applying for this grant.*]

[*Fill in **all** applicable blanks below.*]

The State's graduated driver's licensing statute, requiring both a learner's permit stage and intermediate stage prior to receiving an unrestricted driver's license, was last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Learner's Permit Stage –

Legal citations:

- _____ Applies prior to receipt of any other permit, license, or endorsement by the State if applicant is younger than 18 years of age and has not been issued an intermediate license or unrestricted driver's license by any State;
- _____ Applicant must pass vision test and knowledge assessment;
- _____ In effect for at least 6 months;
- _____ In effect until driver is at least 16 years of age;
- _____ Must be accompanied and supervised at all times;
- _____ Requires completion of State-certified driver education or training course or at least 50 hours of behind-the-wheel training, with at least 10 of those hours at night;
- _____ Prohibits use of personal wireless communications device;
- _____ Extension of learner's permit stage if convicted of a driving-related offense;
- _____ Exemptions from learner's permit stage.

Intermediate Stage –

Legal citations:

- _____ Commences after applicant younger than 18 years of age successfully completes the learner's permit stage, but prior to receipt of any other permit, license, or endorsement by the State;
- _____ Applicant must pass behind-the-wheel driving skills assessment;
- _____ In effect for at least 6 months;
- _____ In effect until driver is at least 17 years of age;
- _____ Must be accompanied and supervised between hours of 10:00 p.m. and 5:00 a.m. during first 6 months of stage, except when operating a motor vehicle for the purposes of work, school, religious activities, or emergencies;
- _____ No more than 1 nonfamilial passenger younger than 21 years of age allowed;
- _____ Prohibits use of personal wireless communications device;
- _____ Extension of intermediate stage if convicted of a driving-related offense;
- _____ Exemptions from intermediate stage.

□ PART 9: NONMOTORIZED SAFETY GRANTS (23 CFR 1300.27)

[*Check the box above **only** applying for this grant AND **only** if NHTSA has identified the State as eligible because the State annual combined pedestrian and bicyclist fatalities exceed 15 percent of the State's total annual crash fatalities based on the most recent calendar year final FARS data.*]

The State affirms that it will use the funds awarded under 23 U.S.C. 405(h) only for the implementation of programs as provided in 23 CFR 1300.27(d).

□ PART 10: RACIAL PROFILING DATA COLLECTION GRANTS (23 CFR 1300.28)

[*Check the box above **only** if applying for this grant.*]

[*Check one box **only** below and fill in **all** blanks under the checked box **only**.*]

□ In the HSP at _____ (location), the official document(s) (i.e., a law, regulation, binding policy directive, letter from the Governor or court order) demonstrates that the State maintains and allows public inspection of statistical information on the race and ethnicity of the driver for each motor vehicle stop made by a law enforcement officer on all public roads except those classified as local or minor rural roads.

□ In the HSP at _____ (location), the State will undertake countermeasure strategies and planned activities during the fiscal year of the grant to maintain and allow public inspection of statistical information on the race and ethnicity of the driver for each motor vehicle stop made by a law enforcement officer on all public roads except those classified as local or minor rural roads. (A State may not receive a racial profiling data collection grant by checking this box for more than 2 fiscal years.)

In my capacity as the Governor's Representative for Highway Safety, I hereby provide the following certifications and assurances –

- I have reviewed the above information in support of the State's application for 23 U.S.C. 405 and Section 1906 grants, and based on my review, the information is accurate and complete to the best of my personal knowledge.

- As condition of each grant awarded, the State will use these grant funds in accordance with the specific statutory and regulatory requirements of that grant, and will comply with all applicable laws, regulations, and financial and programmatic requirements for Federal grants.

- I understand and accept that incorrect, incomplete, or untimely information submitted in support of the State's application may result in the denial of a grant award.

I understand that my statements in support of the State's application for Federal grant funds are statements upon which the Federal Government will rely in determining qualification for grant funds, and that knowing misstatements may be subject to civil or criminal penalties under 18 U.S.C. 1001. I sign these

Certifications and Assurances based on personal knowledge, and after appropriate inquiry.

_____ _____

Signature Governor's Representative for Highway Safety Date

_____

Printed name of Governor's Representative for Highway Safety

Appendix C to Part 1300 – Participation by Political Subdivisions

(a) Policy. To ensure compliance with the provisions of 23 U.S.C. 402(b)(1)(C) and 23 U.S.C. 402(h)(2), which require that at least 40 percent or 95 percent of all Federal funds apportioned under Section 402 to the State (except the District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands) or the Secretary of the Interior, respectively, will be expended by political subdivisions of the State, including Indian tribal governments, in carrying out local highway safety programs, the NHTSA Regional Administrator will determine if the political subdivisions had an active voice in the initiation, development and implementation of the programs for which funds apportioned under 23 U.S.C. 402 are expended.

(b) Terms.

Local participation refers to the minimum 40 percent or 95 percent (Indian Nations) that must be expended by or for the benefit of political subdivisions.

Political subdivision includes Indian tribes, for purpose and application to the apportionment to the Secretary of Interior.

(c) Determining local share.

(1) In determining whether a State meets the local share requirement in a fiscal year, NHTSA will apply the requirement sequentially to each fiscal year's apportionments, treating all apportionments made from a single fiscal year's authorizations as a single entity for this purpose. Therefore, at least 40 percent of each State's apportionments (or at least 95 percent of the apportionment to the Secretary of the Interior) from each year's authorizations must be used in the highway safety programs of its political subdivisions prior to the period when funds would normally lapse. The local participation requirement is applicable to the State's total federally funded safety program irrespective of Standard designation or Agency responsibility.

(2) When Federal funds apportioned under 23 U.S.C. 402 are expended by a political subdivision, such expenditures are clearly part of the local share. Local highway-safety-project-related expenditures and associated indirect costs, which are reimbursable to the grantee local governments, are classifiable as local share. Illustrations of such expenditures are the costs incurred by a local government in planning and administration of highway-safety project-related activities, such as occupant protection, traffic records system improvements, emergency medical services, pedestrian and bicycle safety activities, police traffic services, alcohol and other drug countermeasures, motorcycle safety, and speed control.

(3) When Federal funds apportioned under 23 U.S.C. 402 are expended by a State agency for the benefit of a political subdivision, such funds may be considered as part of the local share, provided that the political subdivision has had an active voice in the initiation, development, and implementation of the programs for which such funds are expended. A State may not arbitrarily ascribe State agency expenditures as “benefitting local government.” Where political subdivisions have had an active voice in the initiation, development, and implementation of a particular program or activity, and a political subdivision which has not had such active voice agrees in advance of implementation to accept the benefits of the program, the Federal share of the cost of such benefits may be credited toward meeting the local participation requirement. Where

no political subdivision has had an active voice in the initiation, development, and implementation of a particular program, but a political subdivision requests the benefits of the program as part of the local government's highway safety program, the Federal share of the cost of such benefits may be credited toward meeting the local participation requirement. Evidence of consent and acceptance of the work, goods or services on behalf of the local government must be established and maintained on file by the State until all funds authorized for a specific year are expended and audits completed.

(4) State agency expenditures which are generally not classified as local are within such areas as vehicle inspection, vehicle registration and driver licensing. However, where these areas provide funding for services such as driver improvement tasks administered by traffic courts, or where they furnish computer support for local government requests for traffic record searches, these expenditures are classifiable as benefitting local programs.

(d) Waivers. While the local participation requirement may be waived in whole or in part by the NHTSA Administrator, it is expected that each State program will generate political subdivision participation to the extent required by the Act so that requests for waivers will be minimized. Where a waiver is requested, however, it must be documented at least by a conclusive showing of the absence of legal authority over highway safety activities at the political subdivision levels of the State and must recommend the appropriate percentage participation to be applied in lieu of the local share.

Appendix D to Part 1300 – Planning and Administration (P & A) Costs

(a) Policy. Federal participation in P & A activities shall not exceed 50 percent of the total cost of such activities, or the applicable sliding scale rate in accordance with 23 U.S.C. 120. The Federal contribution for P & A activities shall not exceed 15 percent of the total funds the State receives under 23 U.S.C. 402. In accordance with 23 U.S.C. 120(i), the Federal share payable for projects in the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands shall be 100 percent. The Indian country, as defined by 23 U.S.C. 402(h), is exempt from these provisions. NHTSA funds shall be used only to finance P & A activities attributable to NHTSA programs.

(b) Terms.

Direct costs are those costs identified specifically with a particular planning and administration activity or project. The salary of an accountant on the State Highway Safety Agency staff is an example of a direct cost attributable to P & A. The salary of a DWI (Driving While Intoxicated) enforcement officer is an example of direct cost attributable to a project.

Indirect costs are those costs (1) incurred for a common or joint purpose benefiting more than one cost objective within a governmental unit and (2) not readily assignable to the project specifically benefited. For example, centralized support services such as personnel, procurement, and budgeting would be indirect costs.

Planning and administration (P & A) costs are those direct and indirect costs that are attributable to the management of the Highway Safety Agency. Such costs could include salaries, related personnel benefits, travel expenses, and rental costs specific to the Highway Safety Agency.

Program management costs are those costs attributable to a program area (e.g., salary and travel expenses of an impaired driving program manager/coordinator of a State Highway Safety Agency).

(c) Procedures. (1) P & A activities and related costs shall be described in the P & A module of the State's Highway Safety Plan. The State's matching share shall be determined on the basis of the total P & A costs in the module. Federal participation shall not exceed 50 percent (or the applicable sliding scale) of the total P & A costs. A State shall not use NHTSA funds to pay more than 50 percent of the P & A costs attributable to NHTSA programs. In addition, the Federal contribution for P & A activities shall not exceed 15 percent of the total funds in the State received under 23 U.S.C. 402 each fiscal year.

(2) A State at its option may allocate salary and related costs of State highway safety agency employees to one of the following:

(i) P & A;

(ii) Program management of one or more program areas contained in the HSP; or

(iii) Combination of P & A activities and the program management activities in one or more program areas.

(3) If an employee works solely performing P & A activities, the total salary and related costs may be programmed to P & A. If the employee works performing program management activities in one or more program areas, the total salary and related costs may be charged directly to the appropriate area(s). If an employee is working time on a combination of P & A and program management activities, the total salary and related costs may be charged to P & A and the appropriate program area(s) based on the actual time worked under each area(s). If the State Highway Safety Agency elects to allocate costs based on actual time spent on an activity, the State Highway Safety Agency must keep accurate time records showing the work activities for each employee.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

Heidi R. King,

Deputy Administrator, National Highway Traffic Safety Administration.

[FR Doc. 2018–01266 Filed 1–24–18; 8:45 am]

BILLING CODE 4910–59–C

FEDERAL REGISTER

Vol. 83 Thursday,
No. 17 January 25, 2018

Part III

The President

Federal Register
Vol. 83, No. 17
Thursday, January 25, 2018

Presidential Documents

Title 3—

The President

Proclamation 9691 of January 19, 2018

National Sanctity of Human Life Day, 2018

By the President of the United States of America

A Proclamation

Today, we focus our attention on the love and protection each person, born and unborn, deserves regardless of disability, gender, appearance, or ethnicity. Much of the greatest suffering in our Nation's history—and, indeed, our planet's history—has been the result of disgracefully misguided attempts to dehumanize whole classes of people based on these immutable characteristics. We cannot let this shameful history repeat itself in new forms, and we must be particularly vigilant to safeguard the most vulnerable lives among us. This is why we observe National Sanctity of Human Life Day: to affirm the truth that all life is sacred, that every person has inherent dignity and worth, and that no class of people should ever be discarded as ''non-human.''

Reverence for every human life, one of the values for which our Founding Fathers fought, defines the character of our Nation. Today, it moves us to promote the health of pregnant mothers and their unborn children. It animates our concern for single moms; the elderly, the infirm, and the disabled; and orphan and foster children. It compels us to address the opioid epidemic and to bring aid to those who struggle with mental illness. It gives us the courage to stand up for the weak and the powerless. And it dispels the notion that our worth depends on the extent to which we are planned for or wanted.

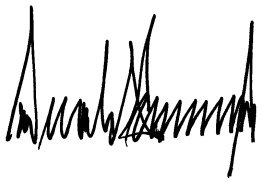
Science continues to support and build the case for life. Medical technologies allow us to see images of the unborn children moving their newly formed fingers and toes, yawning, and even smiling. Those images present us with irrefutable evidence that babies are growing within their mothers' wombs—precious, unique lives, each deserving a future filled with promise and hope. We can also now operate on babies in utero to stave off life-threatening diseases. These important medical advances give us an even greater appreciation for the humanity of the unborn.

Today, citizens throughout our great country are working for the cause of life and fighting for the unborn, driven by love and supported by both science and philosophy. These compassionate Americans are volunteers who assist women through difficult pregnancies, facilitate adoptions, and offer hope to those considering or recovering from abortions. They are medical providers who, often at the risk of their livelihood, conscientiously refuse to participate in abortions. And they are legislators who support health and safety standards, informed consent, parental notification, and bans on late-term abortions, when babies can feel pain. These undeterred warriors, many of whom travel to Washington, DC, every year for the March for Life, are changing hearts and saving lives through their passionate defense of and loving care for all human lives. Thankfully, the number of abortions, which has been in steady decline since 1980, is now at a historic low. Though the fight to protect life is not yet over, we commit to advocating each day for all who cannot speak for themselves.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 22, 2018,

as National Sanctity of Human Life Day. I call on all Americans to reflect on the value of our lives; to respond to others in keeping with their inherent dignity; to act compassionately to those with disabilities, infirmities, or frailties; to look beyond external factors that might separate us; and to embrace the common humanity that unites us.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of January, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-second.



[FR Doc. 2018–01551
Filed 1–24–18; 11:15 am]
Billing code 3295–F8–P

Presidential Documents

Presidential Determination No. 2018–03 of January 23, 2018

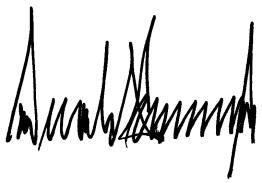
Presidential Determination Pursuant to Section 4533(a)(5) of the Defense Production Act of 1950

Memorandum for the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States, including section 4533(a)(5) of the Defense Production Act of 1950 (the ''Act'')(50 U.S.C. 4533(a)(5)), I hereby determine, pursuant to section 4533(a)(5) of the Act, that critical technology item shortfalls affecting domestic production of trusted advanced photomasks are critical to national defense.

Without Presidential action under this Act, the United States defense industrial base cannot reasonably be expected to adequately provide those capabilities or critical technology items in a timely manner. Further, purchases, purchase commitments, or other action pursuant to section 4533 of the Act are the most cost effective, expedient, and practical alternative method for meeting the need for those capabilities or critical technology items.

You are authorized and directed to publish this memorandum in the *Federal Register.*



THE WHITE HOUSE,
Washington, January 23, 2018

[FR Doc. 2018–01552
Filed 1–24–18; 11:15 am]
Billing code 5001–06–P

Presidential Documents

Presidential Determination No. 2018–04 of January 23, 2018

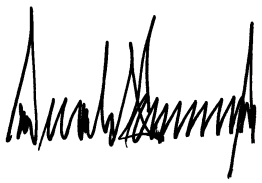
Presidential Determination Pursuant to Section 4533(a)(5) of the Defense Production Act of 1950

Memorandum for the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States, including section 4533(a)(5) of the Defense Production Act of 1950 (the ''Act'')(50 U.S.C. 4533(a)(5)), I hereby determine, pursuant to section 4533(a)(5) of the Act, that critical technology item shortfalls affecting thin-wall castings for military applications are critical to national defense.

Without Presidential action under this Act, the United States defense industrial base cannot reasonably be expected to adequately provide those capabilities or critical technology items in a timely manner. Further, purchases, purchase commitments, or other action pursuant to section 4533 of the Act are the most cost-effective, expedient, and practical alternative method for meeting the need for those capabilities or critical technology items.

You are authorized and directed to publish this memorandum in the *Federal Register.*



THE WHITE HOUSE,
Washington, January 23, 2018

[FR Doc. 2018–01554
Filed 1–24–18; 11:15 am]
Billing code 5001–06–P

FEDERAL REGISTER

Vol. 83 Thursday,
No. 17 January 25, 2018

Part IV

The President

Federal Register
Vol. 83, No. 17
Thursday, January 25, 2018

Presidential Documents

Title 3—

The President

Proclamation 9692 of January 22, 2018

National School Choice Week, 2018

By the President of the United States of America

A Proclamation

All American children deserve the opportunity to achieve their dreams through hard work and personal integrity. Our Nation's education policies must support them on their journeys, recognizing the diverse career goals and academic needs of students in communities across our country. During National School Choice Week, we honor those dedicated educators, administrators, and State and local lawmakers, who promote student-focused academic options for all families, as we increase educational freedom for all Americans.

The United States is one of the most educated countries in the world. Almost 90 percent of American adults attain a high school diploma or GED. But our students deserve more than just a paper diploma. Indeed, they deserve access to an education that provides the tools needed to succeed in our ever-evolving world. To maintain our global leadership and strengthen our modern economy, America's education system must prepare students for the unforeseen challenges of the future. Communities that provide academic options—traditional public, public charter, private, magnet, parochial, virtual, and homeschooling—empower parents and guardians to select the best educational fit for their children.

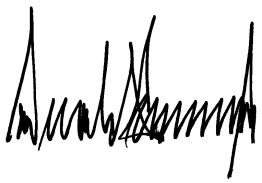
School choice helps alleviate common hindrances to success and creates the space necessary for students' aspirations to flourish. Families that participate in school choice programs are not the only ones who benefit from expanded educational options. Children in traditional public schools benefit as well. In fact, 29 of the top 31 empirical studies on the topic find that freedom of school choice improves the performance of nearby public schools.

My Administration is refocusing education policy on students. We are committed to empowering those most affected by school choice decisions and best suited to direct taxpayer resources, including States, local school boards, and families. As part of my steadfast commitment to invest in America's students, I signed into law the Tax Cuts and Jobs Act last December. One of the bill's provisions includes an expansion of 529 education savings plans so that their funds can be allocated tax-free to K–12 public, private, and religious educational expenses. By giving parents more control over their children's education, we are making strides toward a future of unprecedented educational attainment and freedom of choice. Under the leadership of Secretary of Education Betsy DeVos, we will continue to advance school choice so that every child in America has access to the tools best suited to enabling them to achieve the American Dream.

During National School Choice Week, I encourage parents to explore innovative educational alternatives, and I challenge students to dream big and work hard for the futures they deserve. I also urge State and Federal lawmakers to embrace school choice and enact policies that empower families and strengthen communities.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 21 to January 27, 2018, as National School Choice Week.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of January, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-second.



[FR Doc. 2018–01620
Filed 1–24–18; 2:00 pm]
Billing code 3295–F8–P

Presidential Documents

Proclamation 9693 of January 23, 2018

To Facilitate Positive Adjustment to Competition From Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled Into Other Products) and for Other Purposes

By the President of the United States of America

A Proclamation

1. On November 13, 2017, the United States International Trade Commission (ITC) transmitted to the President a report (the ''ITC Report'') on its investigation under section 202 of the Trade Act of 1974, as amended (the ''Trade Act'') (19 U.S.C. 2252), with respect to imports of certain crystalline silicon photovoltaic (CSPV) cells, whether or not partially or fully assembled into other products (including, but not limited to, modules, laminates, panels, and building-integrated materials) (''CSPV products''). These products exclude certain products described in the ITC Notice of Institution, 82 *FR* 25331 (June 1, 2017), and listed in subdivision (c)(ii) of Note 18 in Annex I to this proclamation.

2. The ITC reached an affirmative determination under section 202(b) of the Trade Act (19 U.S.C. 2252(b)) that CSPV products are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat of serious injury, to the domestic industry producing a like or directly competitive article.

3. Pursuant to section 311(a) of the North American Free Trade Agreement Implementation Act (the ''NAFTA Implementation Act'') (19 U.S.C. 3371(a)), the ITC made findings as to whether imports from Mexico and Canada, considered individually, account for a substantial share of total imports and contribute importantly to the serious injury, or threat thereof, caused by imports. The ITC made affirmative findings of contribution to injury with respect to imports of CSPV products from Mexico but made negative findings with respect to imports of CSPV products from Canada.

4. On November 27, 2017, the United States Trade Representative (USTR) requested additional information from the ITC under section 203(a)(5) of the Trade Act (19 U.S.C. 2253(a)(5)). On December 27, 2017, the ITC provided a response that identified unforeseen developments that led to the importation of CSPV products into the United States in such increased quantities as to be a substantial cause of serious injury (the ''supplemental report'').

5. The ITC commissioners transmitted to the President their individual recommendations with respect to the actions that each of them considered would address the serious injury, or threat of serious injury, to the domestic industry and be most effective in facilitating the efforts of the industry to make a positive adjustment to import competition. The ITC did not recommend an action within the meaning of section 202(e) of the Trade Act (19 U.S.C. 2252(e)).

6. Pursuant to section 203 of the Trade Act (19 U.S.C. 2253), and after taking into account the considerations specified in section 203(a)(2) of the Trade Act (19 U.S.C. 2253(a)(2)), the ITC Report, and the supplemental report, I have determined to implement action of a type described in section 203(a)(3) of the Trade Act (19 U.S.C. 2252(a)(3)) (a ''safeguard measure''), with regard to the following CSPV products:

(a) solar cells, whether or not assembled into modules or made up into panels provided for in subheading 8541.40.60 in Annex I to this proclamation;

(b) parts or subassemblies of solar cells provided for in subheadings 8501.31.80, 8501.61.00, and 8507.20.80 in Annex I to this proclamation;

(c) inverters or batteries with CSPV cells attached provided for in subheadings 8501.61.00 and 8507.20.80 in Annex I to this proclamation; and

(d) DC generators with CSPV cells attached provided for in subheading 8501.31.80 in Annex I to this proclamation.

7. Pursuant to section 312(a) of the NAFTA Implementation Act (19 U.S.C. 3372(a)), I have determined after considering the ITC Report that imports of CSPV products from each of Mexico and Canada, considered individually, account for a substantial share of total imports and contribute importantly to the serious injury or threat of serious injury found by the ITC.

8. Pursuant to section 203 of the Trade Act, the action I have determined to take shall be a safeguard measure in the form of:

(a) a tariff-rate quota on imports of solar cells not partially or fully assembled into other products as described in paragraph 6 of this proclamation, imposed for a period of 4 years, with unchanging within-quota quantities and annual reductions in the rates of duty applicable to goods entered in excess of those quantities in the second, third, and fourth years, as provided in Annex I to this proclamation; and

(b) an increase in duties on imports of modules, imposed for a period of 4 years, with annual reductions in the rates of duty in the second, third, and fourth years, as provided in Annex I to this proclamation.

I have determined to exclude from this action the products listed in subdivision (c)(ii) and (c)(iii) of Note 18 in Annex I to this proclamation.

9. This safeguard measure shall apply to imports from all countries, except as provided in paragraph 10 of this proclamation.

10. This safeguard measure shall not apply to imports of any product described in paragraph 6 of this proclamation of a developing country that is a Member of the World Trade Organization (WTO), as listed in subdivision (b) of Note 18 in Annex I to this proclamation, as long as such a country's share of total imports of the product, based on imports during a recent representative period, does not exceed 3 percent, provided that imports that are the product of all such countries with less than 3 percent import share collectively account for not more than 9 percent of total imports of the product. If I determine that a surge in imports of a product described in paragraph 6 of this proclamation of a developing country that is a WTO Member results in imports of that product from that developing country exceeding either of the thresholds described in this paragraph, the safeguard measure shall be modified to apply to such product from such country.

11. The in-quota quantity in each year under the tariff-rate quota described in paragraph 8 of this proclamation shall be allocated among all countries except those countries the products of which are excluded from such tariff-rate quota pursuant to paragraph 10 of this proclamation.

12. Pursuant to section 203(a)(1)(A) of the Trade Act (19 U.S.C. 2253(a)(1)(A)), I have determined that this safeguard measure will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs. If I determine that further action is appropriate and feasible to facilitate efforts by the domestic industry to make a positive adjustment to import competition and to provide greater economic and social benefits than costs, or if I determine that the conditions under section 204(b)(1) of the Trade Act (19 U.S.C. 2254(b)(1)) are met, I shall reduce, modify, or terminate the action established in this proclamation accordingly. In addition, if I determine within 30 days of the date of this proclamation, as a result of consultations between the United States and other WTO Members pursuant to Article

12.3 of the WTO Agreement on Safeguards, that it is necessary to reduce, modify, or terminate the safeguard measure, I shall proclaim the corresponding reduction, modification, or termination of the safeguard measure within 40 days.

13. Section 502 of the Trade Act (19 U.S.C. 2462) authorizes the President to designate countries as beneficiary developing countries for purposes of the Generalized System of Preferences (GSP).

14. Proclamation 9687 of December 22, 2017, ended the suspension of Argentina's designation as a GSP beneficiary developing country. That proclamation made corresponding modifications to the Harmonized Tariff Schedule of the United States (HTS). Those modifications included technical errors, and I have determined that modifications to the HTS are necessary to correct them.

15. Section 604 of the Trade Act (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 203, 502, and 604 of the Trade Act, and section 301 of title 3, United States Code, do proclaim that:

(1) In order to establish increases in duty and a tariff-rate quota on imports of the CSPV products described in paragraph 6 of this proclamation (other than excluded products), subchapter III of chapter 99 of the HTS is modified as provided in Annex I to this proclamation. Any merchandise subject to the safeguard measure that is admitted into U.S. foreign trade zones on or after 12:01 a.m. eastern standard time on February 7, 2018, must be admitted as ''privileged foreign status'' as defined in 19 CFR 146.41, and will be subject upon entry for consumption to any quantitative restrictions or tariffs related to the classification under the applicable HTS subheading.

(2) Except as provided in clause (3) below, imports of CSPV products of WTO Member developing countries, as listed in subdivision (b) of Note 18 in Annex I to this proclamation, shall be excluded from the safeguard measure established in this proclamation. Imports of solar cells of those countries that are not partially or fully assembled into other products shall not be counted toward the tariff-rate quota limits that trigger the over-quota rates of duties.

(3) If, after the safeguard measure established in this proclamation takes effect, the USTR determines that:

(a) the share of total imports of the product of a country listed in subdivision (b) of Note 18 in Annex I to this proclamation exceeds 3 percent,

(b) imports of the product from all listed countries with less than 3 percent import share collectively account for more than 9 percent of total imports of the product, or

(c) a country listed in subdivision (b) of Note 18 in Annex I to this proclamation is no longer a developing country for purposes of this proclamation;

the USTR is authorized, upon publication of a notice in the *Federal Register,* to revise subdivision (b) of Note 18 in Annex I to this proclamation to remove the relevant country from the list or suspend operation of that subdivision, as appropriate.

(4) Within 30 days after the date of this proclamation, the USTR shall publish in the *Federal Register* procedures for requests for exclusion of a particular product from the safeguard measure established in this proclamation. If the USTR determines, after consultation with the Secretaries

of Commerce and Energy, that a particular product should be excluded, the USTR is authorized, upon publishing a notice of such determination in the *Federal Register,* to modify the HTS provisions created by Annex I to this proclamation to exclude such particular product from the safeguard measure described in paragraph 8 of this proclamation.

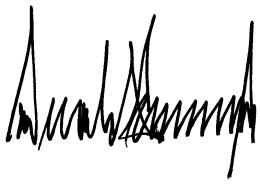
(5) In order to make technical corrections necessary to reflect the end of the suspension of Argentina's designation as a GSP beneficiary developing country, the HTS is modified as set forth in Annex II to this proclamation.

(6) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

(7) Except as provided for in clause (8) of this proclamation, the modifications to the HTS made by this proclamation, including Annex I, shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on February 7, 2018, and shall continue in effect as provided in Annex I to this proclamation, unless such actions are earlier expressly reduced, modified, or terminated. Any modifications to the HTS made pursuant to clause (3) or (4) of this proclamation shall take effect as indicated in a *Federal Register* notice published in accordance with those clauses. One year from the termination of the safeguard measure established in this proclamation, the U.S. note and tariff provisions established in Annex I to this proclamation shall be deleted from the HTS.

(8) The modifications to the HTS set forth in Annex II to this proclamation shall be effective with respect to the articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the relevant sections of Annex II.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of January, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-second.



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ANNEX I

MODIFICATIONS TO CHAPTER 99 OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on February 7, 2018, and through 11:59 p.m. eastern standard time on February 6, 2022, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) is hereby modified by inserting in numerical sequence the following new U.S. note and provisions:

"18. (a) Subheadings 9903.45.21 through 9903.45.25 and any superior texts thereto establish temporary modifications applicable to entries of goods described herein and classified in the enumerated provisions of chapter 85 of the tariff schedule. Whenever any such subheading specifies that the annual aggregate quantity of such goods shall not exceed the quantity established under the terms of this note, when such goods are not the product of a country enumerated in subdivision (b) of this note, any entry of such goods that is in excess of the quantity specified for such provision shall be entered under the over-quota subheading set forth herein for such goods. All such goods shall be subject to duty as provided herein; and such duties shall be cumulative and imposed in addition to the rate of duty established for any such goods in chapter 85 of the tariff schedule, except as may be specified for duties imposed under the Rates of Duty 2 column.

(b) For the purposes of this note and the application of subheadings 9903.45.21 through 9903.45.25, inclusive, the following developing countries that are members of the World Trade Organization shall not be subject to the rates of duty and tariff-rate quotas provided for therein:

Afghanistan, Albania, Algeria, Angola, Armenia, Azerbaijan, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Burkina Faso, Burma, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo (Brazzaville), Congo (Kinshasa), Côte d'Ivoire, Djibouti, Dominica, Ecuador, Egypt, Eritrea, Ethiopia, Fiji, Gabon, The Gambia, Georgia, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, India, Indonesia, Iraq, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kosovo, Kyrgyzstan, Lebanon, Lesotho, Liberia, Macedonia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mauritius, Moldova, Mongolia, Montenegro, Mozambique, Namibia, Nepal, Niger, Nigeria, Pakistan, Papua New Guinea, Paraguay, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tomé and Principe, Senegal, Serbia, Sierra Leone, Solomon Island, Somalia, South Africa, South Sudan, Sri Lanka, Suriname, Swaziland, Tanzania, Timor-Leste, Togo, Tonga, Tunisia, Turkey, Tuvalu, Uganda, Ukraine, Uzbekistan, Vanuatu, Yemen (Republic of), Zambia and Zimbabwe.

(c) (i) For the purposes of subheadings 9903.45.21 and 9903.45.22, except as otherwise provided herein, the term "crystalline silicon photovoltaic cells" ("CSPV cells") means crystalline silicon photovoltaic cells of a thickness equal to or greater than 20 micrometers, having a p/n junction (or variant thereof)

formed by any means, whether or not the cell (or subassemblies thereof provided for in subheading 8541.40.60 and imported under statistical reporting number 8541.40.6030) has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell. Such cells include photovoltaic cells that contain crystalline silicon in addition to other photovoltaic materials. This includes, but is not limited to, passivated emitter rear contact cells, heterojunction with intrinsic thin-layer cells, and other so-called hybrid cells. Subheadings 9903.45.21 and 9903.45.22 include goods presented in cell form and which at the time of importation are not presented assembled into circuits, laminates or modules or made up into panels.

(ii) Subheadings 9903.45.21 and 9903.45.22 shall not cover—

(1) thin film photovoltaic products produced from amorphous silicon ("a-Si"), cadmium telluride ("CdTe"), or copper indium gallium selenide ("CIGS");

(2) CSPV cells, not exceeding 10,000 mm^2 in surface area, that are permanently integrated into a consumer good whose primary function is other than power generation and that consumes the electricity generated by the integrated CSPV cell. Where more than one CSPV cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all CSPV cells that are integrated into the consumer good; and

(3) CSPV cells, whether or not partially or fully assembled into other products, if such CSPV cells were manufactured in the United States.

(iii) Subheadings 9903.45.21 and 9903.45.22 shall likewise not cover the following goods, whether or not separate statistical reporting numbers therefor may appear in chapters 1 through 97 of the tariff schedule:

(1) 10 to 60 watt, inclusive, rectangular solar panels, where the panels have the following characteristics: (A) length of 250 mm or more but not over 482 mm or width of 400 mm or more but not over 635 mm, and (B) surface area of 1000 cm^2 or more but not over 3,061 cm^2), provided that no such panel with those characteristics shall contain an internal battery or external computer peripheral ports at the time of entry;

(2) 1 watt solar panels incorporated into nightlights that use rechargeable batteries and have the following dimensions: 58 mm or more but not over 64 mm by 126 mm or more but not over 140 mm;

(3) 2 watt solar panels incorporated into daylight dimmers, that may use rechargeable batteries, such panels with the following dimensions:

75 mm or more but not over 82 mm by 139 mm or more but not over 143 mm;

(4) off-grid and portable CSPV panels, whether in a foldable case or in rigid form containing a glass cover, where the panels have the following characteristics:

(A) a total power output of 100 watts or less per panel;

(B) a maximum surface area of 8,000 cm^2 per panel;

(C) do not include a built-in inverter;

(D) where the panels have glass covers, such panels must be in individual retail packaging (for purposes of this provision, retail packaging typically includes graphics, the product name, its description and/or features, and foam for transport);

(5) 3.19 watt or less solar panels, each with length of 75 mm or more but not over 266 mm and width of 46 mm or more but not over 127 mm, with surface area of 338 cm^2 or less, with one black wire and one red wire (each of type 22 AWG or 24 AWG) not more than 206 mm in length when measured from panel edge, provided that no such panel shall contain an internal battery or external computer peripheral ports;

(6) 27.1 watt or less solar panels, each with surface area less than 3,000 cm^2 and coated across the entire surface with a polyurethane doming resin, the foregoing joined to a battery charging and maintaining unit, such unit which is an acrylonitrile butadiene styrene ("ABS") box that incorporates a light emitting diode ("LED") by coated wires that include a connector to permit the incorporation of an extension cable.

(d) Any goods covered by this note may also be excluded from the application of relief if they are covered by a determination by the United States Trade Representative ("USTR") published in the *Federal Register* that such goods should be exempt from the application of any rate of duty or tariff-rate quota otherwise imposed on goods described in the provisions of this note. Such a determination by the USTR under this subdivision may exempt specific additional CSPV cells or modules when entered from all countries or when entered from enumerated countries only, or may modify the product descriptions in subdivision (c) of this note. The USTR is authorized to modify or terminate any such determination during the effective period of the subheadings specified in the first sentence of subdivision (a) of this note and to specify, subsequent to the effective date specified in this note, that such CSPV cells and modules will be considered "goods excluded from the application of relief" upon publication by the USTR of a notice in the *Federal Register*. Such "goods excluded from the application of relief" shall not be counted toward any tariff-rate quota quantities specified for any quota period.

(e) (i) For purposes of subheading 9903.45.21, the aggregate annual quantity of goods eligible to enter during any period enumerated herein shall not exceed the volume level set forth in such subheading, where 1 gigawatt equals 1,000 megawatts.

(ii) Any importer entering CSPV cells under subheading 9903.45.21 shall report the electricity power output attributable to such cells to the satisfaction of U.S. Customs and Border Protection ("Customs") and shall provide such information as Customs may require in order to permit the administration of this subheading. Such an entry shall constitute a certification by that importer of the power output attributable to the CSPV cells described therein. Importers are likewise directed to report the electricity power output attributable to CSPV cells entered under subheading 9903.45.22 to the extent that and in such form as Customs may require.

(f) For purposes of subheading 9903.45.22 to this subchapter, the duty rate in the Rates of Duty 1-General subcolumn and the Rates of Duty 2 column for all goods entered under such subheading, and not the product of a country enumerated in subdivision (b) of this note, shall be as follows, with the duty rates set forth herein applied in addition to those applicable under subheading 8541.40.60:

If entered during the period from
February 7, 2018 through February 6, 2019 ..... 30%

If entered during the period from
February 7, 2019 through February 6, 2020 ..... 25%

If entered during the period from
February 7, 2020 through February 6, 2021 ..... 20%

If entered during the period from
February 7, 2021 through February 6, 2022 ..... 15%.

(g) For purposes of subheading 9903.45.25 to this subchapter, the term "modules" shall include the following goods provided for in subheading 8541.40.60 of the tariff schedule: a module is a joined group of CSPV cells, as such cells are defined in subdivision (c) of this note, regardless of the number of cells or the shape of the joined group, that are capable of generating electricity. Also included as a "module" are goods each known as a "panel" comprising a CSPV cell that has undergone any processing, assembly, or interconnection (including, but not limited to, assembly into a laminate). Such CSPV cells assembled into modules or made up into panels include goods of a type reported for statistical purposes under statistical reporting number 8541.40.6020. Such goods also include (i) CSPV cells which are presented attached to inverters or batteries of subheading 8501.61.00 or 8507.20.80, respectively; and (ii) CSPV cells classifiable as DC generators of subheading 8501.31.80.

(h) For purposes of subheading 9903.45.25 to this subchapter, the duty rate in the Rates of Duty 1-General subcolumn and the Rates of Duty 2 column in any of the periods enumerated below shall be as follows, with the duty rates set forth herein applied in addition to those applicable under subheading 8541.40.60:

If entered during the period from
February 7, 2018 through February 6, 2019 ..... 30%

If entered during the period from
February 7, 2019 through February 6, 2020 ..... 25%

If entered during the period from
February 7, 2020 through February 6, 2021 ..... 20%

If entered during the period from
February 7, 2021 through February 6, 2022 ..... 15%.

Such duty shall be imposed on the declared value of such modules, including the cost or value of the non-cell portions thereof (such as aluminum frames), as Customs in its regulations or instructions may require.

Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
	Crystalline silicon photovoltaic cells, as defined in note 18(c) to this subchapter, when the product or originating good of a country other than a country described in note 18(b) to this subchapter:			
9903.45.21	If entered in an annual aggregate quantity not exceeding 2.5 gigawatts, under the terms of such note.....	No change	No change	No change
9903.45.22	Other.....	The duty rate provided in note 18(f) to this sub-chapter		The duty rate provided in note 18(f) to this sub-chapter + 35%

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Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
9903.45.25	Modules as defined in note 18(g) to this subchapter, when the product or originating good of a country other than a country described in note 18(b) to this subchapter.....	The duty rate provided in note 18(h) to this subchapter		The duty rate provided in note 18(h) to this subchapter".

Annexes, page 7

ANNEX II

MODIFICATIONS ON THE ELIGIBILITY OF CERTAIN ARTICLES THE PRODUCT OF ARGENTINA FOR PURPOSES OF THE GENERALIZED SYSTEM OF PREFERENCES

Section A. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 2018, general note 4(d) to the HTS is modified by:

(1) adding, in numerical sequence, the following subheading numbers and country set out opposite such subheading numbers:

0202.30.10	Argentina	1901.20.45	Argentina
0711.20.18	Argentina	2007.99.48	Argentina
1007.10.00	Argentina	2008.30.37	Argentina
1007.90.00	Argentina	2305.00.00	Argentina
1202.30.40	Argentina	2306.30.00	Argentina
1202.42.40	Argentina	4107.11.80	Argentina
1702.60.22	Argentina		

(2) deleting from the numerical sequence, the following subheading number and country set out opposite such subheading number:

8523.29.50	Argentina

(3) adding, in alphabetical order, the country set out opposite the following subheadings:

1602.50.08	Argentina
1702.30.22	Argentina
2008.50.20	Argentina
3824.99.41	Argentina
3826.00.10	Argentina

Section B. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 2018, the HTS is modified as provided in this section. For each of the following subheadings, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A" and inserting the symbol "A*" in lieu thereof:

0202.30.10	1901.20.45
0711.20.18	2007.99.48
1007.10.00	2008.30.37
1007.90.00	2305.00.00
1202.30.40	2306.30.00
1202.42.40	4107.11.80
1702.60.22	

[FR Doc. 2018–01592

Filed 1–24–18; 2: pm]

Billing code 7020–02–C

Presidential Documents

Proclamation 9694 of January 23, 2018

To Facilitate Positive Adjustment to Competition From Imports of Large Residential Washers

By the President of the United States of America

A Proclamation

1. On December 4, 2017, the United States International Trade Commission (ITC) transmitted to the President a report (the ''ITC Report'') on its investigation under section 202 of the Trade Act of 1974, as amended (the ''Trade Act'') (19 U.S.C. 2252), with respect to imports of large residential washers (''washers''). The product subject to the ITC's investigation and determination excluded certain washers described in the ITC Notice of Institution, 82 *FR* 27075 (June 13, 2017), and listed in subdivision (c)(2) of Note 17 in the Annex to this proclamation.

2. The ITC reached an affirmative determination under section 202(b) of the Trade Act (19 U.S.C. 2252(b)) that the following products are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat of serious injury, to the domestic industries producing like or directly competitive articles:

(a) washers; and

(b) certain washer parts, including (i) all cabinets, or portions thereof, designed for use in washers; (ii) all assembled tubs designed for use in washers which incorporate, at a minimum, a tub and a seal; (iii) all assembled baskets designed for use in washers which incorporate, at a minimum, a side wrapper, a base, and a drive hub; and (iv) any combination of the foregoing parts or subassemblies.

3. Pursuant to section 311(a) of the North American Free Trade Agreement Implementation Act (the ''NAFTA Implementation Act'') (19 U.S.C. 3371(a)), the ITC made findings as to whether imports from Canada and Mexico, considered individually, account for a substantial share of total imports and contribute importantly to the serious injury, or threat thereof, caused by imports. The ITC made negative findings of contribution to injury with respect to imports of washers from Canada and Mexico.

4. The ITC transmitted to the President its recommendations made pursuant to section 202(e) of the Trade Act (19 U.S.C. 2252(e)) with respect to the actions that, in its view, would address the serious injury, or threat of serious injury, to the domestic industry and be most effective in facilitating the efforts of the industry to make a positive adjustment to import competition.

5. Pursuant to section 203 of the Trade Act (19 U.S.C. 2253), and after taking into account the considerations specified in section 203(a)(2) of the Trade Act (19 U.S.C. 2253(a)(2)) and the ITC Report, I have determined to implement action of a type described in section 203(a)(3) of the Trade Act (19 U.S.C. 2252(a)(3)) (a ''safeguard measure''), with regard to the following washers and covered washer parts:

(a) washers provided for in subheadings 8450.11.00 and 8450.20.00 in the Annex to this proclamation;

(b) all cabinets, or portions thereof, designed for use in washers, and all assembled baskets designed for use in washers that incorporate, at a

minimum, a side wrapper, a base, and a drive hub, provided for in subheading 8450.90.60 in the Annex to this proclamation;

(c) all assembled tubs designed for use in washers that incorporate, at a minimum, a tub and a seal, provided for in subheading 8450.90.20 in the Annex to this proclamation;

(d) any combination of the foregoing parts or subassemblies, provided for in subheadings 8450.90.20 or 8450.90.60 in the Annex to this proclamation.

6. Pursuant to section 312(a) of the NAFTA Implementation Act (19 U.S.C. 3372(a)), I have determined after considering the ITC Report that (a) imports from Canada of washers and covered washer parts, considered individually, do not account for a substantial share of total imports and do not contribute importantly to the serious injury or threat of serious injury found by the ITC; and (b) imports from Mexico of washers and covered washer parts, considered individually, account for a substantial share of total imports and have contributed importantly to the serious injury or threat of serious injury found by the ITC. Accordingly, pursuant to section 312(b) of the NAFTA Implementation Act (19 U.S.C. 3372(b)), I have excluded washers and covered washer parts that are the product of Canada from the actions I am taking under section 203 of the Trade Act.

7. Pursuant to section 203 of the Trade Act, the action I have determined to take shall be a safeguard measure in the form of:

(a) a tariff-rate quota on imports of washers described in subparagraph (a) of paragraph 5 of this proclamation, imposed for a period of 3 years plus 1 day, with unchanging within-quota quantities, annual reductions in the rates of duties entered within those quantities in the second and third years, and annual reductions in the rates of duty applicable to goods entered in excess of those quantities in the second and third years; and

(b) a tariff-rate quota on imports of covered washer parts described in subparagraphs (b), (c), and (d) of paragraph 5 of this proclamation, imposed for a period of 3 years plus 1 day, with increasing within-quota quantities and annual reductions in the rates of duty applicable to goods entered in excess of those quantities in the second and third years.

8. This safeguard measure shall apply to imports from all countries, except for products of Canada and except as provided in paragraph 9 of this proclamation.

9. This safeguard measure shall not apply to imports of any product described in paragraph 5 of this proclamation of a developing country that is a Member of the World Trade Organization (WTO), as listed in subdivision (b)(2) of Note 17 in the Annex to this proclamation, as long as such a country's share of total imports of the product, based on imports during a recent representative period, does not exceed 3 percent, provided that imports that are the product of all such countries with less than 3 percent import share collectively account for not more than 9 percent of total imports of the product. If I determine that a surge in imports of a product described in paragraph 5 of this proclamation of a developing country that is a WTO Member results in imports of that product from that developing country exceeding either of the thresholds described in this paragraph, the safeguard measure shall be modified to apply to such product from such country.

10. The in-quota quantity in each year under the tariff-rate quotas described in paragraph 7 of this proclamation shall be allocated among all countries except those countries the products of which are excluded from such tariff-rate quota pursuant to paragraphs 8 and 9 of this proclamation.

11. Pursuant to section 203(a)(1)(A) of the Trade Act (19 U.S.C. 2253(a)(1)(A)), I have determined that this safeguard measure will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs. If I determine that further action is appropriate and feasible to facilitate efforts by the domestic industry to make a positive adjustment to import competition

and to provide greater economic and social benefits than costs, or if I determine that the conditions under section 204(b)(1) of the Trade Act (19 U.S.C. 2254(b)(1)) are met, I shall reduce, modify, or terminate the action established in this proclamation accordingly. In addition, if I determine within 30 days of the date of this proclamation, as a result of consultations between the United States and other WTO Members pursuant to Article 12.3 of the WTO Agreement on Safeguards, that it is necessary to reduce, modify, or terminate the safeguard measure, I shall proclaim the corresponding reduction, modification, or termination of the safeguard measure within 40 days.

12. If I determine that a surge in imports of covered washer parts described in subparagraphs (b), (c), and (d) of paragraph 5 of this proclamation undermines the effectiveness of the safeguard measure, the safeguard measure shall be modified by imposing a quantitative restriction in lieu of the tariff-rate quota.

13. Section 604 of the Trade Act (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 203 and 604 of the Trade Act, section 312 of the NAFTA Implementation Act (19 U.S.C. 3372), and section 301 of title 3, United States Code, do proclaim that:

(1) In order to establish increases in duty and a tariff-rate quota on imports of the washers and covered washer parts described in paragraph 5 of this proclamation (other than excluded products), subchapter III of chapter 99 of the HTS is modified as provided in the Annex to this proclamation. Any merchandise subject to the safeguard measure that is admitted into U.S. foreign trade zones on or after 12:01 a.m. eastern standard time, on February 7, 2018, must be admitted as ''privileged foreign status'' as defined in 19 CFR 146.41, and will be subject upon entry for consumption to any quantitative restrictions or tariffs related to the classification under the applicable HTS subheading.

(2) Imports of washers and covered washer parts that are the product of Canada shall be excluded from the safeguard measure established in this proclamation, and such imports shall not be counted toward the tariff-rate quota limits that trigger the over-quota rates of duty.

(3) Except as provided in clause (4) below, imports of washers and covered washer parts that are the product of WTO Member developing countries, as listed in subdivision (b)(2) of Note 17 in the Annex to this proclamation, shall be excluded from the safeguard measure established in this proclamation, and such imports shall not be counted toward the tariff-rate quota limits that trigger the over-quota rates of duties.

(4) If, after the safeguard measure established in this proclamation takes effect, the United States Trade Representative (USTR) determines that:

(a) the share of total imports of the product of a country listed in subdivision (b)(2) of Note 17 in the Annex to this proclamation exceeds 3 percent,

(b) imports of the product from all listed countries with less than 3 percent import share collectively account for more than 9 percent of total imports of the product, or

(c) a country listed in subdivision (b)(2) of Note 17 in the Annex to this proclamation is no longer a developing country for purposes of this proclamation;

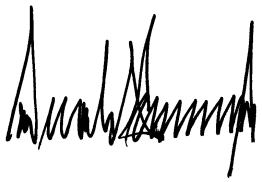
the USTR is authorized, upon publication of a notice in the *Federal Register,* to revise subdivision (b)(2) of Note 17 in the Annex to this proclamation to remove the relevant country from the list or suspend operation of that subdivision, as appropriate.

(5) If, after the safeguard measure established in this proclamation takes effect, the USTR determines that the out-of-quota quantity in units of covered washer parts entered under the tariff lines in chapter 99 enumerated in the Annex to this proclamation has increased by an unjustifiable amount and undermines the effectiveness of the safeguard measure, the USTR is authorized, upon publishing a notice of such determination in the *Federal Register,* to modify the HTS provisions created by the Annex to this proclamation so as to modify the tariff-rate quota on covered washer parts with a quantitative restriction on covered washer parts at a level that the USTR considers appropriate.

(6) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

(7) The modifications to the HTS made in this proclamation, including the Annex hereto, shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on February 7, 2018, and shall continue in effect as provided in the Annex to this proclamation, unless such actions are earlier expressly reduced, modified, or terminated. One year from the termination of the safeguard measure established in this proclamation, the U.S. note and tariff provisions established in the Annex to this proclamation shall be deleted from the HTS.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of January, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-second.



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ANNEX

MODIFICATIONS TO CHAPTER 99 OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on February 7, 2018, and through 11:59 p.m. eastern standard time on February 7, 2021, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) is hereby modified by inserting in numerical sequence the following new U.S. note and provisions:

"17. (a) Subheadings 9903.45.01 through 9903.45.06 and any superior texts thereto establish temporary modifications applicable to entries of goods described herein and classified in the enumerated provisions of chapter 84 of the tariff schedule. Whenever any such subheading specifies that the annual aggregate quantity of such goods shall not exceed the quantity established under the terms of this note, when such goods are not the product of a country enumerated in subdivision (b) of this note, any entry of such goods that is in excess of the quantity specified for such provision shall be entered under the over-quota subheading set forth herein for such goods. All such goods shall be subject to duty as provided herein, and such duties shall be cumulative and imposed in addition to the rate of duty established for any such goods in chapter 84 of the tariff schedule.

(b) For the purposes of this note and the application of subheadings 9903.45.01 through 9903.45.06, inclusive, the following countries shall not be subject to the rates of duty and tariff-rate quotas provided for herein:

(1) Canada; and

(2) the following developing countries that are members of the World Trade Organization:

Afghanistan, Albania, Algeria, Angola, Armenia, Azerbaijan, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Burkina Faso, Burma, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo (Brazzaville), Congo (Kinshasa), Côte d'Ivoire, Djibouti, Dominica, Ecuador, Egypt, Eritrea, Ethiopia, Fiji, Gabon, The Gambia, Georgia, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, India, Indonesia, Iraq, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kosovo, Kyrgyzstan, Lebanon, Lesotho, Liberia, Macedonia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mauritius, Moldova, Mongolia, Montenegro, Mozambique, Namibia, Nepal, Niger, Nigeria, Pakistan, Papua New Guinea, Paraguay, Philippines, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tomé and Principe, Senegal, Serbia, Sierra Leone, Solomon Island, Somalia, South Africa, South Sudan, Sri Lanka, Suriname, Swaziland, Tanzania, Timor-Leste, Togo, Tonga, Tunisia, Turkey, Tuvalu, Uganda, Ukraine, Uzbekistan, Vanuatu, Yemen (Republic of), Zambia and Zimbabwe.

(c) (1) For the purposes of subheadings 9903.45.01 and 9903.45.02 of this subchapter, "household-type (residential) washing machines, including machines which both wash and dry, whether or not with a dry linen capacity exceeding 10 kg" (such goods provided for in subheadings 8450.11.00 and 8450.20.00 and reported under statistical reporting numbers 8450.11.0040, 8450.11.0080, 8450.20.0040 and 8450.20.0080, respectively, on the effective date of this note) shall include the following goods: automatic clothes washing machines, regardless of the orientation of the rotational axis, each with a cabinet width (measured from its widest point) of at least 62.23 cm and no more than 81.28 cm, except as provided in this note.

(2) Subheadings 9903.45.01 and 9903.45.02 shall not apply to the washing machines specified below:

(A) all stacked washer-dryers and all commercial washers:

(i) The term "stacked washer-dryers" denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer.

(ii) The term "commercial washer" denotes an automatic clothes washing machine designed for the "pay per use" segment meeting either of the following two definitions:

(aa) (I) it contains payment system electronics;

(II) it is configured with an externally mounted steel frame at least 15.24 cm high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation);

(III) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level or spin speed for a selected wash cycle setting; and

(IV) the console containing the user interface is made of steel and is assembled with security fasteners; or

(bb) (I) it contains payment system electronics;

(II) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation, the unit cannot begin a wash cycle without first receiving a signal

from a bona fide payment acceptance device such as an electronic credit card reader;

(III) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level or spin speed for a selected wash cycle setting; and

(IV) the console containing the user interface is made of steel and is assembled with security fasteners.

(B) automatic clothes washing machines that meet all of the following conditions:

(i) they have a vertical rotational axis,

(ii) they are top loading; and

(iii) they have a drive train consisting, *inter alia*, of (aa) a permanent split capacitor motor, (bb) a belt drive and (cc) a flat wrap spring clutch.

(C) automatic clothes washing machines that meet all of the following conditions:

(i) they have a horizontal rotational axis;

(ii) they are front loading; and

(iii) they have a drive train consisting, *inter alia*, of (aa) a controlled induction motor and (bb) a belt drive.

(D) automatic clothes washing machines that meet all of the following conditions:

(i) they have a horizontal rotational axis;

(ii) they are front loading; and

(iii) they have cabinet width (measured from its widest point) of more than 72.39 cm.

(d) For purposes of subheading 9903.45.01 of this subchapter, the duty rate in the Rates of Duty 1-General subcolumn (and in the Rates of Duty 2 column, as provided therein) for goods entered under such subheading, and not the product of a country enumerated in subdivision (b) of this note, shall be as follows, with the duty rates set

forth herein applied in addition to those applicable under subheading 8450.11.00 or 8450.20.00:

If entered during the period from
February 7, 2018 through February 6, 2019 ..... 20%

If entered during the period from
February 7, 2019 through February 6, 2020 ..... 18%

If entered during the period from
February 7, 2020 through February 7, 2021 ..... 16%.

(e) For purposes of subheading 9903.45.02 of this subchapter, the duty rate in the Rates of Duty 1-General subcolumn (and in the Rates of Duty 2 column, as provided therein) for goods entered under such subheading, and not the product of a country enumerated in subdivision (b) of this note, shall be as follows, with the duty rates set forth herein applied in addition to those applicable under subheading 8450.11.00 or 8450.20.00:

If entered during the period from
February 7, 2018 through February 6, 2019 ..... 50%

If entered during the period from
February 7, 2019 through February 6, 2020 ..... 45%

If entered during the period from
February 7, 2020 through February 7, 2021 ..... 40%.

(f) For purposes of subheadings 9903.45.05 and 9903.45.06 of this subchapter, the term "parts of household-type (residential) washing machines" shall include the following goods provided for in subheading 8450.90.20 or 8450.90.60 of the tariff schedule:

(1) all cabinets, or portions thereof, provided for in subheading 8450.90.60 and designed for use in the washing machines defined in subdivision (c) of this note, the foregoing which incorporate, at a minimum, (A) a side wrapper, (B) a base and (C) a drive hub;

(2) all assembled tubs provided for in subheading 8450.90.20 and designed for use in such washing machines defined in such subdivision (c) which incorporate, at a minimum: (A) a tub and (B) a seal; and

(3) any combination of the foregoing parts or subassemblies, provided for in subheading 8450.90.20 or 8540.90.60.

(g) For the purposes of subheading 9903.45.05 of this subchapter, the annual aggregate quantity of all parts of household-type (residential) washing machines, as defined in subdivision (f) above, that is eligible to enter under such subheading in any of the periods enumerated below shall be as follows:

If entered during the period from
February 7, 2018 through February 6, 2019 .....50,000 units

If entered during the period from
February 7, 2019 through February 6, 2020 .....70,000 units

If entered during the period from
February 7, 2020 through February 7, 2021 .....90,000 units.

(h) For purposes of subheading 9903.45.06 of this subchapter, the duty rate in the Rates of Duty 1-General subcolumn (and in the Rates of Duty 2 column, as provided therein) for goods entered in any of the periods enumerated below shall be as follows, with the duty rates set forth herein applied in addition to those applicable under subheading 8450.90.20 or 8450.90.60, as appropriate:

If entered during the period from
February 7, 2018 through February 6, 2019 ..... 50%

If entered during the period from
February 7, 2019 through February 6, 2020 ..... 45%

If entered during the period from
February 7, 2020 through February 7, 2021 ..... 40%.

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Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
	Household-type (residential) washing machines, including machines which both wash and dry, whether or not with a dry linen capacity exceeding 10 kg (as defined in note 17(c) to this subchapter and provided for in subheading 8450.11.00 or 8450.20.00), when entered from a country other than a country enumerated in note 17(b) to this subchapter:			
9903.45.01	If entered in an annual aggregate quantity not exceeding 1,200,000 units, under the terms of such note	The duty rate provided in note 17(d) to this subchapter		The duty rate provided in note 17(d) to this subchapter + 35%
9903.45.02	Other	The duty rate provided in note 17(e) to this subchapter		The duty rate provided in note 17(e) to this subchapter + 35%
	Parts of household-type (residential) washing machines (such machines described in subheading 9903.45.01 and 9903.45.02 and defined in note 17(c) to this subchapter), such parts provided for in subheading 8450.90.20 or 8450.90.60 and enumerated in note 17(f) to this subchapter, when entered from a country other than a country specified in note 17(b) to this subchapter:			
9903.45.05	If entered in an annual aggregate quantity not exceeding the quantity specified in note 17(g) to this subchapter, under the terms of such note	No change		No change
9903.45.06	Other	The duty rate set forth in note 17(h) to this subchapter		The duty rate set forth in note 17(h) to this subchapter + 40%".

[FR Doc. 2018–01604

Filed 1–24–18; 2 p.m.]

Billing code 7020–02–C

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Federal Register

Vol. 83, No. 17

Thursday, January 25, 2018

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