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The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1774

Special Evaluation Assistance for Rural Communities and Households Program (SEARCH)

AGENCY: Rural Utilities Service, USDA.

ACTION: Correcting amendment.

SUMMARY: On June 24, 2010, the Rural Utilities Service (RUS) issued a final rule to establish the regulation for the Special Evaluation Assistance for Rural Communities and Households Program (SEARCH) as authorized by Section 306(a) of the Consolidated Farm and Rural Development Act (CONACT). Following final implementation of this final rule, RUS found that the wording for the definition of a rural area is inconsistent with the statute. This document corrects the final regulation.

DATES: Effective February 13, 2019.

FOR FURTHER INFORMATION CONTACT: LaVonda Pernell, Acting Branch Chief, Portfolio Management Branch, Water and Environmental Programs, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave. SW, Washington, DC 20250. Telephone: (202) 202–720–9635; email: *LaVonda.Pernell@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Need for Correction

On June 24, 2010 (75 FR 35963), the Rural Utilities Service (RUS) issued a final rule to establish the regulation for the Special Evaluation Assistance for Rural Communities and Households Program (SEARCH) (7 CFR part 1774) as authorized by Section 306(a) of the Consolidated Farm and Rural Development Act (CONACT) 7 U.S.C. 1926(a)(2)). Inadvertently, the wording for the definition of rural area, as it applies to the SEARCH program, was incorrectly recorded in the final regulation and is inconsistent with the statute. This document corrects the final regulation.

List of Subjects in 7 CFR Part 1774

Community development, Grant programs, Reporting and recordkeeping requirement, Rural areas, Waste treatment and disposal, Water supply.

Accordingly, 7 CFR part 1774 is amended by making the following correcting amendment:

PART 1774—SPECIAL EVALUATION ASSISTANCE FOR RURAL COMMUNITIES AND HOUSEHOLDS PROGRAM (SEARCH)

■ 1. The authority citation for part 1774 continues to read as follows:

Authority: 7 U.S.C. 1926(a)(2)(C).

■ 2. Amend § 1774.2 by revising the definition of ''Rural area'' to read as follows:

§ 1774.2 Definitions.

* * * * *

Rural area. For the purposes of this SEARCH program, any communities in a city, town, or unincorporated area with populations of 2,500 or fewer inhabitants, according to the most recent decennial Census of the United States (decennial Census).

* * * * *

Dated: December 20, 2018.

Bette B. Brand,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2019–02106 Filed 2–12–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 48

[Docket No. FAA–2018–1084, Amdt. No. 48–2]

RIN 2120–AL32

External Marking Requirement for Small Unmanned Aircraft

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

ACTION: Interim final rule.

SUMMARY: This interim final rule requires small unmanned aircraft owners to display the unique identifier assigned by the FAA upon completion of the registration process (registration number) on an external surface of the aircraft. Small unmanned aircraft owners are no longer permitted to enclose the FAA-issued registration number in a compartment.

DATES: This rule is effective February 25, 2019.

Comments must be received on or before March 15, 2019.

ADDRESSES: Send comments identified by docket number FAA–2018–1084 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Natalie Wilkowske, Aircraft Registration Branch, Civil Aviation Registry, Flight Standards Service, Registry Bldg., Room 118, 6425 S Denning Ave., Oklahoma City, OK 73169–6937; telephone 1–844–FLY–MYUA; email *UAS-ExternalMarking@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

In the interim final rule titled ''Registration and Marking Requirements for Small Unmanned Aircraft'' (Registration IFR), the FAA provided a web-based aircraft registration process for the registration of small unmanned aircraft to facilitate compliance with the statutory requirement that all aircraft register prior to operation. See 80 FR 78593 (December 16, 2015). The Registration IFR also required that the FAA-issued number assigned during the registration process be affixed or marked on the small unmanned aircraft. To grant flexibility to the diverse types of small unmanned aircraft commercially available, the FAA required that the registration number marking be readily accessible and maintained in a condition that is readable and legible upon close visual inspection. The IFR further explained that markings in an enclosed compartment, such as a battery compartment, will be considered readily accessible if they can be accessed without the use of tools. See id at 78627–28.

This interim final rule revises the small unmanned aircraft marking requirement by requiring the registration number to be marked on the exterior of the aircraft. The FAA is taking this action to address concerns expressed by the law enforcement community and the FAA's interagency security partners regarding the risk a concealed explosive device poses to first responders who must open a compartment to find the small unmanned aircraft's registration number.

II. Good Cause for Immediate Adoption

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

Members of the law enforcement and security communities have expressed concern that the current rule, which allows registration numbers to be marked in an enclosed compartment, presents an imminent risk of harm to first responders. When responding to a security incident involving an unmanned aircraft, first responders seek to identify the owner or operator.[1] One way to do that is to obtain the registration number of the unmanned aircraft. Requiring first responders to physically handle a small unmanned aircraft to obtain the registration number poses an unnecessary safety and security risk to those individuals, as well as to others in the immediate proximity to the aircraft, because of the potential for the unmanned aircraft to conceal an explosive device in an enclosed compartment (such as the battery compartment), designed to detonate upon opening. Requiring small unmanned aircraft owners to place the registration number on an external surface of the aircraft helps to mitigate this risk because a first responder can view the number without handling the aircraft, or by using other technologies that allow for remote viewing of the aircraft's external surface.

The FAA had intended to make this change shortly after various members of the law enforcement and security communities communicated their concerns in late 2016 and early 2017. The FAA was not able to act immediately, however, due to litigation challenging the applicability of the Registration IFR to model aircraft as defined in section 336 of Public Law 112–95.[2] The FAA was reluctant to act during the pendency of the litigation because model aircraft comprise the largest segment of registered unmanned aircraft that would be subject to the revised marking requirement.[3] The National Defense Authorization Act for Fiscal Year 2018 (NDAA)[4] resolved the uncertainty when it was signed into law on December 12, 2017 by restoring the applicability of the Registration IFR to model aircraft. Having resolved the applicability issue, the FAA finds that notice and comment would be contrary to the public interest. After highlighting this vulnerability in a proposed rule, first responders could be exposed to additional risk during the notice and comment period as a result of the attention drawn to the vulnerability. Given that the vulnerability would remain unmitigated while the proposed rule is being finalized, the agency has determined there is good cause to issue the rule without seeking prior notice and comment.

Additionally, the APA requires agencies to delay the effective date of regulations for 30 days after publication, unless the agency finds good cause to make the regulations effective sooner. See 5 U.S.C. 553(d). Good cause exists for making this regulation effective 10 days from the date of publication based on the same rationale in the previous discussion regarding forgoing notice and comment in accordance with 5 U.S.C. 553(b)(3)(B).

III. Comments Invited

Consistent with the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 11034; February 26, 1979), which provide that to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice, the Department requests comment on this interim final rule. The Department encourages persons to participate in this rulemaking by submitting comments containing relevant information, data, or views. The Department will consider comments received on or before the closing date for comments. The Department will consider late filed comments to the extent practicable. This interim final rule may be amended based on comments received.

IV. Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules; and 49 U.S.C. 44701(a)(5), which requires the Administrator to promote safe flight of civil aircraft in air commerce by prescribing regulations and setting minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

This rule is also promulgated pursuant to 49 U.S.C. 44101–44106 and 44110–44113, which require aircraft to

[1] During an interagency meeting on December 2, 2016, regarding unmanned aircraft systems policy, several elements of the law enforcement community and the FAA's interagency security partners raised concerns regarding the part 48 provision that allows the small unmanned aircraft registration number to be placed in an enclosed compartment, such as a battery compartment. Additionally, the National Protection and Programs Directorate of the Federal Protective Service sent a letter to the FAA Administrator on May 5, 2017, to highlight its specific concerns about this provision and to request that the FAA amend it.

[2] *Taylor* v. *Huerta,* Case No. 15–1495, (D.C. Cir. May 19, 2017).

[3] As of May 31, 2018, 936,957 model aircraft owners completed the registration process and 218,033 non-model aircraft were registered. Model aircraft owners may apply a single registration number to multiple small unmanned aircraft. See 14 CFR 48.115 and 48.200.

[4] Public Law 115–91.

be registered as a condition of operation and establish the requirements for registration and registration processes.

V. Discussion of the Interim Final Rule

The Registration IFR established a web-based aircraft registration process for the registration of small unmanned aircraft to facilitate compliance with the statutory requirement that all aircraft register prior to operation. See 80 FR 78593 (December 16, 2015). The Registration IFR required that the FAA-issued registration number be affixed or marked on the small unmanned aircraft. To grant flexibility to the diverse types of small unmanned aircraft commercially available, the FAA required that the registration number marking be readily accessible and maintained in a condition that is readable and legible upon close visual inspection. 14 CFR 48.205(c). The IFR further explained that markings in an enclosed compartment, such as a battery compartment, will be considered readily accessible if they can be accessed without the use of tools. See 80 FR at 78628. The FAA included this provision in the Registration IFR to accommodate the television and motion picture industry, which did not want markings to show in theatrical and television productions, and hobbyists who wanted to preserve the authenticity of model aircraft that replicate other aircraft. The FAA also included this provision to allow future consideration of the use of a serial number as a unique identifier for purposes of registration. See 80 FR at 78628.

As discussed previously, after the Registration IFR became effective, the law enforcement community and FAA's interagency security partners highlighted the risk to first responders when registration numbers are permitted to be concealed. To address this safety and security risk, the FAA is amending 14 CFR 48.205(c) to require the registration number be displayed and visible on an external surface of the small unmanned aircraft. The FAA has determined that the importance of mitigating the risk to first responders outweighs the previously discussed aesthetic interests and justifies the minimal burden and inconvenience this change could impose on small unmanned aircraft owners.

This interim final rule does not change the acceptable methods of external marking provided in § 48.205(a) and (b). Additionally, the FAA does not specify a particular external surface upon which the registration number must be placed. The requirement is that it can be seen upon visual inspection of the aircraft's exterior. This interim final rule is effective February 25, 2019. Owners must ensure each aircraft meets this requirement for any operation that occurs after February 25, 2019.

VI. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as codified in 5 U.S.C. 601 *et seq.,* requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39, as amended, 19 U.S.C. chapter 13) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, 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 the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this interim final rule.

A. Regulatory Evaluation

This rule revises the requirements regarding the placement of the registration number assigned to a small unmanned aircraft. Under the Registration IFR, the FAA allowed the registration number to be placed in an enclosed compartment (*e.g.,* the battery compartment) on the small unmanned aircraft, but the FAA now requires the number to be placed on the exterior of the aircraft. While this rule changes one possible location where the registration number may be displayed, the cost to operators/owners is minimal as they will continue to use the same methods to mark the aircraft. The FAA acknowledges that there may be some minimal costs associated with reduced aesthetic freedom for UAS designed to look a particular way.

As previously discussed, if the registration number is not readily visible on the exterior of the small unmanned aircraft, first responders or other persons seeking to identify the small unmanned aircraft owner must open such enclosed compartments to view the unique identifier. Requiring first responders to physically handle a small unmanned aircraft to obtain a registration number adds an unnecessary safety and security risk to those individuals, as well as to others in the immediate proximity to the aircraft. This rule helps to mitigate those risks.

The Office of Information and Regulatory Affairs has determined that this interim final rule is a significant regulatory action pursuant to Executive Order 12866. It requires that owners of small unmanned aircraft mark the registration number on an external surface of the aircraft, which poses a minimal burden and inconvenience if an owner must re-mark the aircraft to comply with this rule.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act, in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever an agency is required by 5 U.S.C. 553, or any other law, to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553, after being required by that section or any other law to publish a general notice of proposed rulemaking. The FAA found good cause to forgo notice and comment and any delay in the effective date for this rule. As notice and comment under 5 U.S.C. 553 are not required in this situation, the regulatory flexibility analyses described in 5 U.S.C. 603 and 604 are not required.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where

appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this interim final rule and determined that it has a legitimate domestic objective—the protection of safety—and does not operate in a manner that excludes imports that meet this objective.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $155 million in lieu of $100 million.

This interim final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this interim final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. As stated in the Registration IFR, the registration and marking requirements for small unmanned aircraft apply only to operations within the United States and there are no ICAO standards for marking small unmanned aircraft.[5]

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f of this order and involves no extraordinary circumstances.

The FAA has reviewed the implementation of the rule and determined it is categorically excluded from further environmental review according to FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.6f. The FAA has examined possible extraordinary circumstances and determined that no such circumstances exist. After careful and thorough consideration of the action, the FAA finds that this Federal action does not require preparation of an Environmental Assessment or Environmental Impact Statement in accordance with the requirements of NEPA, Council on Environmental Quality (CEQ) regulations, and FAA Order 1050.1F.

VII. Executive Order Determinations

A. Executive Order 13132, ''Federalism''

The FAA has analyzed this interim final rule under the principles and criteria of Executive Order 13132, ''Federalism.'' The agency has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this interim final rule under Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the executive order, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

D. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This rule is not subject to the requirements of Executive Order 13771 (82 FR 9339, Feb. 3, 2017) because the costs associated with the rule are considered *de minimis.*

VIII. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the internet—

- Search the Federal Document Management System (FDMS) Portal (*http://www.regulations.gov*);
- Visit the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies/* or
- Access the Government Publishing Office's web page at: *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request (identified by amendment or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677.

All documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the internet through the Federal eRulemaking Portal referenced above.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) (set forth as a note to 5 U.S.C. 601), as amended, requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under

[5] Standard Practice for UAS Registration and Marking (Excluding Small Unmanned Aircraft Systems), ASTM F2851–10 (2018), *available at https://www.astm.org/Standards/F2851.htm.*

the **FOR FURTHER INFORMATION CONTACT** section at the beginning of the preamble. You can find out more about SBREFA on the internet at: *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 48

Aircraft, Reporting and recordkeeping requirements, Signs and symbols, Small unmanned aircraft, Unmanned aircraft.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

PART 48—REGISTRATION AND MARKING REQUIREMENTS FOR SMALL UNMANNED AIRCRAFT

■ 1. The authority citation for part 48 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40113–40114, 41703, 44101–44103, 44105–44106, 44110–44113, 45302, 45305, 46104, 46301, 46306.

■ 2. In § 48.205, revise paragraph (c) to read as follows:

§ 48.205 Display and location of unique identifier.

* * * * *

(c) The unique identifier must be legibly displayed on an external surface of the small unmanned aircraft.

Issued under the authority provided by 49 U.S.C. 106(f), 41703, 44101–44103, in Washington, DC, on December 21, 2018.

Daniel K. Elwell,

Acting Administrator.

[FR Doc. 2019–00765 Filed 2–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–0878; Airspace Docket No. 14–AWP–10]

RIN 2120–AA66

Amendment of Class D and Class E Airspace, and Establishment of Class E Airspace; Honolulu, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace, and Class E airspace extending upward from 700 feet above the surface, and establishes Class E surface area airspace at Wheeler Army Airfield (AAF), Honolulu, HI. This action also updates the airport name and geographic coordinates in the associated Class D and E airspace areas to match the FAA's aeronautical database, and replaces outdated language in the airspace description, and makes an editorial change to the airspace designations.

DATES: Effective 0901 UTC, April 25, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2245.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class D and Class E airspace and establishes Class E surface area airspace at Wheeler AAF, Honolulu, HI., to support IFR operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 34956; July 24, 2018) for Docket No. FAA–2014–0878 to modify Class D airspace, and Class E airspace extending upward from 700 feet above the surface, and establish Class E surface area airspace at Wheeler Army Airfield (AAF), Honolulu, HI. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received expressing concerns about impacts to the ''south practice area,'' potential impacts to Wheeler AAF Air Traffic Control Tower (ATCT), and the potential for increased airspace incursions by student pilots.

The FAA determined that the concerns identified, concerning south practice and Wheeler ATCT were identified and mitigated through the Safety Risk Management Panel held April 17 and 18, 2018, with representatives from the general aviation and air traffic control communities. The FAA will develop and conduct airspace briefings for VFR pilots, review and update the Chart Supplement graphic for transiting Wheeler AAF airspace, and review and update flight procedures for VFR arrivals to Honolulu International Airport.

The commenter also noted that specific charting notation, denoting the floor/shelf of the Wheeler AAF Class D airspace, on both paper and electronic map formats. The FAA VFR sectional will clearly outline the lateral boundaries and altitudes associated with the modifications. The FAA agrees that electronic data is increasingly used by pilots as their source of aviation information. The FAA recommends all pilots ensure that the programs they use to acquire aviation information use only FAA-certified data sources for the basis of their products and that they are maintained and up to date.

Lastly, the commenter requested a modification to the Class D airspace that did not ''encroach so heavily into the busy south practice area'', that may require increased communication with Wheeler ATCT. The FAA worked with representatives from the general aviation, commercial/tour industry and military users, and Wheeler ATCT and Honolulu Control Facility air traffic personnel, over the course of nearly 4 years to develop this airspace. The FAA appreciates the potential for increased radio contact between the ATCT and transiting traffic however, the boundary changes are necessary to ensure aircraft

operating under instrument flight rules have adequate protection.

Class D and Class E airspace designations are published in paragraph 5000, 6002, and 6005, respectively of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class D airspace, Class E airspace extending upward from 700 feet above the surface, and establishing Class E surface area airspace at Wheeler AAF, Honolulu, HI.

Class D airspace extending upward from the surface to and including 3,300 feet MSL is modified to within a 2.6-mile radius of Wheeler AAF, then extend to a 3.7-mile radius from the southeast to the southwest, adjoining the boundary of Restricted Area R–3109 to the west, excluding that airspace below 1,800 feet MSL beyond 3.3 miles from the airport from the 89° bearing clockwise to the 218° bearing from the airport.

Class E surface area airspace is established to be coincident with the lateral dimensions of the Class D airspace, and is effective continuously to provide protection to instrument procedures.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AWP HI D Honolulu, HI [Amended]

Wheeler AAF, HI
(Lat. 21°28′53″ N, long. 158°02′16″ W)

That airspace extending upward from the surface to and including 3,300 feet MSL bounded by a line from lat. 21°31′03″ N, long. 158°04′30″ W; to lat. 21°31′24″ N, long. 158°03′00″ W, thence clockwise along a 2.6-mile radius of Wheeler AAF to lat. 21°30′33″ N, long. 158°00′07″ W; to lat. 21°28′41″ N, long. 157°58′19″ W, thence clockwise along a 3.7-mile radius of the airport to lat. 21°25′46″ N, long. 158°04′24″ W; to lat. 21°26′52″ N, long. 158°04′31″ W; to lat. 21°27′17″ N, long. 158°05′45″ W; to lat. 21°29′14″ N, long. 158°04′50″ W; to lat. 21°30′18″ N, long. 158°03′59″ W; thence to the point of beginning, excluding that airspace below 1,800 feet MSL beyond 3.3 miles from the airport from the 89° bearing clockwise to the 218° bearing from the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Pacific Chart Supplement.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AWP HI E2 Honolulu, HI [New]

Wheeler AAF, HI
(Lat. 21°28′53″ N, long. 158°02′16″ W)

That airspace extending upward from the surface bounded by a line from lat. 21°31′03″ N, long. 158°04′30″ W; to lat. 21°31′24″ N, long. 158°03′00″ W, thence clockwise along a 2.6-mile radius of Wheeler AAF to lat. 21°30′33″ N, long. 158°00′07″ W; to lat. 21°28′41″ N, long. 157°58′19″ W, thence clockwise along a 3.7-mile radius of the airport to lat. 21°25′46″ N, long. 158°04′24″ W; to lat. 21°26′52″ N, long. 158°04′31″ W; to lat. 21°27′17″ N, long. 158°05′45″ W; to lat. 21°29′14″ N, long. 158°04′50″ W; to lat. 21°30′18″ N, long. 158°03′59″ W; thence to the point of beginning; excluding that airspace below 1,800 feet MSL beyond 3.3 miles from the airport from the 89° bearing clockwise to the 218° bearing from the airport.

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

* * * * *

AWP HI E5 Honolulu, HI [Amended]

Wheeler AAF, HI
(Lat. 21°28′53″ N, long. 158°02′16″ W)

That airspace extending upward from 700 feet above the surface within a 4.2-mile radius of Wheeler AAF, excluding that portion within Restricted Area R–3109, when active.

Issued in Seattle, Washington, on January 30, 2019.

Shawn Kozica,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2019–02069 Filed 2–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0879; Airspace Docket No. 18–AGL–24]

RIN 2120–AA66

Amendment of Class E Airspace; Oscoda, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Oscoda-Wurtsmith Airport, Oscoda, MI. This action is required due to the decommissioning of the Au Sable VHF omnidirectional range (VOR) navigation aid, which provided navigation guidance for the instrument procedures at the airport, as part of the VOR Minimum Operational Network (MON) Program. Also, the geographic coordinates for the airport in the associated airspace are updated to coincide with the FAA' s aeronautical database. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Effective 0901 UTC, April 25, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11C at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.* FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Witucki, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5900.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (83 FR 51901; October 15, 2018) for Docket No. FAA–2018–0879 to modify Class E airspace at Oscoda-Wurtsmith Airport, Oscoda, MI. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002 and 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies Class E surface airspace within a 4.5-mile radius of Oscoda-Wurtsmith Airport, Oscoda, MI by removing the Au Sable VOR/DME and the associated extension to the southwest of the airport, due to the decommissioning of the Au Sable VOR, which provided navigation guidance to the instrument procedures at the airport, as part of the VOR MON Program.

Also, the geographic coordinates of the airport in this airspace, and in Class E airspace extending upward from 700 feet above the surface, are adjusted to coincide with the FAA's aeronautical database.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

AGL MI E2 Oscoda, MI [Amended]

Oscoda-Wurtsmith Airport, MI
(Lat. 44°27′06″ N, long. 83°23′39″ W)

Within a 4.5-mile radius of Oscoda-Wurtsmith Airport.

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

AGL MI E5 Oscoda, MI [Amended]

Oscoda-Wurtsmith Airport, MI
(Lat. 44°27′06″ N, long. 83°23′39″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Oscoda-Wurtsmith Airport.

Issued in Fort Worth, Texas, on February 4, 2019

John Witucki,

Manager (A), Operations Support Group, ATO Central Service Center.

[FR Doc. 2019–02056 Filed 2–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–1031; Airspace Docket No. 17–ANM–21]

RIN 2120–AA66

Establishment of Class E Airspace and Amendment of Class E Airspace; Ephrata, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface, and modifies Class E surface area airspace at Ephrata Municipal Airport, Ephrata, WA. This action also updates the geographic coordinates of the airport in the associated Class E airspace areas to match the FAA's aeronautical database. These changes are necessary to accommodate airspace redesign for the safety and management of instrument flight rules (IFR) operations within the National Airspace System. Also, an editorial change would be made to the Class E surface airspace legal description replacing ''Airport/Facility Directory'' with the term ''Chart Supplement''.

DATES: Effective 0901 UTC, April 25, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

FOR FURTHER INFORMATION CONTACT: Bonnie Malgarini, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2329.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes and amends Class E airspace at Ephrata Municipal Airport, Ephrata, WA, to support standard instrument approach procedures for IFR operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 26889; June 11, 2018) for Docket No. FAA–2017–1031 to establish Class E airspace extending upward from 700 feet above the surface and modify Class E surface area airspace at Ephrata Municipal Airport, Ephrata, WA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface and modifying Class E surface area airspace at Ephrata Municipal Airport, Ephrata, WA.

Class E surface area airspace is modified to within 4.2-mile radius of the airport (from a 4.4-mile radius) and within 2.7 miles each side of the Ephrata VORTAC 043° and 233° radials extending from the 4.2-mile radius to 7 miles northeast of the VORTAC. The exclusionary language noting Moses Lake, WA, Class D airspace is removed as it is not needed to define the boundary.

Class E airspace extending upward from 700 feet is established within 4.2 miles northwest and 6.6 miles southeast of the 043° and 223° bearings from the airport extending from the airport to 11.1 miles northeast and 6.3 miles southwest of the airport, respectively.

Additionally, this action updates the geographic coordinates (from lat. 47°18′17″ N, long. 119°30′49″ W to lat. 47°18′29″ N, long. 119°31′01″ W) for the associated Class E airspace areas to match the FAA's aeronautical database. Also, an editorial change is made to the Class E airspace legal descriptions replacing Airport/Facility Directory with Chart Supplement.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM WA E2 Ephrata, WA [Amended]

Ephrata Municipal Airport, WA
(Lat. 47°18′29″ N, long. 119°31′01″ W)

That airspace extending upward from the surface within a 4.2-mile radius of Ephrata Municipal Airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

ANM WA E5 Ephrata, WA [New]

Ephrata Municipal Airport, WA
(Lat. 47°18′29″ N, long. 119°31′01″ W)

That airspace extending upward from 700 feet above the surface within 4.2 miles northwest and 6.6 miles southeast of the 043° and 223° bearings from Ephrata Municipal Airport extending from the airport reference point to 11.1 miles northeast and 6.3 miles southwest of the airport.

Issued in Seattle, Washington, on January 31, 2019.

Shawn M. Kozica,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2019–02084 Filed 2–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0350; Airspace Docket No. 17–AAL–6]

RIN 2120–AA66

Amendment of Class E Airspace for the Following Alaska Towns; Toksook Bay, AK; Unalakleet, AK; Wainwright, AK; and Yakutat, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending upward from 1,200 feet above the surface at Toksook Bay Airport, Toksook Bay, AK; Unalakleet Airport, Unalakleet, AK; Wainwright Airport, Wainwright, AK; and Yakutat Airport, Yakutat, AK. This action adds exclusionary language to the legal descriptions of these airports for Class E airspace extending beyond 12 miles from the shoreline, and ensures the safety and management of aircraft within the National Airspace System.

DATES: Effective 0901 UTC, April 25, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

FOR FURTHER INFORMATION CONTACT: Bonnie Malgarini, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S 216th St., Des Moines, WA 98198–6547; telephone (206) 231–2329.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace extending upward from 1,200 feet above the surface at Toksook Bay Airport, AK; Unalakleet Airport, AK; Wainwright Airport, AK; and Yakutat Airport, AK, to support IFR operations in standard instrument approach and departure procedures at these airports and to limit Class E airspace to within 12 miles of the shoreline.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 37778; August 2, 2018) for Docket No. FAA–2017–0350 to modify Class E airspace for Toksook Bay Airport, AK; Unalakleet Airport, AK; Wainwright Airport, AK; and Yakutat

Airport, AK. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

A legal description of Wales, AK, was accidently included in the NPRM. It does not belong with this amendment and has been removed.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace extending upward from 1,200 feet above the surface at Toksook Bay Airport, Toksook, AK; Unalakleet Airport, Unalakleet, AK; Wainwright Airport, Wainwright, AK; and Yakutat Airport, Yakutat, AK. This action adds language to the legal descriptions of these airports that reads ''excluding that airspace extending beyond 12 miles of the shoreline'', and supports IFR operations in standard instrument approach and departure procedures at these airports. A legal description was accidently included in the NPRM for Wales, AK, and it has been removed from this amendment.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

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

* * * * *

AAL AK E5 Toksook Bay, AK [Amended]

Toksook Bay Airport, AK
(Lat. 60°32′29″ N, long. 165°05′14″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Toksook Bay Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Toksook Bay Airport, excluding that airspace that extends beyond 12 miles of the shoreline.

* * * * *

AAL AK E5 Unalakleet, AK [Amended]

Unalakleet Airport, AK
(Lat. 63°53′19″ N, long. 160°47′57″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Unalakleet Airport beginning at the 360° bearing of the airport clockwise to the 260° bearing of the airport, and within a 13.5-mile radius of the airport beginning at the 260° bearing of the airport clockwise to the 360° bearing of the airport, and within 6 miles each side of the Unalakleet Airport 185° bearing of the airport extending from the 7-mile radius to 10 miles south of the airport; and that airspace extending upward from 1,200 feet above the surface within a 74-mile radius of Unalakleet Airport, excluding that airspace that extends beyond 12 miles of the shoreline.

* * * * *

AAL AK E5 Wainwright, AK [Amended]

Wainwright Airport, AK
(Lat. 70°38′17″ N, long. 159°59′41″ W)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Wainwright Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Wainwright Airport, AK, excluding that portion extending outside the Anchorage Arctic CTA/FIR (PAZA) boundary, and excluding that airspace that extends beyond 12 miles of the shoreline.

* * * * *

AAL AK E5 Yakutat, AK [Amended]

Yakutat Airport, AK
(Lat. 59°30′12″ N, long. 139°39′37″ W)
Yakutat VOR/DME
(Lat. 59°30′39″ N, long. 139°38′53″ W)

That airspace extending upward from 700 feet above the surface within the area bounded by lat. 59°47′42″ N, 139° 58′48″ W, to lat. 59°37′33″ N, long. 139°40′54″ W, then along the 7 mile radius of the Yakutat VOR/DME clockwise to lat. 59°28′54″ N, long. 139°25′36″ W, to lat. 59°20′16″ N, long. 139°10′20″ W, to lat. 59°02′49″ N long. 139°47′45″ W, to lat. 59°30′15″ N long. 140°36′43″ W, to the point of beginning, excluding that area beyond 12 miles from the shoreline within Gulf of Alaska Low Control Area; and that airspace extending upward from 1,200 feet above the surface within a 75-mile radius of the Yakutat VOR/DME, excluding that area extending over Canada, and that airspace that extends beyond 12 miles of the shoreline within Control 1487L.

* * * * *

Issued in Seattle, Washington, on January 31, 2019.

Shawn M. Kozica,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2019–02054 Filed 2–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–1032; Airspace Docket No. 17–ANM–4]

RIN 2120–AA66

Establishment of Class E Airspace, Amendment of Class D Airspace, and Revocation of Class E Airspace; Tacoma, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E surface area airspace, and Class E airspace extending upward from 700 feet above the surface at Tacoma Narrows Airport, Tacoma, WA. This action removes Class E airspace designated as an extension at Tacoma Narrows Airport. Additionally, this action updates the geographic coordinates of the airport and replaces the outdated term Airport/Facility Directory with the term Chart Supplement in the Class D airspace description. These changes are necessary to accommodate airspace redesign for the safety and management of instrument flight rules (IFR) operations within the National Airspace System.

DATES: Effective 0901 UTC, April 25, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

FOR FURTHER INFORMATION CONTACT: Bonnie Malgarini, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S 216th Street, Des Moines, WA 98198–6547; telephone (206) 231–2329.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace, amends Class D airspace, and removes Class E airspace at Tacoma Narrows Airport, Tacoma, WA to support IFR operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 4863; February 2, 2018) for Docket No. FAA–2017–1032 to establish Class E surface area airspace, and Class E airspace extending upward from 700 feet above the surface at Tacoma Narrows Airport, Tacoma, WA, and remove Class E airspace designated as an extension at the airport. After publication, an error was noted in the airspace description of the north extension and in the description of the south extension in the section of the preamble entitled, The Rule. The description of the north extension should be applied to the south extension and the description of the south extension should be applied to the north extension. Correcting the errors produced no changes in the legal description of the boundaries as the extensions are removed by this action. Additionally, there was an error in the latitude coordinates for Tacoma Narrows airport. It was listed as lat. 44°16′05″ N, while the correct coordinates are lat. 47°16′05″ N.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. Two comments were received, supporting the proposal.

While the Aircraft Owners and Pilots Association (AOPA) supported this proposal, they stated that the NPRM did not comply with FAA guidance in Order 7400.2, *Procedures for Handling Airspace Matters,* because a graphic was not included in the docket. Additionally, AOPA encouraged the FAA to follow their guidance in the Order by making the action effective date coincidental to the sectional chart publication date.

The FAA has determined AOPA's comments raised no substantive issues with respect to the proposed changes to the airspace addressed in the NPRM. To the extent the FAA failed to follow its policy guidance reference publishing graphics in the docket and establishing the Class D airspace effective date to match the sectional chart date, we note the following.

With respect to AOPA's comment addressing graphics, FAA Order 74002.L, para 2–3–3.c. requires the official docket to include available graphics. For this airspace action, a graphic was produced and placed in the docket on February 15, 2018.

Specific to AOPA's comment regarding the FAA already creating a graphical depiction of new or modified airspace overlaid on a Sectional Chart for quality assurance purposes, this is not correct nor required in all cases. During the airspace reviews, airspace graphics may be created, if deemed necessary, to determine if there are any terrain issues, or if cases are considered complex. However, in many cases when developing an airspace amendment proposal, a graphic is not needed. It was unclear if the graphic AOPA argued was already created with a sectional chart background was actually the airspace graphic created by the Aeronautical Informational Services office in preparation of publishing the sectional charts. However, that graphic is normally created after the rulemaking determination is published.

With respect to AOPA's comment addressing effective dates, FAA Order 7400.2L, para 2–3–7.a.4. states that, to the extent practicable, Class D airspace area and restricted area rules should become effective on a sectional chart date and that consideration should be given to selecting a sectional chart date that matches a 56-day en route chart cycle date. The FAA does consider publishing Class D airspace amendment effective dates to coincide with the publication of sectional charts, to the extent practicable; however, this consideration is accomplished after the NPRM comment period ends. Substantive comments received to NPRMs, flight safety concerns, management of IFR operations at affected airports, and immediacy of requiring proposed airspace amendments are some of the factors that must be taken into consideration when

selecting the appropriate effective date. After considering all factors, the FAA may determine that selecting an effective date that conforms to a 56-day en route chart cycle date that is not coincidental to sectional chart dates is better for the NAS and users than awaiting the next sectional chart date.

Class D and E airspace designations are published in paragraph 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies Class D airspace, establishes Class E surface area airspace, removes Class E airspace designated as an extension to a Class D or Class E surface area, and establishes Class E airspace extending upward from 700 feet above the surface at Tacoma Narrows Airport, Tacoma, WA.

Class D airspace is modified to add a small extension south of the airport within 1.7 miles each side of a 189° bearing from the airport extending from the 4-mile radius to 5.3 miles south of the airport.

Class E surface area airspace is established coincident with the dimensions of the Class D airspace and effective during the hours when the Class D is not in effect to protect IFR operations continuously.

Class E airspace designated as an extension is removed as the extension north of the airport (within 1.8 miles each side of the 187° bearing from Scenn OM extending from the 4-mile radius to 1 mile south of the OM) protects no arrival aircraft within 1,000 feet of the surface. Also, the extension to the south (within 1.8 miles each side of the 009° bearing from the Graye NDB extending from the 4-mile radius to .9 miles north of the NDB; excluding that airspace within the Tacoma, McChord AFB, WA, Class D airspace area) protects no arrival aircraft within 1,000 feet of the surface beyond 5.3 miles south of the airport. By eliminating the unnecessary airspace, the remaining extension to the south is less than 2 nautical miles in length, and must be Class D.

Class E airspace extending upward from 700 feet is established at Tacoma Narrows Airport within 4 miles each side of the 007° and 187° bearings, respectively, from the airport extending to 8 miles north and 7 miles south of the airport. This new airspace duplicates the larger Seattle Class E airspace area, and ensures sufficient airspace is designated for Tacoma Narrows Airport in case of any future modification.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM WA D Tacoma, WA [Amended]

Tacoma Narrows Airport, WA
(Lat. 47°16′05″ N, long. 122°34′41″ W)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 4-mile radius of Tacoma Narrows Airport, and within 1.7 miles each side of the 189° bearing from the airport extending from the 4-mile radius to 5.3 miles south of the airport, excluding that airspace within the Tacoma, McChord AFB, WA, Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM WA E2 Tacoma, WA [New]

Tacoma Narrows Airport, WA
(Lat. 47°16′05″ N, long. 122°34′41″ W)

That airspace extending upward from the surface within a 4-mile radius of the Tacoma Narrows Airport, and within 1.7 miles each side of the 189° bearing from the airport extending from the 4-mile radius to 5.3 miles south of the airport, excluding that airspace within the Tacoma, McChord AFB, WA, Class D airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

ANM WA E4 Tacoma, WA [Removed]

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

* * * * *

ANM WA E5 Tacoma, WA [New]

Tacoma Narrows Airport, WA
(Lat. 47°16′05″ N, long. 122°34′41″ W)

That airspace extending upward from 700 feet above the surface within 4 miles each

side of the 007° bearing from the Tacoma Narrows Airport extending to 8 miles north of the airport, and within 4 miles each side of a 187° bearing from the airport extending to 7 miles south of the airport.

Issued in Seattle, Washington, on January 31, 2019.

Shawn M. Kozica,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2019–02074 Filed 2–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 75

[Docket ID: DOD–2011–OS–0127]

RIN 0790–AI82

Exceptional Family Member Program (EFMP)

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Final rule.

SUMMARY: This part discusses procedures for identifying a family member with special needs and coordinating travel for family members of active duty Service members who meet the Department of Defense (DoD) criteria for the Exceptional Family Member Program (EFMP). It also describes procedures for processing DoD civilian employees who have family members with special needs for an overseas assignment and provides family support services to military families with special needs.

DATES: This final rule is effective on March 15, 2019.

FOR FURTHER INFORMATION CONTACT: Rebecca Lombardi, 571–372–0862.

SUPPLEMENTARY INFORMATION:

Authority and Background

This rule implements 10 U.S.C. 1781c, which established the Office of Community Support for Military Families with Special Needs (OSN) within the Office of the Under Secretary of Defense for Personnel and Readiness. The purpose of the program is to enhance and improve DoD support around the world for military families with special needs (whether medical or educational) through developing policies, disseminating information, obtaining referrals for services and in obtaining services. By statute, the OSN is responsible for developing an EFMP policy that applies to members of the armed forces without regard to their location and in a manner consistent with the needs of the armed forces while being responsive to the career development needs of members.

In addressing support for military families, the program provides the following:

- Procedures to identify members of the armed forces who are members of military families with special needs.
- Mechanisms to ensure timely and accurate evaluations of members of such families who have special needs.
- Procedures to facilitate the enrollment of such members of the armed forces and their families in programs of the military department for the support of military families with special needs.
- Procedures to ensure the coordination of DoD health care programs and support programs for military families with special needs, and the coordination of such programs with other Federal, State, local, and non-governmental health care programs and support programs intended to serve such families.
- Requirements for resources (including staffing) to ensure the availability through the DoD of appropriate numbers of case managers to provide individualized support for military families with special needs.
- Requirements regarding the development and continuous updating of an individualized services plan (medical and educational) for each military family with special needs.
- Requirements for record keeping, reporting, and continuous monitoring of available resources and family needs under individualized services support plans for military families with special needs, including the establishment and maintenance of a central or various regional databases for such purposes.

Public Comments

Following the publication of the proposed rule in December 11, 2015 (80 FR 76881–76889), 99 public comments were received and are discussed below. There has been some restructuring of the final rule as several sections of the proposed rule were determined to be better suited to internal DoD Guidance, which can be found in DoD Instruction 1315.19, ''Exceptional Family Member Program,'' available at *http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/131519p.pdf.*

Section 75.1 Purpose

Due to the restructuring of the rule, § 75.1 of the final rule includes new paragraphs (a) and (b). Other paragraphs in § 75.1 of the proposed rule were removed and now appear in DoD Instruction 1315.19.

Several commenters requested Guard and Reserve components be eligible for enrollment in the EFMP automatically rather than allowing each Service to determine the conditions under which their Guard and Reserve members are eligible to enroll in the EFMP.

DoD declines to make this change because only active duty military undergo the assignment coordination process. Therefore, the Department does not require the Services to enroll their Guard and Reserve members in the program, but also does not prohibit the Services from doing so, in accordance with their respective missions and needs.

Many commenters requested changes to Service-specific EFMP policies or assignment coordination procedures associated with the EFMP program. Suggested changes included a request that Guard and Reserve components be eligible for EFMP services regardless of duty status, a request that a Service apply special codes to EFMP families in their data system, a request to cease frequent contact from the EFMP program, a request to mandate a uniform set of programming to be provided through each Service's EFMP program or at each installation, and a request to limit frequent changes to assigned EFMP coordinators.

Other suggestions included a request to allow people to examine their own family member profiles during the assignment coordination process, a request to allow families more of a voice in the assignment coordination process, a request for changes to the process when an assignment is denied, requests for information packets about the EFMP program and local resources at the time of enrollment and permanent change of station, requests for greater clarity on how health information and outcomes from previous duty stations are or are not considered during assignment coordination, a request that families be given an official reason for assignment location denials, a request for changes to the weight given to family needs during assignment coordination, and requests for a system to appeal assignment coordination decisions.

No changes were made to the final rule based on the above Service-specific comments. All Service EFMP policies must conform to this final rule and the associated DoD Instruction 1315.19. Beyond that, the Department believes the Services must have the flexibility to tailor their EFMP policies to meet the specific needs of their missions and communities. To request changes to Service-specific EFMP policies or

assignment coordination procedures, please contact your local EFMP office.

Section 75.3 Definitions

Several commenters submitted requests for clarification, change, or inclusion of particular definitions. In addition, due to the restructuring of the rule, in § 75.3, the definitions of ''CONUS,'' ''Medical case management,'' ''Non-clinical case management,'' ''Pinpoint location,'' ''Respite Care Services,'' and ''Services Plan'' now appear only in DoD Instruction 1315.19. Four commenters requested that we clarify the meaning of ''adverse'' and ''adversely.''

The Department does not believe it is necessary to clarify the meaning of these terms as they are used in DoD Instruction 1315.19 in the context of the factors that must be considered when stabilization is requested and in the context of overseas assignments for active duty Service members, as the Department interprets ''adverse'' and ''adversely'' to have the plain language meaning of the terms, which is ''unfavorable'' or ''harmful,'' and ''unfavorably'' or ''harmfully.'' For example, when used with respect to a stabilization decision under DoD Instruction 1315.19, the proper analysis will be whether stabilization will have an unfavorable or harmful effect on the mission requirements of the Military Service.

One commenter stated the definition for ''assistive technology device'' at § 75.3 was inconsistent with the Individuals with Disabilities Education Act (IDEA) definition of assistive technology in chapter 33 of Title 20, U.S. Code. Four commenters requested that changes to the definition be made to include information related to the evaluation and selection of such devices. The Department partially concurred with the comments. The definition of ''assistive technology device'' at § 75.3 is not limited to devices used by children who receive IDEA services. Instead, in accordance with the conditions that trigger EFMP enrollment, the term ''assistive technology device'' as used in § 75.5 in this final rule, is intended to cover all devices used by children and adults when the use of such device is required because of a chronic medical condition. To clarify the definition, we have removed the sentence that excluded surgically implanted medical devices, which was imported from the IDEA definition of assistive technology in the earlier version of the regulation. We decline to broaden the definition to incorporate evaluations and training in the use of assistive technology because the need for those services does not trigger EFMP enrollment. Instead, the presence of a device used in connection with a chronic medical condition is the trigger for enrollment in the EFMP.

The definition of ''assistive technology device'' at § 75.3 now reads: ''Any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.''

Four commenters requested that DoD adopt an agency-wide definition of ''child with special medical needs'' or adopt the National Institute of Child Health and Human Development (NICHHD) definition of child and youth with special health care needs (CYSHCN) to ensure accurate data collection.

While we agree the use of standard definitions is important for the collection of accurate data, DoD declines to make this change. The NICHHD definition of CYSHCN: ''those who have or are at risk for a chronic physical, developmental, behavioral, or emotional condition and who also require health and related services of a type or amount beyond that required by children generally'' is not, on its own, specific enough to ensure appropriate assignment coordination. In addition, since this rule sets policy only with respect to the EFMP program, the establishment of a DoD-wide definition will require coordination with all other DoD departments that interact with children with special medical needs to ensure that all necessary elements of a working definition are properly included. The development of a new definition is an in-depth process, and must be tailored to each program to meet the needs of their unique population, and coordination will not be completed by the time this rule publishes.

Two commenters requested that we define the term ''CONUS.'' However, as this term is currently defined in DoD Instruction 1315.19 as ''the 48 contiguous states of the United States, excluding Alaska, Hawaii, and U.S. territories,'' no change is made to the rule.

One respondent requested clarification of the term ''expeditiously'' as used in § 75.6(b)(4)(i) and (ii). These provisions require Department of Defense Education Activity (DoDEA) and the Military Medical Departments to evaluate and provide services to children eligible for enrollment in a DoDEA school on a space-required basis and to provide them with any required IDEA services ''expeditiously and regardless of cost.'' The Department agrees that additional clarification is required so all IDEA activities happen within the specified timelines.

To that end, § 75.6(b)(4)(i) now reads: ''The DoDEA and the Military Medical Department responsible for the provision of related services to support DoDEA at the duty station are required to evaluate school-aged children (ages 3 through 21 years, inclusive) eligible for enrollment in a DoDEA school on a space-required basis and provide them with the special education and related services included in their IEPs in accordance with 32 CFR part 57.'' Section 75.6(b)(4)(ii) now reads: ''The Military Departments are required to provide infants and toddlers (from birth up to 3 years of age, inclusive) eligible for enrollment in a DoDEA school on a space-required basis with the EIS identified in the IFSPs in accordance with 32 CFR part 57.''

One respondent requested clarification of the definition of ''family care plan.'' Two commenters requested that distinctions between Services Plans and family care plans be added.

The Department declines to add a definition of ''family care plan'' to this final rule as each Service defines such plans in accordance with its own policies. Most military families have a family care plan, which is not predicated on the presence of a disability in the family. A family care plan may cover issues such as child care in the case of parental deployment, parental wills and trusts, and any other instructions or provisions for dependents in case of a Service member's death. Services Plans are part of the family support services offered through EFMP offices and are developed on an as-needed basis for families who have a family member with a disability in accordance with DoD Instruction 1315.19.

Four commenters requested additions to or clarifications of the definitions of ''Individualized Education Program (IEP),'' ''Individualized Family Services Plan (IFSP),'' and ''Special education'' at § 75.3. The requested additions were intended to describe a child's rights under the IDEA, including the right to receive instruction while suspended or expelled, the requirement to provide specially designed instruction that meets the child's educational needs that result from the disability, and other technical requirements under the IDEA. Three commenters also requested that we add a definition of ''specially designed instruction'' to clarify educational rights arising under the IDEA.

The Department does not agree that detailed descriptions of a child's rights under the IDEA or additional definitions related to the special education process are necessary or appropriately placed in this final rule. A child's services under the IDEA intersect with this final rule because the receipt of IDEA services is a trigger for EFMP enrollment under § 75.5(b). Children of active duty Service members and civilian employees appointed to an overseas location who are eligible for enrollment in a DoD school on a space-required basis will be identified as having special educational needs if they have, or are found eligible for, either an IFSP or an IEP under 32 CFR part 57 which is the DoD's implementing regulation for the IDEA. DoD has clarified the definitions of special education, IEP, and IFSP so that all IDEA definitions and terms used in the final rule refer to the DoD's IDEA regulation (identical to or refer to the definitions in 32 CFR part 57).

Therefore, the definitions of Early Intervention Services, Individualized Education Program, Individualized Family Service Plan, Related Services, and Special Education were revised in both the final rule and DoD Instruction 1315.19. These definitions now mirror definitions in 32 CFR part 57.

Four commenters requested that the term ''non-clinical case management'' be expanded to include coordination of medical services. Two commenters stated that if the definition of non-clinical case management is not expanded to include coordination of medical services, then the definition should be changed to exclude reference to medical services.

We do not believe that non-clinical case management includes medical services coordination. Medical case management is defined in DoD Instruction 1315.19, and it refers readers to the TRICARE Medical Management Guide for more information regarding medical case management. However, in response, this definition, contained only in DoD Instruction 1315.19, has been changed to read: ''The provision of information and referral to families and individuals that assist them in making informed decisions and navigating resources to improve their quality of life such as educational, social, community, housing, legal, and financial services. This does not involve coordination and follow-up of medical treatments.''

Five commenters suggested that the definition of ''related services'' at § 75.3 should be expanded to include interpreting services for children who are deaf and interpreting services for children who are English language learners. We do not agree that this definition of related services should include interpreting services for children who are English language learners. The related services referred to in the rule arise in the IDEA. Eligibility for services under the IDEA is predicated on the presence of a disability and is not affected by a child's proficiency with English. Services provided under the IDEA are designed to address educational needs that arise from a disability. Children who receive educational services from the DoD and require both special education services and services for English language learners are protected by various Department of Defense Education Activity policies. The term ''related services'' refers to transportation and such developmental, corrective, and other supportive services required to assist a child with a disability to benefit from special education under the child's individualized education program. Special education services are provided by the Department pursuant to 32 CFR part 57, which explicitly includes interpreting services for children who are deaf or hard of hearing in its definition of related services. To ensure uniform understanding and application of definitions related to special education, as indicated above, we have changed the definition of ''related services'' so that it refers to the definition in 32 CFR part 57. Thus, the definition of ''related services'' at § 75.3 of the final rule has been revised to mirror the definition that is in 32 CFR part 57 in both the final rule and in DoD Instruction 1315.19.

Six commenters discussed the use of terms such as ''special needs'' versus ''handicapped'' or ''disability.'' One commenter requested that we clarify that the term ''person with special needs'' may, but does not have to, refer to a person with a disability. Two commenters requested that we adopt the definition of disability used in Section 504 of the Rehabilitation Act of 1973, codified at 29 U.S.C. 705. One commenter stated that, if there is no distinction between the terms ''disability'' and ''special needs'' for purposes of this rule, we should use only one term throughout.

The Department has made no changes to the rule or the instruction based on these comments because DoD has received no evidence indicating this clarification of such matters is necessary. The final rule includes a number of specific conditions falling within the umbrella of ''special needs'' at § 75.5 related to medical diagnosis, medical history, medications, specialty care requirements, chronic need for adaptive equipment, assistive technology or certain environmental considerations, and educational needs. Should any of the listed conditions be met, then enrollment in EFMP is triggered. The enumerated conditions are those that, in the Department's experience, require careful coordination during the assignment coordination process. While distinguishing disability from medical or other conditions is important in certain contexts, for EFMP purposes, it is not relevant whether a condition is or is not considered to be a disability. We decline to use only the term ''disability '' or ''special needs'' because one enrollment trigger for children, the receipt of IDEA special education services on an IEP, is predicated on the presence of a disability that impacts a student's ability to benefit from his or her education. Therefore, in the case of enrollment of a child who receives IDEA services, ''special needs'' would be an inaccurate term. We decline to use the term ''disability'' exclusively because the statute that authorizes this final rule, 10 U.S.C. 1781c, uses the term ''special needs,'' and we believe that this term is necessary to capture Congress' full intent.

Section 75.4 Policy

Due to the restructuring of the rule, certain paragraphs of § 75.4 (Policy) in the final rule have been removed from the final rule and now appear only in DoD Instruction 1315.19.

One commenter recommended we incorporate language from 10 U.S.C. 1781c(e)(3), regarding the assignment of Service members into the rule. The Department agrees the requested language clarifies the relationship between assignment or stabilization requests, the needs of the armed forces, and the career development of active duty Service members, and have added the requested language.

Change: Changes were made to DoD Instruction 1315.19, which now reads: ''the assignment or stabilization requests of members of the armed forces who are members of military families with special needs, shall be addressed in a manner consistent with the needs of the armed forces and responsive to the career development of members of the armed forces on active duty.''

Several commenters discussed the issue of homesteading, or stabilization of duty stations. Comments included a request to make EFMP status a priority when negotiating orders, prioritizing stabilization requests of families in which a member is diagnosed with autism, and a request that all Services implement stabilization in the same way.

The Department agrees stabilization can be important for families. DoD Instruction 1315.19 permits the Services to stabilize families in Alaska, Hawaii, or a CONUS location for a minimum of four years so long as stabilization does not have an adverse effect on the mission of the Military Service or the career development of the Service member. However, we decline to list specific disabilities or medical conditions that automatically require stabilization or require specific prioritization of EFMP status because many disabilities and medical conditions manifest in a range of severity or intensity of need, which means that individual analysis of the family member's needs and circumstances is always necessary. The Military Services are best positioned to perform the necessary analysis in conjunction with an understanding of their current and future missions, populations, and resources; therefore, each Military Service is the most appropriate arbiter of its own stabilization process.

One respondent stated stabilization should not adversely impact career advancement or promotion. Two commenters stated that Service members are erroneously told that they may not reenlist if they request stabilization.

While no changes were made to the final rule, the Department agrees stabilization or requests for stabilization to accommodate a family member with special needs must not adversely impact the career of the Service member who has requested it. DoD Instruction 1315.19 allows for stabilization in cases where the Service member initiates the request, the family member has a documented need for stabilization per Service-specific guidance, stabilization does not have an adverse impact to the mission requirements of the Military Service, and the career of the Service member has been considered and is not affected adversely. We believe that stabilization that is granted under these conditions will not adversely impact the career of the requesting Service member.

Two commenters requested that we add language to the rule so EFMP programs can be utilized by a member of any of the Services whether assigned to an installation run by his or her own Service or another Service. No changes were made to the final rule as the final rule already includes a statement describing the duty of the EFMP to provide family support services regardless of Service affiliation. In addition, DoD Instruction 1315.19 states it is DoD policy that the EFMP provides family support services, including non-clinical case management, to military families with special needs regardless of the sponsor's Service affiliation or enrollment status in the EFMP.

Section 75.5 Responsibilities

Due to the restructuring of the rule, what was § 75.5 (Responsibilities) in the proposed rule has been removed from the final rule and now appears in DoD Instruction 1315.19. What was § 75.6 (DoD Criteria for Identifying Family Members with Special Needs) in the proposed rule has been renumbered to § 75.5 in the final rule.

Two commenters erroneously claimed that the proposed rule did not comply with 10 U.S.C. 1781c because certain statutory duties of the OSN were given to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) and the Assistant Secretary of Defense for Manpower and Reserve Affairs (ASD(M&RA)). No change was made to the final rule as 10 U.S.C. 1781c(a) establishes the OSN as an office in the Office of Military Family Readiness Policy, which is within the Office of the USD(P&R). Furthermore, DoD Instruction 1315.19 states the USD(P&R) provides for the OSN, pursuant to 10 U.S.C. 1781c, and submits an annual report to Congress on the activities of the OSN on behalf of the Secretary of Defense in accordance with 10 U.S.C. 1781c (g). Contrary to the commenter's claim that this does not comply with the statute, the duties assigned to the USD(P&R) under DoD Instruction 1315.19 directly reflect statutory duties assigned to the USD(P&R) and/or the Secretary of Defense and are appropriately assigned to the USD(P&R).

The commenters also claimed that responsibilities assigned to the ASD(M&RA) in DoD Instruction 1315.19 are not in compliance with the statute. The Department disagrees. DoD Instruction 1315.19 requires the ASD(M&RA) to consult with the Secretaries of the Military Departments, as appropriate, to ensure the development, implementation, and monitoring of an effective EFMP across DoD. DoD Instruction 1315.19 also requires the ASD(M&RA) to resolve disputes among the DoD Components regarding the implementation of procedures in § 75.5 through § 75.6 of the final rule. These responsibilities are assigned to the ASD(M&RA) because, given the current organizational structure of the DoD, such assignment provides for the most efficient means of ensuring the effective operation of the EFMP within the DoD.

Two commenters requested that the annual data reports from the Military Services to the ASD(M&RA) required at what was § 75.5(e)(18) of the proposed rule, now DoD Instruction 1315.19, be made public reports. No change was made to the rule as aggregate data received through the reports required by DoD Instruction 1315.19 is made public through the Annual Report to the Congressional Defense Committees on the Activities of the Office of Special Needs.

Two commenters requested a revision of what was § 75.5(d)(4)(iii) of the proposed rule now in DoD Instruction 1315.19, which allows the Director, DoDEA, to request reimbursement from the sending Military Department when there is a failure to coordinate an overseas assignment with DoDEA that results in the assignment of the Service member to a location where DoDEA incurs expenses (*e.g.* by hiring additional staff) beyond normal operations to provide special education pursuant to the child's IEP because, as written, it could be interpreted to mean that command sponsorship should be denied if educational services are not available.

The Department does not agree that the language could be interpreted to allow denial of command sponsorship and has made no change to the final rule. The language in DoD Instruction 1315.19 describes DoDEA's authority to seek reimbursement where it incurs additional expenses resulting from a Service's failure to coordinate a Service member's overseas move. This is an internal check in the system that ensures coordination procedures are observed. Three commenters requested clarification on what was in § 75.5(d)(2) of the proposed rule, now in DoD Instruction 1315.19, regarding the responsibility of the Director, DoDEA, to make recommendations to the Military Services and other DoD components on the availability of special education services. The commenters suggested adding language to clarify several items, including the nature of the Director's recommendations, whether the Director's responsibilities included making recommendations on all public schools and charter schools, and whether the recommendations referred to are for both CONUS and OCONUS locations.

No change was made to the final rule as the Department does not believe that the Director, DoDEA, requires additional regulatory clarification on the scope of this duty at this time. The Director is only able to make recommendations regarding educational services in locations where DoDEA is responsible for the provision of educational services. For example, if a DoDEA school closes, DoDEA must inform the

military departments that educational services, including special educational services, are no longer available at that school.

Two commenters discussed what was in § 75.5(e)(4) of the proposed rule, now in DoD Instruction 1315.19, regarding the responsibility of the Secretaries of the Military Departments to ensure family members of active duty Service members who are identified with a medical condition meeting the criteria at what was § 75.6 of the proposed rule (now § 75.5 of the final rule) be referred to Service-specific points of contact for enrollment in the EFMP, and stated that the requirement to have the Service-specific EFMP point of contact enroll the Service member compounds the problems with access to services for families on joint bases or on installations managed by Services other than that to which a member belongs.

No change is made to the final rule as enrollment in the EFMP is currently a Service-specific function connected to each Service's assignment coordination process. The Services currently conduct independent assignment coordination activities in keeping with the needs of their missions and communities.

Four commenters discussed the need for better communication among EFMP staff and better communication and coordination between medical staff at Military Treatment Facilities (MTFs) and EFMP staff. One respondent suggested making all bases aware of the EFMP. Three commenters requested more effective public communication about EFMP programming.

While no change is made to the final rule, the Department does agree that communication about the EFMP and between MTFs and EFMP Family Support Programs is important to ensure families' special medical and educational needs are fully considered through the assignment coordination process and to help families access needed services in a timely manner. We believe the rule adequately addresses this need, as DoD Instruction 1315.19 includes provisions that are intended to increase communication and coordination among the three components of each EFMP program, as well as between MTFs and EFMP Family Support Programs.

Specifically, DoD Instruction 1315.19 requires the Secretaries of the Military Departments to promote collaboration among the components of their respective EFMP programs, ensure MTFs contact Service-specific EFMP points-of-contact at the point that a family member of an active duty Service member is identified with a medical condition that meets the EFMP enrollment criteria (located at § 75.5 in the final rule), and ensure Military Treatment Facility personnel are trained on EFMP policies and procedures. In addition, DoD Instruction 1315.19 requires the Secretaries of the Military Departments to provide information on the EFMP to all active duty Service members and their families, regardless of location, and civilian employees or selectees who have applied for government employment in overseas locations.

Seven commenters submitted suggestions about EFMP family support staff qualifications, suggesting that specialized staff should be hired to address specific disabilities or medical conditions, and stating that staff training on disability topics, DoD resources, the disability community, local services, and respite care was needed and should include family members with special needs in order to aid staff in providing effective help to families. While no change is made to the final rule, the Department agrees that, to provide effective support, EFMP staff must have knowledge of areas of importance to families with special needs. However, the Military Departments' hiring practices are beyond the scope of this final rule, so we decline to create rules requiring that specialized EFMP family support staff be hired to address specific disabilities or medical conditions. To ensure ongoing training and development of expertise, DoD Instruction 1315.19 requires the Secretaries of the Military Departments to ensure annual training is conducted on EFMP policies and procedures as well as topics such as Medicaid, Supplemental Security Income, and TRICARE benefits.

One commenter requested we add additional language at what was § 75.5(e) of the proposed rule, now in DoD Instruction 1315.19, to strengthen the requirements for the Military Departments to provide guidance, develop programs, and establish services relating to the EFMP. The Department does not have evidence that additional language is necessary at this time, so no change has been made to the final rule. It should be noted that DoD Instruction 1315.19 explicitly assigns responsibility for several EFMP-related responsibilities, including the requirements to provide guidance on implementation and to establish EFMP services, to the Secretaries of the Military Departments. We will evaluate the necessity for additional language based on implementation of the final rule by the Military Departments and their Services. Seven commenters were concerned with the paperwork involved with enrollment in EFMP. Commenters recommended enrollment in EFMP be standardized, either requiring physicians at MTFs to submit the paperwork to initiate EFMP enrollment, or allowing school-provided paperwork to serve as adequate documentation of disability for enrollment purposes.

The Department appreciates the commenters' attention to the demands placed on Service members, but makes no changes to the final rule because enrollment paperwork is already standardized across the DoD through completion of DD Forms 2792,[1] documenting special medical needs and DD Form 2792–1,[2] documenting special educational needs.

In an effort to decrease the paperwork burden on families, enrollment in EFMP is initiated and substantially completed by the MTF and the Service-specific EFMP point of contact. When a family member of an active duty Service member is identified within an MTF with a medical condition that meets the EFMP enrollment criteria at § 75.5 of the final rule, the MTF must initiate the EFMP enrollment process by referring the Service member to the Service-specific EFMP point of contact who ensures the DD Form 2792, ''Family Member Medical Summary'' is completed.

For families who receive medical care outside of the Military Treatment Facility, DoD Instruction 1315.19 requires that, under the authority of the ASD(HA), all medical care providers are made aware of the mandatory enrollment requirements of the EFMP when a family member is identified with a medical condition meeting the criteria at § 75.5 in the final rule. Physicians are part of the EFMP enrollment process in so far as they determine that a medical condition exists that requires enrollment, contact the Service-specific EFMP point of contact to initiate enrollment procedures, and complete the DD Form 2792, ''Family Member Medical Summary.'' We are not able to dictate how physicians outside of the MTFs manage non-medical paperwork, and therefore believe that Service-specific EFMP points of contact are the most appropriate personnel to manage the EFMP enrollment process.

Also, the Department is not able to accept school paperwork as sole documentation of eligibility for EFMP because the information collected and recorded by schools varies by state and

[1] Available online at *http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2792.pdf.*

[2] Available online at *http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2792-1.pdf.*

within each state. To ensure that all required information is collected for each family, a standard DoD form is necessary.

Section 75.6 DoD Criteria for Identifying Family Members With Special Needs

Due to the restructuring of the rule, what was § 75.6 (DoD Criteria for Identifying Family Members with Special Needs) in the proposed rule has been renumbered to § 75.5 in the final rule.

Several commenters suggested that the criteria for enrollment in the EFMP be changed so that fewer conditions would trigger enrollment, that enrollment for adults or any individual with a well-controlled medical condition or positive health prognosis be made optional, or that parents be able to determine whether their children need to be enrolled in the program. One commenter erroneously stated that EFMP enrollment is supposed to be voluntary. One commenter requested that families be given the opportunity to make their own decisions about whether to go to a duty station or not, and asked that they be allowed to waive their access to a compassionate reassignment should the duty station not have adequate services and support for the family member with special needs. No changes were made to the final rule. DoD Instruction 1315.19 states enrollment for EFMP is mandatory for active duty Service members whose families include a member with special needs. Also, we do not agree that changes to the enrollment criteria or mandatory enrollment requirement for the EFMP are feasible. The criteria at § 75.5 that automatically trigger enrollment in EFMP capture those conditions that, whether well-controlled or untreated, and whether manifested by a child or an adult, must be considered when assignments are coordinated because they may require medication that is not legally available or importable in every overseas location, may require specialized care that is not available in certain locations, or may be adversely impacted by the environmental conditions at particular locations. We do not agree that allowing families to waive their access to a compassionate reassignment is sound policy because it could put family members who need reassignment in danger of having to stay in a location without adequate or necessary medical resources.

Section 75.7 Coordinating Assignments of Active Duty Service Members Who Have a Family Member With Special Needs

Due to the restructuring of the rule, what was § 75.7 (Coordinating Assignments of Active Duty Service Members Who Have A Family Member with Special Needs) in the proposed rule has been removed and now appears in DoD Instruction 1315.19.

One commenter stated that Service members were denied critical assignments due to common medical needs of family members. Three commenters stated that active duty careers were hurt by having a family member enrolled in EFMP. While no changes were made to the final rule, DoD Instruction 1315.19 was modified to now read: ''active duty Service members may not be denied consideration for an essential (as defined by the military personnel assignment system) duty assignment overseas solely because of the special needs of a family member.''

DoD Instruction 1315.19 also states active duty Service members may not be denied consideration for an essential (as defined by the military personnel assignment system) duty assignment overseas solely because they have children who are or may be eligible for EIS or special education services in accordance with 32 CFR part 57. We agree, however, that this extends to cover the Service person in the event that they have an adult family member with special medical needs, and therefore have clarified the language in DoD Instruction 1315.19 to state that active duty Service members may not be denied consideration for an essential (as defined by the military personnel assignment system) duty assignment overseas solely because they have a family member with special needs.

One respondent requested that we add a process for disenrollment from the EFMP program. No changes were made to the final rule based on this comment because the Department does not believe this is necessary. DoD Instruction 1315.19 requires the Military Services to establish procedures to update the status of family member(s) with special needs when conditions occur, change, or no longer exist, and when Service-specific policy requires. This should be sufficient to ensure disenrollment of individuals who no longer meet the enrollment criteria at § 75.5 in the final rule.

Two commenters requested changes to what was § 75.7(c)(1)(iii) of the proposed rule, now in DoD Instruction 1315.19, which states that the Military Personnel Activities will remove active duty Service members who have family members with special medical and educational needs from overseas orders if no suitable overseas assignment location can be found and there is no adverse impact on the military mission or on the active duty Service member's career. The commenters requested that this requirement only apply to medical needs, not educational needs when considering a Service member for overseas orders.

No changes were made to the final rule given that DoD Instruction 1315.19 states that, in cases where both the special medical and special educational needs of family members cannot be met, the Military Personnel Activities will remove the Service member from overseas orders, barring any adverse impact on the military mission or service person's career.

Two commenters discussed the language which appeared at what was § 75.7(e) of the proposed rule, now in DoD Instruction 1315.19, requiring active duty Service members to complete DD Forms 2792 and 2792–1 when they become aware that a family member may meet the criteria at what was § 75.6 in the proposed rule, now § 75.5 in the final rule. The commenters recommended informing Service members that removing their children from special education in order to get a targeted assignment and then referring the child for special education services once the new duty station is reached is punishable under the UCMJ. No change was made to the final rule and the Department does not agree that additional clarification is required. DoD Instruction 1315.19 states that a Service member who fails or refuses to provide the required information for a family member or who knowingly provides false information about any dependent may be subject to disciplinary actions in accordance with Article 92 or Article 107, in violation of 10 U.S.C. chapter 47, also known as The Uniform Code of Military Justice. We believe that this sufficiently covers the situation described by the commenters.

Section 75.9 Provision of Family Support Services

Due to the restructuring of the rule, what was § 75.9 (Provision of Family Support Services) in the proposed rule has been removed and now appears in DoD Instruction 1315.19.

Two commenters discussed § 75.9 in the proposed rule, which now appears in DoD Instruction 1315.19. The commenters emphasized the importance of case management and requested that the rule include more detail on case

management resource requirements and responsibilities, including case management access standards and requirements for development and updating of Services Plans. No change was made to the final rule, and we do not agree more detail is required.

DoD Instruction 1315.19 currently requires Services Plans to include identification of the family's current needs, the services they receive, the support they require, and documentation of the support provided to the family and follow-on contacts, including case notes. We believe that these requirements establish an appropriate baseline for Services Plans.

In the realm of respite care services, several commenters questioned the differences in respite care hours provided by each Service, suggested that all respite care contracts be locally based, commented on difficulties enrolling in specific respite care programs and difficulties locating quality care providers, and requested that families be given the option to select their own respite care providers and utilize respite care services in the home or at activities/appointments, that respite care providers provide transportation and homemaking services, and that respite care services be established at youth centers or other locations outside of the home.

While no changes were made to the final rule, DoD has modified DoD Instruction 1315.19 to read: ''family support services may include respite care for family members who meet the eligibility criteria, regardless of age, according to Service-specific eligibility and guidance.'' We believe the definition of respite care services is internal to the Department, and decisions on whether to offer respite care programs, as well as specifics as to who may be a respite care provider, hours of service provided, and location of service provision, are matters of policy to be determined by each Service. Questions or comments regarding specific respite care programming or benefits should be directed to the local EFMP Family Support Office.

Section 75.10 OSN

Due to the restructuring of the rule, what was § 75.10 (Office of Community Support for Military Families with Special Needs), now appears in DoD Instruction 1315.19.

One respondent requested that we add a section to the rule reflecting the description of the Director of the OSN at 10 U.S.C. 1781c(c). No change was made to the final rule as we do not agree that this level of specificity is required, given that statutory requirements guide the Department's implementation of the duties of the OSN.

Six commenters recommended the rule explicitly reference the responsibilities of the OSN under 10 U.S.C. 1781c. Two commenters recommended adding language from the statute delineating the OSN's responsibility to monitor programs of the military departments for the assignment and support of members of the armed forces who are members of military families with special needs. One commenter recommended adding language from the statute delineating the OSN's responsibility to monitor the availability and accessibility of programs provided by other Federal, State, local, and non-governmental agencies to military families with special needs. Four commenters recommended adding language from the statute delineating OSN's responsibility to conduct periodic reviews of best practices in the provision of medical and educational services for children with special needs.

While no change has been made to the final rule, DoD Instruction 1315.19 now explicitly states that the OSN ''conducts periodic reviews of best practices in the provision of services for military families with special needs,'' and ''collaborates with the Military Departments to standardize EFMP components as appropriate.'' In addition, we believe that, by monitoring the implementation of DoD Instruction 1315.19, the OSN will ensure the issuance is implemented with fidelity by all of the Services and will ensure compliance with the issuance. Relevant language has been added to DoD Instruction 1315.19, which now states that OSN has the responsibility for ''implementation of this part through data review and program monitoring.''

Six commenters requested that the rule establish uniform benchmarks and performance goals for the identification, enrollment, and assignment coordination components of the EFMP, and implement a process for ensuring the compliance of each Service with the final rule. OSN and the Military Departments are working to standardize various aspects of the EFMP across DoD, particularly in the areas of identification/enrollment and assignment coordination, as well as the provision of family support. Wording about the standardization process has been added to DoD Instruction 1315.19 but not the final rule. In addition, we believe OSN's monitoring of the implementation of DoD Instruction 1315.19 as required by language added to DoD Instruction 1315.19 will ensure compliance with the issuance.

Five commenters requested that the Advisory Panel on Community Support for Military Families with Special Needs be included in the rule. While no changes were made to the final rule, relevant language has been added to DoD Instruction 1315.19, which now indicates that the OSN ''convenes the Advisory Panel on Community Support for Military Families with Special Needs in accordance with 10 U.S.C. 1781c.''

Six commenters requested the development of data systems to evaluate the outcomes of DoD programs for children and establish a common set of EFMP data evaluation systems across the DoD. While no change was made to the final rule, the Department agrees with the necessity to establish an EFMP data system to implement and record a set of standardized EFMP-related metrics across the Department. To that end, DoD Instruction 1315.19 was modified to direct the OSN to develop and implement a web-based data management system to support the EFMP with the Military Departments and directs the ASD(HA) to participate in the development and deployment of the system.

Many commenters submitted comments noting differences and inconsistencies in their experiences with EFMP policies, procedures, and programs between different installations, and across the Services. Commenters requested that paperwork, services, and programming be made consistent, and that families at joint bases and sister-Service locations have the same level of access to EFMP that they would at installations operated by their own Service. While the Services have flexibility to implement EFMP programs in the manner they deem most supportive to their unique missions and most effective for meeting their families' needs, we agree that, to the extent practicable, consistency in EFMP policies, procedures, and programs are of benefit to enrolled families. While no changes were made to the final rule, changes were made to DoD Instruction 1315.19 which now indicates that the OSN ''collaborates with the Military Departments to standardize EFMP components as appropriate.'' We have also added language to DoD Instruction 1315.19 clarifying that, in addition to discovering gaps in available services for families with special needs, the OSN is responsible for coordinating with the Military Departments and other DoD entities to ensure standardization of EFMP policies and procedures as appropriate.

General Comments on the Proposed Rule

Three commenters asked about the inclusion of specialized programs for adult family members with special needs. No changes were made to the rule because it does not mandate separate services for adult and child EFMP enrollees and incorporates adult and child dependent family members with special needs in all aspects of the EFMP program, with one exception. Specifically, in accordance with § 75.5(b) of this final rule, children with disabilities ages birth to 21 are eligible for enrollment in the EFMP on the basis of having early intervention or special educational needs if they have or are eligible to have an IFSP or an IEP under 32 CFR part 57. Otherwise, both adults and children are eligible for enrollment when meeting the criteria at § 75.5(a)(1) through (5) in this final rule. Also, nothing in the rule prohibits the Services from offering specialized EFMP services for children or adults as necessary to meet the needs of their families. Please contact your local EFMP Family Support Office to determine what EFMP services are available locally for adults, or to request services that address the concerns of adults with special needs. Online resources for adults with special needs are available at Military OneSource (*http://www.militaryonesource.mil/*).

Two commenters requested EFMP materials in multiple languages. As language access requirements are outside the scope of this rule, no change was made to the rule or DoD Instruction 1315.19. However, the DoD does provide EFMP resources in multiple languages. There are multiple online resources in eight languages on the Military OneSource website at *http://www.militaryonesource.mil/.*

One commenter requested training videos on the EFMP and specific EFMP topics, such as required medical and educational DD Forms, special needs programs, case management, and medical travel. This comment did not request a change to the regulation or DoD instruction, but we provide the following information in response: We currently have multiple informational and training videos on a variety of EFMP-related topics including, but not limited to, online learning and videos explaining the EFMP and providing an overview of early intervention services (provided by the medical departments), as well as a number of webinars. They are available at: *http://www.militaryonesource.mil/.*

Three commenters requested additional sections to the rule regarding two programs: Military Department Support for Local Centers to Assist Military Children with Special Needs, and the Foundation for Support of Military Families with Special Needs. No change is being made to the rule or DoD Instruction 1315.19 at this time. While the Secretary of Defense was given the authority to establish these programs in Section 563 of the National Defense Authorization Act for Fiscal Year 2010, as amended (published as a note to 10 U.S.C. 1781c), neither program has been established. Should the Secretary choose to establish either or both of these programs, any necessary rule-making associated with the programs will happen at that time.

One commenter requested that the Overarching Coordinating Committee for Military Families with Special Needs be included in the rule. No changes were made to the final rule. Changes were made, however, to DoD Instruction 1315.19 to express that the OSN ''convenes an Overarching Coordinating Committee meeting at least once a year to review the implementation of this part.''

One commenter requested the EFMP program establish summer camps, after school programs, social clubs, or sports teams to support children with disabilities and their siblings. No change is made in the rule or DoD Instruction 1315.19, as nothing prohibits the Services from offering these services. Several installation EFMP family support offices currently sponsor activities for children with disabilities and their family members on a regular basis, including sports events, social, educational, and cultural activities. Please contact your local EFMP family support office to request or suggest events and activities.

One organization requested we add language to facilitate collaboration between that organization and EFMP programs, and to give families information on the organization's programs in their state. No change is made to the rule or DoD Instruction 1315.19, as we decline to regulate EFMP office relationships with non-DoD organizations or require that families receive materials and services prepared by outside organizations.

The Department received several comments that complimented or thanked the Department for a range of issues including the provision of services to family members with special needs, and the inclusion of mental health issues. The Department appreciates the many comments received in support of the EFMP.

One commenter requested we establish a process for receiving complaints about EFMP services. No change is made to the rule, which does not require a complaint process. The rule, however, does not prohibit the Services from establishing complaint processes for their EFMP programs. DoD Instruction 1315.19 gives the Secretaries of the Military Departments and the Assistant Secretary of Defense for Manpower and Reserve Affairs the responsibility for ensuring that each EFMP program is effectively implemented and monitored. We believe the ongoing review by the OSN of each Military Services' implementation of the rule will determine if a DoD-level complaint process is needed. The Department may reconsider this issue at a later date.

Several commenters recommended DoD centralize the EFMP rather than allowing each Service to implement their own EFMP program. Commenters cited uniformity of procedures and services provided by EFMP offices, and equitable conditions and services for families as reasons for requesting a centralized EFMP. No changes are made to the rule as it sets baseline requirements for enrollment criteria for the EFMP, assignment coordination, family support services, data systems, and assigns responsibility for various aspects of the EFMP program. We decline to make rules restricting the Services from developing their own EFMP programs because the Services must have the flexibility to design programs that meet the needs of their unique missions and families.

Comments Beyond the Scope of This Rule

Many commenters had questions or submitted suggested changes about medical services provided by the Military Departments and TRICARE medical policy. Questions, concerns, and suggestions included a request for an updated database for finding medical providers in new locations, resources available in case of the death of an EFMP member, waiting lists for specialty care providers, continuity of medical care, customer service concerns, pre-enrollment and appointments with new care providers when moving to a new region, TRICARE ECHO enrollment procedures, the collection of data on the efficacy of TRICARE wellness programs, lapses in medical services after moving, vaccination schedules, and transfer of medical records.

This rule does not regulate TRICARE programs, policies, or procedures. All TRICARE related inquiries should be directed to the TRICARE website at *http://www.tricare.mil/.*

Also, this rule does not regulate the provision of medical services by the Military Medical Departments, and all questions about medical services provided by the Military Medical Departments should be directed to the local installation MTF.

Four commenters submitted comments requesting specific services for veterans, such as access to certain military medical facilities or EFMP family support services for veterans and their families. One respondent requested that DoD ensure public schools serving military children provide a Free Appropriate Public Education. One respondent requested that medical services for high-risk pregnancies, autism, asthma, and mental health be made available at every location where family members are able to accompany Service members. One respondent recommended that DoD provide educational attorneys in every state to assist military families with special education mediation and due process hearings. One respondent requested that ABA therapists be placed in every school. Two commenters discussed service-specific housing policies. One commenter discussed the Army's compassionate reassignment procedures. One commenter recommended designating staff or a help line to help families navigate the forms and processes followed to establish dependency status with the Defense Finance and Accounting Services.

It should be noted that the regulation of veterans affairs and the regulation of educational services provided by non-DoD public schools is not within the authority of the Secretary of Defense and individuals should contact a local veterans' affairs office to discuss concerns. While DoD regulates the provision of educational services by DoDEA, it does not have the authority to regulate educational services provided by State and local governments. To address concerns with non-DoD schools, please contact the local school district administration. The allocation of medical resources, legal staffing, and school staffing within the DoD is beyond the scope of this regulation. Local Military Treatment Facilities can discuss medical resourcing, and local DoDEA schools can discuss school-based services in DoD schools.

Administrative Changes

After the proposed rule was published in the **Federal Register** and the public comments were adjudicated, four administrative edits were made. The edits pertained to the Definitions section (§ 75.3) of the rule and were made in order to align with the definitions contained in an associated rule, 32 CFR part 57. These edits were not made as a result of public comments. Specifically, the administrative changes updated the definitions of Early Intervention Services (EIS), Individualized Education Program (IEP), Related Services, and Special Education to be consistent with 32 CFR part 57.

Internal Comments

Section 75.4(b) of the proposed rule was amended to read ''assignment process'' in the final rule due to an internal DoD comment received. This amendment was made because the special needs of the family member must be taken into account during the assignment process. If the Service Member is not identified as having a family member with a special need, there is no need for coordination during the assignment process.

Expected Impact of the Final Rule

The Department of Defense and the Military Services, which are responsible for providing services to military families with special needs, receive their funding for the Exceptional Family Member Program from the defense-wide Operations and Maintenance (O&M) appropriation. The approximate cost for the Exceptional Family Member Program for FY2016 was $48,300,000. There is no change to program eligibility or reporting requirements based on this final rule.

Regulatory Procedures

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

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

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

This final rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because this rule is related to agency organization, management or personnel.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule will not have a substantial effect on State and local governments.

Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The Department of Defense certifies that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that 32 CFR part 75 does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. These reporting requirements have been approved by the Office of Management and Budget and assigned OMB Control Number 0704–0411, titled Exceptional Family Member Program.

System of Record Notices (SORN) and Privacy Impact Assessments (PIA)

The applicable SORNs and PIAs for the Exceptional Family Member Program are:

1. DMDC 02 DoD. The system name is the Defense Enrollment Eligibility Reporting Systems (DEERS) (available at

http://dpcld.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/627618/dmdc-02-dod/).

The Privacy Impact Assessment (PIA) for this program is available at *https://www.dmdc.osd.mil/documents/PIA_DEERS.pdf.*

This system collects demographic information on DoD beneficiaries, including Service members and dependents, to provide a database for determining eligibility for DoD entitlements and privileges and support DoD health care management programs through the Defense Health Agency. This demographic information is used to verify Service affiliation for the EFMP.

2. EDHA 07 DoD. The system name is the Military Health Information System (available at *http://dpcld.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/570672/edha-07/*).

The Privacy Impact Assessment (PIA) for this program is available at *https://health.mil/Reference-Center/Forms/2016/06/23/MHSMDR.*

The Military Health Information System collects information regarding medical care at Military Treatment Facilities (MTFs), including beneficiary eligibility and enrollment in health programs within the DoD, medical records, and diagnosis procedures, to support benefits determinations for DoD healthcare programs. This medical information is used to determine the needs of military families during the Identification/Enrollment and Assignment Coordination components of the EFMP.

3. EDHA 16 DoD. The system name is the Special Needs Program Management Information System (SNPMIS) Records (available at *http://dpcld.defense.gov/Privacy/SORNsIndex/DODwideSORNArticleView/tabid/6797/Article/570679/edha-16-dod.aspx*).

The Privacy Impact Assessment (PIA) for this program is available at *https://health.mil/Reference-Center/Forms/2015/12/01/PIA-Summary-for-Special-Needs-Program-Management-Information-System_SNPMIS.*

The Special Needs Program Management Information System (SNPMIS) provides access to a comprehensive program of therapy, medical support, and social services for young Department of Defense (DoD) Military Health System (MHS) beneficiaries with special needs. SNPMIS is the Military Health System (MHS) automated information system designed to ensure the DoD meets the unique information requirements associated with implementation of the Individuals with Disabilities Education Act (IDEA). SNPMIS captures records referral, evaluation, eligibility, and service plan data for children with special needs who are eligible for MHS services under IDEA. This system is a distributed data collection application with database servers distributed at various Military Treatment Facilities (MTFs) located within the Continental United States (CONUS) and Outside the Continental United States (OCONUS). SNPMIS is currently used in 45 EDIS clinics at Army, Navy, and Air Force installations worldwide.

4. DPR 34 DoD. The system name is the Defense Civilian Personnel Data System (available at *http://dpcld.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/570697/dpr-34-dod/.*

The Privacy Impact Assessment (PIA) for this program is available at *http://www.dhra.mil/webfiles/docs/Privacy/PIA/DHRA.XX.DCPAS.DCPDS.4.12.2013.pdf.*

The Defense Civilian Personnel Data System collects personnel information on civilian employees to provide support to the DoD civilian workforce. This personnel information is used to document staff processing of EFMP paperwork.

5. DoDEA 26. The system name is the DoDEA Educational Records system (available at *http://dpcld.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/570573/dodea-26/.*

The Privacy Impact Assessment (PIA) for this program is available at *http://www.dodea.edu/upload/pia_SIRs_AIRs.pdf.*

The DoDEA Educational Records system maintains student educational records to inform the management, funding, and tracking of DoD schools. This information is used to determine the educational needs of children during the Identification/Enrollment and Assignment Coordination components of the EFMP.

6. DoDEA 29. The system name is the DoDEA Non-DoD Schools Program system (available at *http://dpcld.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/570576/dodea-29/*).

The Privacy Impact Assessment (PIA) for this program is available at *http://www.dodea.edu/upload/pia_SIRs_AIRs.pdf.*

The DoDEA Non-DoD Schools Program system maintains the educational records for all students who receive non-DoD schooling funded by the DoD to track obligations and invoices for transportation, tuition, and tutoring payments and to determine eligibility and enrollment by grade. This information is used to determine the educational needs of children during the Identification/Enrollment and Assignment Coordination components of the EFMP.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 75

Children, Family health, Special needs.

■ Accordingly, 32 CFR part 75 is added to read as follows:

PART 75—EXCEPTIONAL FAMILY MEMBER PROGRAM (EFMP)

Subpart A—General

Sec.
75.1 Purpose.
75.2 Applicability.
75.3 Definitions.

Subpart B—Policy

75.4 Policy.

Subpart C—Procedures

75.5 DoD criteria for identifying family members with special needs.
75.6 Civilian employees on overseas assignment.

Authority: 10 U.S.C. 1781c.

Subpart A—General

§ 75.1 Purpose.

This part:

(a) Provides guidance and prescribes procedures for:

(1) Identifying a family member with special needs who is eligible for services as defined in this part.

(2) Processing DoD civilian employees who have family members with special needs for an overseas assignment.

(b) Does not create any rights or remedies in addition to those already otherwise existing in law or regulation, and may not be relied upon by any person, organization, or other entity to allege a denial of such rights or remedies.

§ 75.2 Applicability.

This part applies to:

(a) Service members who have family members with special needs as described in this part.

(b) All DoD civilian employees in overseas locations and selectees for overseas positions who have family

members with special needs as described in this part.

§ 75.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purpose of this part.

Assistive technology device. Any item, piece of equipment, or product system, whether acquired commercially off the shelf modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

Assistive technology service. Any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.

CONUS. The 48 contiguous states of the United States, excluding Alaska, Hawaii, and U.S. territories or other overseas insular areas of the United States.

Early Intervention Services (EIS). Developmental services for infants and toddlers with disabilities, as defined in 32 CFR part 57, that are provided under the supervision of a Military Department, including evaluation, IFSP development and revision, and service coordination provided at no cost to the child's parents.

Evaluations. Medical, psychological, and educational assessments required to define a medical or educational condition suspected after a screening procedure.

Family member. A dependent as defined by 37 U.S.C. 401, to include a spouse and certain children of a Service member, who is eligible to receive a DoD identification card, medical care in a DoD Military Treatment Facility, and command sponsorship or DoD-sponsored travel. To the extent authorized by law and in accordance with Service implementing guidance, the term may also include other nondependent family members of a Service member. For the purposes of § 75.6 of this part only, this definition also includes the dependents of a civilian employee on an overseas assignment, or being considered for an overseas assignment, who are, or will be, eligible to receive a DoD identification card during that overseas assignment. To the extent authorized by law and in accordance with Service implementing guidance, the term may also include other nondependent family members of a civilian employee on an overseas assignment, or being considered for an overseas assignment.

Family member travel. Refers to family member permanent change of station authorization that is requested by a Service member or civilian employee for the purposes of § 75.6 of this part only.

Family support services. Encompasses the non-clinical case management delivery of information and referral for families with special needs, including the development and maintenance of an individualized Services Plan (SP).

Individualized Education Program (IEP). A written document that is developed, reviewed, and revised at a meeting of the Case Study Committee, identifying the required components of the individualized education program for a child with a disability.

Individualized Family Service Plan (IFSP). A written document identifying the specially designed services for an infant or toddler with a disability and the family of such infant or toddler.

Overseas. Any location outside of the 48 contiguous United States including Alaska, Hawaii, and all U.S. Territories or other overseas insular areas of the United States.

Related services. Transportation and such developmental, corrective, and other supportive services required to assist a child with a disability to benefit from special education under the child's IEP. The term includes services or consults in the areas of speech-language pathology, audiology services, interpreting services, psychological services, physical and occupational therapy, recreation (including therapeutic recreation), social work services, school nurse services designed to enable a child with a disability to receive a Free Appropriate Public Education (FAPE) as described in the child's IEP, early identification and assessment of disabilities in children, counseling services (including rehabilitation counseling), orientation and mobility services, and medical services for diagnostic or evaluative purposes.

Related services assigned to the military medical departments overseas. Services provided by Educational and Developmental Intervention Services to Department of Defense Dependent School students for the development or implementation of an IEP, which are necessary for the student to benefit from special education. Those services may include medical services for diagnostic or evaluative purposes, social work, community health nursing, nutrition, occupational therapy, physical therapy, audiology, ophthalmology, and psychological testing and therapy.

Responsible military department. The Military Department responsible for providing EIS or related services in the geographic areas assigned under 32 CFR part 57.

Special education. Specially designed instruction (including instruction in physical education) provided at no cost to the parent to meet the unique needs of a child with a disability, conducted in the classroom, in the home, in hospitals and institutions, and in other settings.

Special needs. Includes special medical and educational needs of family members who meet the DoD criteria for enrollment in the EFMP as found in § 75.5 of this part.

Specialty care. Specialized health care required for health maintenance and provided by a physician whose training focused primarily in a specific field, such as neurology, cardiology, rheumatology, dermatology, oncology, orthopedics, or ophthalmology.

Subpart B—Policy

§ 75.4 Policy.

It is DoD policy that:

(a) The EFMP identifies family members with special needs, enrolls sponsors in the program, and participates in the coordination of assignments for active duty Service members in order for the special needs of family members to be considered during the assignment process.

(b) Active duty Service members whose families include a member with special needs must enroll in the EFMP to ensure their family member's special needs are considered during the assignment process.

(c) The special needs of a civilian employee's family member will not be considered in the selection of a civilian for an overseas position.

Subpart C—Procedures

§ 75.5 DoD criteria for identifying family members with special needs.

(a) *Special medical needs.* Individuals who meet one or more of the criteria in this section will be identified as a family member with special medical needs:

(1) Potentially life-threatening conditions or chronic (duration of 6 months or longer) medical or physical conditions requiring follow-up care from a primary care manager (to include pediatricians) more than once a year or specialty care.

(2) Current and chronic (duration of 6 months or longer) mental health conditions (such as bi-polar, conduct, major affective, thought, or personality disorders); inpatient or intensive (greater than one visit monthly for more than 6 months) outpatient mental health service within the last 5 years; or intensive mental health services required at the present time. This

includes medical care from any provider, including a primary care manager.

(3) A diagnosis of asthma or other respiratory-related diagnosis with chronic recurring symptoms that involves one or more of the following:

(i) Scheduled use of inhaled or oral anti-inflammatory agents or bronchodilators.

(ii) History of emergency room use or clinic visits for acute asthma exacerbations or other respiratory-related diagnosis within the last year.

(iii) History of one or more hospitalizations for asthma, or other respiratory-related diagnosis within the past 5 years.

(4) A diagnosis of attention deficit disorder or attention deficit hyperactivity disorder that involves one or more of the following:

(i) Includes a co-morbid psychological diagnosis.

(ii) Requires multiple medications, psycho-pharmaceuticals (other than stimulants) or does not respond to normal doses of medication.

(iii) Requires management and treatment by a mental health provider (*e.g.,* psychiatrist, psychologist, social worker or psychiatric nurse practitioner).

(iv) Requires the involvement of a specialty consultant, other than a primary care manager, more than twice a year on a chronic basis.

(v) Requires modifications of the educational curriculum or the use of behavioral management staff.

(5) A chronic condition that requires:

(i) Adaptive equipment (such as an apnea home monitor, home nebulizer, wheelchair, custom-fit splints/braces/orthotics (not over-the-counter), hearing aids, home oxygen therapy, home ventilator, etc.).

(ii) Assistive technology devices (such as communication devices) or services.

(iii) Environmental or architectural considerations (such as medically required limited numbers of steps, wheelchair accessibility, or housing modifications and air conditioning).

(b) *Special educational needs.* Family members of active duty Service members (regardless of location) and civilian employees appointed to an overseas location eligible for enrollment in a DoDEA school on a space-required basis will be identified as having special educational needs if they have, or are found eligible for, either an IFSP or an IEP under 32 CFR part 57.

§ 75.6 Civilian employees on overseas assignment.

(a) *Vocabulary.* Section 75.3 provides definitions of ''family member'' that apply only to this section.

(b) *Employee rights.* (1) The DoD Components must select civilian employees for specific positions based on job requirement and merit factors in accordance with 5 U.S.C. 2302, and 29 U.S.C. 791 through 794d. Selection for an overseas position must not be influenced by the special needs of a civilian employee's family member(s), or any other prohibited factor.

(2) The civilian employee or selectee will be given comprehensive medical, dental, and educational information about the overseas community where the position is located to help the employee make an informed choice about accepting the position.

(3) Refer to the Joint Travel Regulations (available at *https://www.defensetravel.dod.mil/Docs/perdiem/JTR.pdf*) for PCS travel and transportation allowances for eligible civilian employees and their family members.

(4) Civilian employees or selectees assigned to positions overseas are generally responsible for obtaining medical and dental services and paying for such services, except services provided pursuant to 32 CFR part 57. Their family members may have access to the MHS on a space-available, reimbursable basis only, except for services pursuant to 32 CFR part 57.

(i) DoDEA and the Military Medical Department responsible for the provision of related services to support DoDEA at the duty station are required to evaluate school-aged children (ages 3 through 21 years, inclusive) eligible for enrollment in a DoDEA school on a space- required basis and provide them with the special education and related services included in their IEPs in accordance with 32 CFR part 57.

(ii) The Military Departments are required to provide infants and toddlers (from birth up to 3 years of age, inclusive) eligible for enrollment in a DoDEA school on a space-required basis with the EIS identified in the IFSPs in accordance with 32 CFR part 57.

(c) *Processing a civilian employee for an overseas position.* (1) When recruiting for an overseas position, DoD human resources representatives will:

(i) Provide information on the requirements of this part related to civilian employees or applicants for employment, including employee rights provided in DoD Instruction 1315.19.

(ii) Provide information on the availability of medical and educational services, including a point of contact for the applicant to ask about specific special needs. This information must be contained in any document used for recruitment for overseas positions.

(iii) Include the following statements in recruitment information:

(A) If an employee brings a child to an overseas location and that child is entitled to attend a DoD school on a space-required basis in accordance with DoDEA Regulation 1342.13 (available at *http://www.dodea.edu/aboutDoDEA/upload/1342_13.pdf*), DoDEA and the Military Department responsible for providing related services will ensure that the child, if eligible for special education, receives a free appropriate public education, including special education and related services pursuant to 32 CFR part 57.

(B) If an employee brings an infant or toddler (up to 3 years of age) to an overseas location, and that infant or toddler, but for the child's age, is entitled to attend the DoDEA on a space-required basis in accordance with DoDEA Regulation 1342.13, then the Military Department responsible for EIS will provide the infant or toddler with the required EIS in accordance with the eligibility criteria consistent with 32 CFR part 57.

(C) If an employee brings a family member to an overseas location who requires medical or dental care, then the employee will be responsible for obtaining and paying for such care. Access for civilian employees and their families to military medical and dental treatment facilities is on a space-available and reimbursable basis only.

(2) When the gaining human resources representatives process a civilian for an overseas position where family member travel is authorized at government expense, then they must ask the selectee to determine whether a family member has special needs, using the criteria provided in § 75.5 of this part. All selectees must be asked only after they have been notified of their selection in accordance with 29 U.S.C. 791 through 794d, and 29 CFR 1630.14. If the selectee indicates that a family member has special needs:

(i) The DoD civilian human resources representatives may not coerce or pressure the selectee to decline the job offer in light of that information.

(ii) The selectee may voluntarily forward to the civilian human resources representative completed DD Forms 2792 or 2792–1 for each family member with special needs to provide information on the availability of medical and educational services. DD Form 2792–1 must be submitted if the selectee intends to enroll his or her child in a school funded by the DoD or a school in which DoD is responsible for paying the tuition for a space-required family member.

(3) The gaining human resources activity will coordinate with the appropriate military medical and educational personnel on availability of services and inform the selectee in writing of the availability of medical, educational, and early intervention resources and services to allow the civilian employee to make an informed choice whether to accept the position. The notice will include:

(i) Comprehensive medical, dental, and educational information on the overseas community where the position is located.

(ii) A description of the local DoDEA facility and programs, specifying the programs for children with special education needs.

(iii) A description of the local EIS available for infants and toddlers with disabilities.

(iv) A statement indicating that the lack of EIS or special education resources (including related services assigned to the military medical departments) cannot serve as a basis for the denial of family travel at government expense and required services will be provided even if a local program is not currently established in accordance with 32 CFR part 57.

(d) *Use of EFMP Family Support Services.* Civilian employees may utilize EFMP family support services on a space-available basis.

Dated: February 7, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 202

[Docket No. 2017–15]

Group Registration of Unpublished Works

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is modernizing its practices and procedures to increase the efficiency and quality of the registration process. As part of this effort, this final rule establishes a new group registration option for a limited number of unpublished works, replacing the prior accommodation for ''unpublished collections.'' The new group registration option will allow the Office to examine each work for copyrightable authorship, create a more robust record of the claim, and improve the overall efficiency of the registration process. In addition, the final rule makes certain technical amendments to the regulations governing the group registration option for photographs.

DATES: Effective March 15, 2019.

FOR FURTHER INFORMATION CONTACT: Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice by email at *rkas@copyright.gov*; Erik Bertin, Deputy Director of Registration Policy and Practice by email at *ebertin@copyright.gov*; or Mark Gray, Attorney-Advisor, by email at *mgray@copyright.gov*; all can be reached by telephone at 202–707–8040.

SUPPLEMENTARY INFORMATION:

I. Background

The Copyright Act authorizes the Register of Copyrights to specify by regulation the administrative classes of works available for the purpose of seeking a registration and the nature of the deposits required for each class. The Register also has discretion to allow groups of related works to be registered with one application and one filing fee, a procedure known as ''group registration.'' [1] Pursuant to this authority, the Register has issued regulations permitting the Copyright Office to issue group registrations for certain limited categories of works, provided that certain conditions have been met.[2]

On October 12, 2017, the Office issued a notice of proposed rulemaking (NPRM) proposing to create a new group registration option for unpublished works, labeled ''GRUW,'' to replace a longstanding registration accommodation known as the ''unpublished collection'' option.[3] Applicants have been able to use the unpublished collection option to register an unlimited number of unpublished works with one application and filing fee.[4] The regulation governing the existing option, however, was based on longstanding Office practices, and it was not specifically adopted under the Office's authority to issue group registrations under section 408(c)(1) of the Copyright Act.

The NPRM explained the rationale for replacing the unpublished collection option with a new group registration option and described key aspects of the proposal. First, applicants would be required to use a new online application specifically designed for registering groups of unpublished works, in lieu of the Standard Application or a paper application. Second, applicants would be required to upload an electronic copy or phonorecord of each work, in lieu of providing a physical deposit. Third, the filing fee for this option would be $55, the same fee that currently applies to individual works claims submitted on the Standard Application. Fourth, applicants could include no more than five works in each claim, with a limited exception to allow applicants to register up to five sound recordings together with the musical work, dramatic work, or literary work embodied in each recording. Fifth, the author and claimant for each work in the group must be the same. Sixth, the works must be registered in the same administrative class, and the authorship statement for each work must be exactly the same. Seventh, the proposed rule confirmed that a registration for a group of unpublished works will cover each work in the group and each one would be registered as a separate work. Finally, it clarified that applicants could not assert a claim in the selection, coordination, or arrangement of the works within the group, and that the group as a whole will not be considered a compilation, a collective work, or a derivative work.

The Office received 113 comments in response to the NPRM, discussed in more detail below. The majority of comments were submitted by individuals, including photographers, illustrators, graphic designers, and other visual artists. The Office also received comments from (1) Author Services, Inc., representing the literary, theatrical, and musical works of the late L. Ron Hubbard; (2) the law firm of Browning-Smith, which represents artists, sculptors, and illustrators; (3) the Copyright Alliance; (4) the Graphic Artists Guild, Inc.; (5) the Kernochan Center for Law, Media and the Arts at Columbia Law School (''Kernochan Center''); (6) Science Fiction and Fantasy Writers of America, Inc. (''SFWA''), American Society of Journalists and Authors (''ASJA''), and The National Writers Union (''NWU'') (collectively the ''SFWA Commenters''); (7) NWU, ASJA, SFWA, and the Textbook & Academic Authors Association (collectively the ''NWU Commenters''); and (8) The Authors Guild, Inc., SFWA, The Association of Garden Communicators, Society of Children's Book Writers and Illustrators,

[1] *See* 17 U.S.C. 408(c)(1).

[2] *See generally* 37 CFR 202.3(b)(5), 202.4.

[3] *See* 82 FR 47415 (Oct. 12, 2017).

[4] 37 CFR 202.3(b)(4)(i)(B).

and Songwriters Guild of America, Inc. (collectively the ''Authors Guild Commenters'').[5]

While no commenter fully opposed the Office's proposal to eliminate the unpublished collections option, nearly all objected to the proposed limit on the number of works that may be included in each claim.[6] Another common concern was the perceived difficulty of determining whether a particular work is published or unpublished, especially for works distributed online. Those concerns are discussed in more detail below.

Having carefully considered each of the comments, the Office now issues a final rule that closely follows the proposed rule, with some modifications. First, the final rule increases the number of works that may be included in each submission from five to ten. The final rule also makes other minor adjustments, including clarifying that applicants must obtain guidance from the Office of Registration Policy & Practice before correcting or amplifying the information in a registration for a group of unpublished works and making several technical amendments to streamline group registration of photographs by removing some prior technical limitations.

II. The Final Rule

A. The Number of Works in the Group

The NPRM proposed to limit the number of works that may be included in each claim to five works. The Office acknowledged that this would be a significant change, given that applicants currently may register an unlimited number of works as an unpublished collection. The Office explained that limiting the number of works in the group would allow the Office to efficiently examine each work for copyrightable authorship and improve the quality of the public registration record.[7]

A majority of commenters objected to this proposal. Only two organizations—the Kernochan Center[8] and Author Services—supported the five-work limit. While some of the commenters sympathized with the Office's rationale for limiting the number of works allowable in each claim, they contested the proposed limit. Several suggested that the proposal was unfair, given that photographers may register up to 750 unpublished photos with one application, while other creators would be limited to five.[9] The Copyright Alliance, Graphic Artists Guild, and Authors Guild Commenters, and several individuals argued that it would be cost-prohibitive for authors who create a large volume of material to file multiple applications to register their works, and suggested the limit would discourage authors from seeking registration.[10]

As an alternative, one commenter suggested a limit of 20 works would be appropriate for claims involving sound recordings and musical works, as the average compact disc can hold up to 20 songs.[11] But the Authors Guild Commenters encouraged the Office to allow ''at least several hundred in the case of text-based works, perhaps more depending on the nature of the work,'' or preferably ''all works created in a calendar quarter.''[12]

As an initial matter, the Office emphasizes that the general rule requires each individual work—whether unpublished or not—to be submitted with a separate registration application and a separate fee.[13] The Standard and Single Applications can be used to register individual works. The Office has adopted certain narrow exceptions to this general rule, where it has determined that, absent the ability to file multiple works on one application with one filing fee, registration would not be made. In nearly every such circumstance, the Office has created a group registration option for a particular *kind* of work—*e.g.,* serials, newspapers, photographs.[14] But the existing unpublished collections option is not a group registration option,[15] and is not limited to certain kinds of works. These features have ''always made it an oddity in Copyright Office practice''[16] and complicated the Office's efforts to efficiently administer the registration system.

While the Office considered eliminating the unpublished collections option entirely, it ultimately determined that creating a group registration option for unpublished works would be beneficial for a particular class of copyright owners: ''[i]ndividual creators or small businesses who might not otherwise use the more expensive standard registration application to register their unpublished works on an individual basis.''[17] The group registration option aims to do that, without undermining the general rule of ''one work per registration.''

After carefully reviewing the comments and weighing the issues involved, the Office has decided to increase the limit on the number of works that can be included in the group from five to ten. As stated in the NPRM, the Office is committed to conducting a complete and thorough examination of each work that is submitted under this group registration option.[18] To maintain reasonable fees for this service, this requires an appropriate limit on the number of works included in each claim. The final rule also provides a limited exception for sound recordings, allowing applicants to include up to ten sound recordings in each claim, together with the musical work, dramatic work, or literary work embodied in each recording.

In increasing the limit, the Office considered several factors. First, the rule must anticipate the amount of effort required to examine the wide-range of claims that may be included in this group. As noted, under the GRUW option, applicants may register nearly any type of work.[19] But as the Authors Guild Commenters acknowledged, the amount of time needed to examine each

[5] All of the comments received in response to the NPRM can be found on the Copyright Office's website at *https://www.copyright.gov/rulemaking/group-unpublished/.*

[6] Though most commenters did not support retaining the unpublished collections option on its own merits, the Authors Guild Commenters requested that unpublished collections remain a registration option if the five-work limit is not dramatically increased. Authors Guild et al. Comment at 3.

[7] 82 FR at 47417.

[8] The Kernochan Center supported the proposal based on the (correct) assumption that the limit would not apply to unpublished photographs, which are eligible for registration under a separate group registration option. Kernochan Ctr. Comment at 3; *Final Rule: Group Registration of Photographs,* 83 FR 2542 (Jan. 18, 2018).

[9] *See, e.g.,* Browning-Smith Comment at 1; NWU et al. Comment at 5; Judy Sorrels Comment at 1; Benjamin Hummel Comment at 1; Cherish Flieder Comment at 1.

[10] *See, e.g.,* Authors Guild et al. Comment at 4–5; Copyright Alliance Comment at 2; Graphics Artists Guild Comment at 2; Barbara Tourtillotte Comment at 1; Megan D. Comment at 1; Laura Matthews Comment at 1.

[11] Sergey Vernyuk Comment at 1.

[12] Authors Guild et al. Comment at 6.

[13] *See U.S. Copyright Office, Compendium of U.S. Copyright Office Practices, Third Edition* sec. 511 (''As a general rule, a registration covers one individual work, and an applicant should prepare a separate application, filing fee, and deposit for each work that is submitted for registration.'') (''*Compendium*'').

[14] *See generally* 37 CFR 202.4.

[15] *See* 82 FR at 47416.

[16] *Id.*

[17] *See* 82 FR at 47418.

[18] The commenters supported this objective. For example, the Authors Guild Commenters acknowledged that examining each work and documenting its findings in the record ''will facilitate licensing of works while reducing the potential for works to become orphaned.'' Authors Guild et al. Comment at 4.

[19] The Office explained in the NPRM that compilations, collective works, databases, and websites will not be eligible for this group registration option, because they typically contain multiple works of authorship. Similarly, architectural works cannot be registered with this option, because the regulations expressly prohibit the Office from registering multiple architectural works with one application. 82 FR at 47417 n.6.

work for copyrightable authorship, will vary depending on the ''class and nature of the work.'' [20] For example, sound recordings, musical works, audiovisual works, and choreographic works take significantly more time to examine than literary or photographic works, because each file must be opened, buffered, and played to determine if the work contains a sufficient amount of creative expression. An examiner can more easily review a large set of photographs for copyrightable authorship than a large quantity of software or other visual works. These important differences between claims involving unpublished photographs and other types of works justify differential treatment in registration.[21] Because the GRUW registration option will not be limited in the categories of works that can be included, the GRUW option instead accommodates the full range of potential categories of works and resource demands on the Office.

Second, the Office must consider the impact of the group option on the overall registration scheme, in light of current staffing levels and the capabilities of the current registration system. In contrast to claims involving a single work, claims involving dozens, hundreds, or even thousands of unpublished works may require several hours or more to complete. Allowing more than ten works to be registered with one application and one basic filing fee would burden the Office's resources, and the additional workload associated with those claims would have an adverse effect on pendency times for other types of works throughout the Registration Program.

Third, and relatedly, the Office must account for the financial impact of permitting a greater number of works to be filed on one application with one filing fee. In seeking an increase in the number of works filed in a single GRUW application, commenters presumably request that the Office maintain the same fee. There is no fiscally responsible way to do that. If the Office increases the number of works permitted on one application, the Office's examination costs will increase commensurately. Indeed, as the Authors Guild Commenters acknowledged, the resources required to adequately examine an application involving many different works ''cannot be supported with the fee for a single registration.'' [22] Those costs must be covered in some fashion, likely by raising the fee for GRUW applications. But that result would discriminate against creators trying to register relatively few works, since the same fee would apply whether creators register 5, 10, 20, or 100 works. In light of these considerations, the Office has determined that limiting the GRUW application to ten copyrighted works strikes the appropriate balance.

The Office recognizes that applicants previously submitted dozens, hundreds, or even thousands of works through the unpublished collections option, and that going forward, some applicants will need to file multiple applications instead of registering all of their works with one submission. The Office takes seriously the additional cost and burden this may impose, especially on individual filers and small businesses. But the Office never intended unpublished collections claims to include such a large quantity of works, and this new limit is necessary to ensure that the Office can reasonably and efficiently fulfill its statutory obligations to ensure that each work constitutes copyrightable subject matter and meets the other legal and formal requirements for registration.

While the Office has determined that ten is the most appropriate limit for the GRUW option, it will continue exploring whether additional group options (or other accommodations) are necessary to ensure that the standard rule of one application per work does not drive certain creators to forgo registration altogether.[23] For example, since the proposed GRUW option was published, the Office not only finalized its proposed rule regarding group registration of published and unpublished photographs, with a limit of up to 750 photographs per application, it also issued a separate NPRM proposing to create a group registration option for qualifying short online literary works; under that proposed rule, applicants may submit up to 50 works with the same application.[24] The Office is also preparing a proposed group option for musical works and sound recordings included as part of a music album.[25] These separate proposals should address some of the concerns raised by commenters about the limit for this unpublished option.[26]

The Office similarly recognizes that visual artists other than photographers are often prolific, and the comments provided useful information about the needs of these artists and the volume of material they typically create.[27] The comments suggest that—from an artist perspective—a group option for graphic and other visual art works could be limited to between 20–100 works, but the Office does not have currently sufficient information on the length of time that would be needed to examine these types of works if they were grouped together.[28] Consequently, the Office will monitor the amount of time needed to examine visual art claims submitted under GRUW. The Office will use that information to determine whether it would be appropriate to create a separate group registration option for visual art works other than photographs.

B. Distinguishing Between Published and Unpublished Works

The final rule confirms that this group registration option may only be used to register unpublished works. The Office recognizes that applicants may struggle with determining whether a work is published or unpublished, and this determination can be less than straightforward in many instances. But ''publication'' is a statutorily defined term, and the Office is required under section 409 to ask for the publication status of works on the registration

[20] Authors Guild et al. Comment at 4 & n.2.

[21] Many comments pointed to the difference in the number of works registrable under GRUW and the 750-work limit for group registrations of photographs. *See, e.g.,* Cherish Flieder Comments wat 1 (pointing to disparity and requesting equal rules for all visual works); Browning-Smith Comment at 1 (characterizing 750-work limit for photographs as ''special treatment''). But other comments support the Office's flexibility in crafting registration options tailored to the nuances of the works at issue. *See* Jeffrey West Comment at 1–2 (proposing higher limit for illustrations, graphic designs, and fine artwork based on the ''reasonable number of images'' created in a professional practice); Graphic Artists Guild Comment at 1–2 (member survey showed artists generate average of 15 works in the process of designing a logo).

[22] Authors Guild et al. Comment at 3.

[23] *See* 82 FR at 47416–17 (citing H.R. Rep. No. 94–1476, at 154 (1976), as reprinted in 1976 U.S.C.C.A.N. 5659, 5770; S. Rep. No. 94–473, at 136 (1975) (regulatory authority to create group registration of related works is because such options are ''needed and important'').

[24] 83 FR 65612 (Dec. 21, 2018).

[25] *See Update to Compendium of U.S. Copyright Office Practices,* 82 FR 45625, 45628 (Sept. 29, 2017) (explaining plans in response to comments regarding registering music on an album).

[26] *See, e.g.,* Sergey Vernyuk Comment at 1 (suggesting raising the GRUW limit to 20 works to allow for group registration of ''an unpublished CD's-worth of music''); Copyright Alliance Comment at 2 (outlining needs for a group registration for musical works and sound recordings as well as new options for bloggers and other online creators); Authors Guild et al. Comment at 8 (requesting creation of additional group registration options for various classes of works).

[27] *See, e.g.,* Rachel Fritz Comment at 1; Barbara Tourtillotte Comment at 1; Shari Warren Comment at 1; Jeffrey West.

[28] *See, e.g.,* Jeffrey West Comment at 1–2 (estimating creation of fine art works to be several hundred images per year and suggesting limit of 250–300); Benjamin Hummel Comment at 1 (children's book illustrators generally require creation of 20–40 images); Graphic Artists Guild Comment at 1 (citing survey that creating logo results in average of 15 works and noting that some logos require close to 50 sketches).

application.[29] As noted in the *Compendium* and other publications, the applicant is responsible for determining whether a work is unpublished, and the Office generally accepts that determination unless it is contradicted by information contained within the registration materials.[30]

Several commenters expressed concern about this requirement. The Copyright Alliance, Graphic Artists Guild, and Authors Guild Commenters noted that applicants find it difficult to determine whether a work is published or unpublished, especially for works distributed online.[31] To that end, the Graphic Artists Guild requested that the Office issue further guidance ''on what constitutes publication for online works.'' [32] Similarly, the Authors Guild Commenters suggested that the ''explanations of the meaning of 'publication' and associated terms'' in the *Compendium* ''requires a knowledge of copyright law that few applicants'' possess, particularly with respect to ''works disseminated online.'' [33] The Authors Guild Commenters acknowledged that the Office ''cannot unilaterally amend the definition of 'publication' '' because it is ''embodied'' in the Copyright Act.[34] But they suggested that the Office could promulgate a regulatory definition for ''online publication'' through an administrative rulemaking, which would give interested parties the opportunity to ''weigh in and ensure that all issues are properly vetted,'' or perhaps replace the ''published/unpublished distinction'' with a ''concept such as 'disseminated to the public' or 'made available to the public.' '' [35]

In light of section 409's statutory requirement, and the Office's longstanding existing guidance and practices regarding the need for applicants to specify whether their works are published or unpublished, the Office concludes that it is not necessary to delay implementation of the new group registration option due to any uncertainty regarding the definition of publication.[36] Indeed, since this NPRM was published, the Office has adopted a final rule regarding group registration options for published and unpublished photographs that grappled with many of the same issues.[37] But the Office appreciates that applicants have raised important questions about their challenges in applying the definition of publication, particularly in the context of works that are only made available online, and plans to issue a notice of inquiry to solicit comments regarding issues related to online publication, and ultimately to provide additional guidance for applicants. Meanwhile, the Office believes that prompt promulgation of this final rule will aid the Office in fulfilling its statutory obligations and administering the copyright registration system.

C. Filing Fee

The NPRM proposed a $55 filing fee for registering a group of unpublished works, the same fee that currently applies to clams submitted on the Standard Application.[38] The Office stated that it would monitor the cost of examining these claims once the final rule had been implemented. Since the NPRM, the Office has conducted a fee study that proposed a filing fee of $85 for each GRUW submission, the same as the fee that currently applies to claims involving the group registration option for contributions to periodicals.[39] Until the proposed fees in the fee study go into effect, the Office has adopted the noticed $55 fee for GRUW claims. In this regard, the Office notes that the GRUW option updates and replaces the unpublished collection option, which was also available for the same $55 fee pursuant to the Standard Application. Accordingly, the Office does not consider the availability of the GRUW option for the same rate as the Standard Application to constitute an ''adjustment'' of fees.[40]

In response to the proposed $55 fee, several commenters encouraged the Office to develop alternate fee structure for unpublished works in order to expand the number of works that may be included in each claim. Browning-Smith and the Copyright Alliance urged the Office to offer a sliding fee schedule, where the amount of the fee would vary depending on the number of works submitted.[41] The SFWA Commenters noted that the Office uses a similar sliding-fee structure for recordation, where remitters pay extra for each additional group of ten titles listed in the document.[42] The Copyright Alliance also encouraged the Office to adopt a subscription-based fee that would allow applicants to pay a periodic fee for registering all the works they produce during a given timeframe.[43] The Office welcomes these suggestions and will take them into account in developing the business requirements for its next generation registration system.[44] The current registration system, however, does not permit the Office to adopt these types of alternative fee structures.

D. Other Eligibility Requirements

While the remaining eligibility requirements sparked little or no opposition, the Office offers the following points of clarification:

The final rule provides that the works must be registered in the same administrative class, and the authorship statement for each work must be exactly the same. The Authors Guild Commenters and the Kernochan Center supported this idea, noting that it would eliminate the need to have examiners in different divisions review the same works.[45] By contrast, the Graphic Artists Guild expressed concern that it would prevent visual artists from registering unpublished works that contain multiple forms of authorship, such as children's books, graphic novels, comics and cartoons, or illustrated short stories containing text and artwork.[46]

To be clear, applicants will be able to register unpublished works that contain different types of authorship. When completing the application, applicants should select the administrative class that would be most appropriate for the predominant form of authorship in each work, and the authorship term that best describes the work as a whole. For example, when registering a group of comic strips that contain a substantial amount of artwork combined with some

[29] *See* 17 U.S.C. 409(8) (requiring copyright application to include ''the date and nation of [ ] first publication'' if a work has been published).

[30] *See, e.g., Compendium* sec. 1904.1; *U.S. Copyright Office, Circular 1: Copyright Basics,* at 7 (Sept. 2017), *https://www.copyright.gov/circs/circ01.pdf.*

[31] Authors Guild et al. Comment at 6; Copyright Alliance Comment at 2 n.2, Graphic Artists Guild Comment at 1–2.

[32] Graphic Artists Guild Comment at 2.

[33] Authors Guild et al. Comment at 7.

[34] *Id.*

[35] *Id.* at 7–8. The Authors Guild Comment did not specify whether it was advocating for statutory change or suggesting that the Office could somehow ''replace'' the concept of publication with ''made available to the public'' through a rulemaking.

[36] *Contra id.* at 8.

[37] 83 FR 2542 (Jan. 18, 2018).

[38] *See* 82 FR at 47419.

[39] *See* 83 FR 24054, 24059 (May 24, 2018).

[40] *See* 37 CFR 201.3 (listing current registration fees); 17 U.S.C. 708(b) (describing process for adjustment of registration fees); *see also* Booz Allen Hamilton, *U.S. Copyright Office, Fee Study, Questions and Answers* at 6 (Dec. 2017), *https://www.copyright.gov/rulemaking/feestudy2018/fee_study_q&a.pdf* (Question 3 discussing propriety of charging certain group registration options the same rate as the Standard Application if they required similar resources for processing).

[41] *See* Browning-Smith Comment at 1–2; Copyright Alliance Comment at 2.

[42] SFWA et al. Comment at 3.

[43] Copyright Alliance Comment at 2.

[44] *See Notification of Inquiry: Registration Modernization,* 83 FR 52336, 52339 (Oct. 17, 2018) (seeking input on whether the Office should adopt scaled fees based on the number and types of works registered).

[45] Authors Guild et al. Comment at 9; Kernochan Ctr. Comment at 3.

[46] Graphic Artists Guild Comment at 3.

text, applicants should select the class for ''visual arts works'' and should use the term ''unpublished pictorial or graphic works'' to describe those works. When registering a group of illustrated short stories that contain a substantial amount of text combined with some illustrations, applicants should select the class for ''literary works'' and should use the term ''unpublished literary works'' to describe those works. If the types of authorship in each work are roughly equal—as is often the case with a children's book—applicants may select ''literary works'' or ''visual arts works,'' and depending on which class has been selected, they may use the term ''unpublished literary works'' or ''unpublished pictorial or graphic works'' to describe those works.

Perhaps because it represents an author who is deceased, Author Services said it would be unable to use the group registration option, because the author and claimant for each work must be the same person or organization.[47] To be clear, an author may always be named as the copyright claimant for purposes of this group registration option, even if that individual has transferred their copyright or has died.[48] But if Author Services prefers to list itself as the claimant, it would be ineligible for this group registration option and could instead register the works individually; as noted, entities to which copyrights have been transferred are not intended to be the primary beneficiary of this rule.

E. Supplementary Registration

A supplementary registration is a special type of registration that may be used ''to correct an error in a copyright registration or to amplify the information given in a registration.'' [49] The NPRM explained that if applicants need to correct or amplify the information appearing in a registration for a group of unpublished works, they will be required to use the online application for supplementary registration.[50]

The Office created multiple versions of this form that may be used to correct or amplify the information in a registration for a group of photographs, serials, newspapers, newsletters, or contributions to periodicals. But the Office has not yet created a similar version for a registration for a group of unpublished works. Therefore, the final rule clarifies that applicants should contact the Office of Registration Policy & Practice to obtain instructions before seeking a supplementary registration involving these types of claims.

F. Technical Amendments

The final rule makes a few technical changes intended to clarify the regulations, update cross-references, and simplify the registration of photographs by accepting more formats and material. Specifically, the final rule removes a superfluous sentence from § 202.4(h) which states that a group of unpublished photographs cannot be registered as an unpublished collection and removes a provision from § 202.4(h) and (i), and § 202.20(c), stating that photographers should not include any form of punctuation in the file names that they upload to the electronic registration system.[51] The Office was concerned that punctuation in the file names might cause a technical error that could prevent the system from opening the files, but after testing the new applications the Office has confirmed that punctuation should not cause this type of problem.[52] This represents a change in a ''rule[] of agency organization, procedure, or practice,'' [53] that does not ''alter the rights or interests of parties'' to require notice and comment [54]—if anything, it eases the requirements for applicants that use this option.

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 202

Copyright, Preregistration and registration of claims to copyright.

Final Regulations

For the reasons set forth in the preamble, the U.S. Copyright Office amends 37 CFR parts 201 and 202 as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Amend § 201.3 by redesignating paragraphs (c)(8) though (22) as (c)(9) through (23) and adding a new paragraph (c)(8) to read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

* * * * *

(c) * * *

Registration, recordation and related services	Fees ($)
* * * * *	
(8) Registration of a claim in a group of unpublished works	55
* * * * *	

* * * * *

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 3. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

■ 4. Amend § 202.3 by revising paragraph (b)(4) and adding paragraph (c)(4) to read as follows:

§ 202.3 Registration of copyright.

* * * * *

(b) * * *

(4) *Registration as one work.* For the purpose of registration on one application and upon the payment of one filing fee, the following shall be considered one work: In the case of published works, all copyrightable elements that are otherwise recognizable as self-contained works, that are included in the same unit of publication, and in which the copyright claimant is the same.

* * * * *

(c) * * *

(4) In the case of applications for registration made under paragraphs (b)(4) through (5) of this section or under § 202.4, the ''year of creation,'' ''year of completion,'' or ''year in which creation of this work was completed''

[47] Author Services Comment at 1.

[48] *See Compendium* sec. 619.7 (''The author may always be named as the copyright claimant . . . even if the author does not own any of the rights under copyright when the application is filed.''); *Notice of Proposed Rulemaking: Registration of Copyright: Definition of Claimant,* 77 FR 29257, 29258 (May 17, 2012) (author may always be listed as a copyright claimant ''because an author may always have a reversionary or beneficial interest in the work''); *see also Compendium* sec. 619.13(Q) (''If the author is the only party who is eligible to be named as the copyright claimant, and if the author is deceased . . . the U.S. Copyright Office will accept an application that names the author as the copyright claimant.'').

[49] 17 U.S.C. 408(d).

[50] 82 FR at 47419.

[51] 37 CFR 202.4(h)(9), (i)(9); *id.* at 202.20(c)(2)(vii)(D)(*8*).

[52] For similar reasons, the Office removed a provision from the deposit requirements for GRUW that encouraged applicants to submit their works in a .zip file, rather than uploading them one at a time.

[53] 5 U.S.C. 553(b)(3)(A).

[54] *JEM Broadcasting Co.* v. *FCC,* 22 F.3d 320, 326 (D.C. Cir. 1994).

means the latest year in which the creation of any copyrightable element was completed.

* * * * *

■ 5. Amend § 202.4 as follows:

■ a. Add paragraph (c).

■ b. In paragraph (h)(8), remove the second sentence, which is in parentheses.

■ c. In paragraph (h)(9), remove the second sentence.

■ d. In paragraph (i)(9), remove the second sentence.

■ e. In paragraph (n), remove ''paragraph (g), (h), (i), or (k)'' and add in its place ''paragraphs (c), (g), (h), (i), or (k)''.

The addition reads as follows:

§ 202.4 Group registration.

* * * * *

(c) *Group registration of unpublished works.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a group of unpublished works may be registered in Class TX, PA, VA, or SR with one application, the required deposit, and the filing fee required by § 201.3(c) of this chapter, if the following conditions are met:

(1) All the works in the group must be unpublished, and they must be registered in the same administrative class.

(2) Generally, the applicant may include up to ten works in the group. If the conditions set forth in § 202.3(b)(1)(iv)(A) through (C) have been met, the applicant may include up to ten sound recordings and ten musical works, literary works, or dramatic works in the group.

(3) The group may include individual works, joint works, or derivative works, but may not include compilations, collective works, databases, or websites.

(4) The applicant must provide a title for each work in the group.

(5) All the works must be created by the same author or the same joint authors, and the author and claimant information for each work must be the same.

(6) The works may be registered as anonymous works, pseudonymous works, or works made for hire if they are identified in the application as such.

(7) The applicant must identify the authorship that each author or joint author contributed to the works, and the authorship statement for each author or joint author must be the same. Claims in the selection, coordination, or arrangement of the group as a whole will not be permitted on the application.

(8) The applicant must complete and submit the online application designated for a group of unpublished works. The application may be submitted by any of the parties listed in § 202.3(c)(1).

(9) The applicant must submit one complete copy or phonorecord of each work. Each work must be contained in a separate electronic file that complies with § 202.20(b)(2)(iii). The files must be submitted in one of the electronic formats approved by the Office, they must be assembled in an orderly form, and they must be uploaded to the electronic registration system. The file size for each uploaded file must not exceed 500 megabytes; the files may be compressed to comply with this requirement.

(10) In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (c)(8) of this section or may grant special relief from the deposit requirement under § 202.20(d), subject to such conditions as the Associate Register and Director of the Office of Registration Policy and Practice may impose on the applicant.

* * * * *

■ 6. Amend § 202.6 as follows:

■ a. Redesignate paragraphs (e)(2) through (7) as paragraphs (e)(3) through (8).

■ b. In newly redesignated paragraph (e)(8), remove ''paragraph (e)(1)'' and add in its place ''paragraph (e)(1) or (2)''.

■ c. Add new paragraph (e)(2).

The addition reads as follows:

§ 202.6 Supplementary registration.

* * * * *

(e) * * *

(2) To seek a supplementary registration for a group of unpublished works registered under § 202.4(c), an applicant must complete and submit the online application designated for supplementary registration after consultation with and under the direction of the Office of Registration Policy & Practice.

* * * * *

§ 202.20 [Amended]

■ 7. Amend § 202.20(c)(2)(vii)(D)(*8*) by removing the fourth sentence.

Dated: January 28, 2019.

Karyn A. Temple,

Acting Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2019–02185 Filed 2–12–19; 8:45 am]

BILLING CODE 1410–30–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 2017–16]

Group Registration of Newspapers

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is amending its regulation governing the group registration option for newspaper issues. This rule will eliminate the three-month deadline for submitting this type of claim. Based on requests received from several newspaper publishers, the Office has determined that there is a legitimate need to make this change effective immediately.

DATES: Effective February 18, 2019.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights; Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice; or Erik Bertin, Deputy Director of Registration Policy and Practice, by telephone at 202–707–8040 or by email at *regans@copyright.gov, rkas@copyright.gov* and *ebertin@copyright.gov.*

SUPPLEMENTARY INFORMATION: In 1992 the Copyright Office established a group registration option that allows newspaper publishers to register an entire month of issues with one application and one filing fee.[1] Initially, applicants were required to submit a paper application and submit microfilm deposit copies, and they had to submit these materials within three months after the publication of the most recent issue in the group.[2] This deadline was intended to benefit the Library of Congress by ensuring that newspaper issues could be added to its collections and made available to its patrons in a timely manner. But newspaper publishers often submitted their claims after the three-month deadline due to the high cost of producing microfilm. Many publishers could not afford to send their newspapers to a microfilm producer until they had a sufficient number of issues to justify the cost, which delayed the production and delivery of the microfilm.[3]

Last year the Office updated its regulation governing this group registration option.[4] Under the current

[1] 57 FR 39615 (Sept. 1, 1992).

[2] 37 CFR 202.3(b)(6)(F) (1992).

[3] 82 FR 51369, 51378 (Nov. 6, 2017).

[4] 83 FR 4144 (Jan. 30, 2018).

rule, a publisher may register a group of newspapers if the applicant submits the claim using the appropriate electronic application and submits a PDF copy of each issue within three months after the publication of the earliest issue in the group.[5] Unlike the paper application, the electronic registration system contains automated validations that enforce this three-month deadline.

Since the Office implemented these new requirements, several newspaper publishers have reported difficulty and delays in creating PDF copies. Many publishers have not been able to submit their claims before the three-month deadline. And some publishers have attempted to bypass the validations in the electronic system by submitting a paper application and microfilm copies. The Office has refused to register these claims, because they were submitted on a paper form and with the wrong deposit, or because they were received after the deadline. On average, it takes three months or more to process a paper application and a physical deposit,[6] so by the time the Office has issued a refusal, the publisher may not have an opportunity to resubmit their claim on the appropriate form and with an appropriate deposit.

To address these problems and ensure that newspaper publishers can obtain the statutory benefits of registration, the Office has decided to eliminate the three-month filing requirement. This will provide more flexibility for applicants, and allow them to register issues that otherwise would be ineligible for registration. The Office will remove the automated validation that prevents publishers from submitting issues that are more than three months old. Beginning on February 18, 2019, publishers will be permitted to submit claims through the electronic registration system, regardless of when their issues were published. Likewise, publishers may electronically resubmit claims that were refused because they were filed on a paper form or without a digital deposit, or because they were received after the three month deadline. To do so, publishers must submit a new application (using the electronic form designated for newspaper issues), a new digital deposit, and a new filing fee.

The Office will monitor this change to the rule to determine whether it succeeds in incentivizing increased registrations and to ensure that it does not have an adverse effect on the Library's collections. In the meantime, the Office has prepared a video tutorial that provides step-by-step instructions on how to complete the electronic application and upload digital copies.[7] The help text that accompanies the application also provides answers to frequently asked questions.[8] And the Office has published a circular that provides detailed information about the group registration process.[9]

The Office still encourages publishers to submit their claims within three months of publication, because it may provide certain legal benefits. To seek statutory damages and attorney's fees in an infringement action, publishers must register their issues in a timely manner. Specifically, a publisher typically may seek these remedies if a newspaper issue was registered (i) before the infringement commenced or (ii) within three months after the first publication of that work. *See* 17 U.S.C. 412.

The Office finds there is good cause for adopting this amendment without first publishing a notice of proposed rulemaking, because it is a ''rule[ ] of agency organization, procedure, or practice.'' [10] It does not adversely ''alter the rights or interests of parties''—if anything, it eases the requirements for applicants choosing to exercise this option by removing the time restriction on its availability.[11] It therefore merely ''alter[s] the manner in which the parties present themselves . . . to the agency.'' [12] *Id.* Thus, notice and comment is not required under the Administrative Procedure Act.

All other provisions in the current regulation on group registration of newspapers remain unaffected.

List of Subjects in 37 CFR Part 202

Copyright.

For the reasons set forth above, the Copyright Office amends 37 CFR part 202 as follows:

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

§ 202.4 [Amended]

■ 2. Amend § 202.4 by removing paragraph (e)(7).

Dated: January 31, 2019.

Karyn A. Temple,

Acting Register of Copyrights and Director Of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2019–02186 Filed 2–12–19; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 203

[Docket No. 2017–1]

Freedom of Information Act Regulations

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is issuing a final rule that amends its regulations governing its practices and procedures under the Freedom of Information Act (FOIA). The final rule closely follows the February 7, 2017 interim rule, implementing the FOIA Improvement Act of 2016. The final rule makes limited modifications to align with public comments and to promote further regulatory clarity and customer service.

DATES: *Effective date:* March 15, 2019.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov,* or by telephone at 202–707–8350; or Catherine Zaller Rowland, Associate Register of Copyrights and Director of Public Information and Education, by email at *crowland@copyright.gov,* or by telephone at 202–707–0956.

SUPPLEMENTARY INFORMATION:

I. Background

The Freedom of Information Act (FOIA), section 552 of title 5 of the United States Code, provides a statutory right of access to federal agency records. In part, FOIA establishes procedures by

[5] 37 CFR 202.4(e). The new deadline was based on the date of publication for the earliest issue in the group (rather than the most recent) for the reasons stated in the notice of proposed rulemaking dated November 6, 2017. *See* 82 FR at 51377–78.

[6] *See* U.S. Copyright Office, *Registration Processing Times, available at https://www.copyright.gov/registration/docs/processing-times-faqs.pdf.*

[7] *See Group of Newspaper Issues Tutorial,* U.S. Copyright Office, *https://www.copyright.gov/eco/newspaper.mp4.*

[8] *See Help: Group Registration of Newspaper Issues,* U.S. Copyright Office, *https://www.copyright.gov/eco/help-newspapers.html.*

[9] *See* U.S. Copyright Office, *Circular 62A: Group Registration of Newspapers* (2018), *available at https://www.copyright.gov/circs/circ62a.pdf.*

[10] 5 U.S.C. 553(b)(A).

[11] *JEM Broad. Co.* v. *FCC,* 22 F.3d 320, 326 (D.C. Cir. 1994); *see also* 5 U.S.C. 553(d)(1) (publication 30 days before effective date of substantive rule not required for rule that ''grants or recognizes an exemption or relieves a restriction'').

[12] *JEM Broad. Co.,* 22 F.3d at 326.

which a member of the public may request records from a federal agency and the parameters by which an agency must operate when responding to a request from the public. FOIA requires agencies to promulgate regulations addressing the logistical requirements of making requests, fees, and expedited processing [1] while providing areas of discretionary authority.

In 2017, the Copyright Office (the ''Office'') published an Interim Rule [2] in response to the FOIA Improvement Act of 2016 (the ''Act''),[3] which amended FOIA to address a range of procedural issues and required federal agencies subject to FOIA to review and update their regulations. In its interim rule, the Office updated its regulations to conform with the Act, including the Act's prohibition on charging fees after certain agency failures, specifying a ninety-day period for filing an administrative appeal, and requiring that records be made available in electronic format. The Office also adopted, where appropriate, the template for agency FOIA regulations released by the Office of Information Policy at the Department of Justice (DOJ OIP). The template provided a clear structure for the required regulatory provisions, allowed the Office to formalize its multi-track processing practices, and established clear regulatory language to improve customer service.[4] In December 2018, the Office also made minor technical changes to its FOIA regulations to reflect the Office's current organizational structure while updating its licensing regulations relating to section 115 of title 17.[5]

The Office received comments from two individuals as well as the National Archives and Records Administration (NARA).[6] Having reviewed and carefully considered these comments, the Office now issues a final rule that closely follows the proposed rule, with minor amendments as discussed below.

II. Discussion of Comments and Other Considerations

A. NARA Record Schedule Technical Correction

NARA submitted a technical comment related to § 203.10, Preservation of Records, which referenced General Records Schedule (GRS) 14. NARA notes that GRS 14 was replaced with a new records schedule, GRS 4.2.[7] The final rule incorporates this change.

B. Comments From Individuals

Both individual commenters wrote in support of the Office's interim rule as an effort to provide citizens with access to records and improve agency responsiveness to the public. One commenter also voiced a general concern that access to records should not be dependent upon access to technology.[8] The Office recognizes that individuals without access to technology can encounter unique obstacles to accessing the Office's information and records but believes that these concerns are adequately addressed by the Office's regulations and practices and that no amendments are required to the rule.

The Office receives a large number of its FOIA requests from individuals without access to technology, often for records that are already made publicly available by the Office in electronic form. When the Office receives such a request, it responds in writing by mail and includes copies of the requested documents, even if they are otherwise publicly available on the Office's website at *www.copyright.gov.* Further, the Office maintains the Public Information Office (PIO), which assists callers and correspondents in accessing information, including by providing printed copies of proactively disclosed records upon request.

C. Other Considerations and Technical Changes

The Office has made three additional technical changes to the final rule based on its ongoing review of the law and additional guidance made publicly available by DOJ OIP. First, the Office has added language to the rule in § 203.7(c), explaining that the Office will alert requesters as to the availability of mediation services offered by NARA's Office of Government Information Services when the Office provides notice of unusual circumstances. The interim rule included language explaining that the Office would alert a requester of the dispute resolution services when issuing a denial notification but inadvertently omitted similar language in the rule with regard to notices of delays due to unusual circumstances. The Office's practices have been to notify requesters of their right to dispute resolution services in both denials and notices of unusual circumstances, and the final rule now reflects the Office's practices.

Second, the final rule clarifies in § 203.11(j) that only Privacy Act [9] requests are processed under the Office's Privacy Act fee schedule. The Office makes this technical amendment to clear up any possible confusion about the Privacy Act fee schedule by changing the language to focus on the type of request rather than the requester.

Third, the Office has amended § 203.11(k) to adopt the streamlined fee waiver factors published by the DOJ OIP subsequent to the publication of the Office's interim rule.[10] This updated template language improves regulatory clarity but does not materially change the proposed § 203.11(k).

Accordingly, for the reasons explained above, the Office has determined that these additional amendments comprise non-substantive, procedural changes not ''alter[ing] the rights or interests of the parties,'' and thus are not subject to further notice and comment requirements of the Administrative Procedure Act.[11]

List of Subjects in 37 CFR Part 203

Freedom of information.

Final Regulations

For the reasons set forth above, the Copyright Office adopts the interim rule amending 37 CFR part 203 which was published at 82 FR 9505 on February 7, 2017, as amended by 83 FR 63064 on December 7, 2018, as final with the following changes:

PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

■ 1. The authority citation for part 203 continues to read as follows:

Authority: 5 U.S.C. 552.

■ 2. Amend § 203.7 by revising paragraph (c)(1)(i) introductory text to read as follows:

§ 203.7 Timing of responses to requests.

* * * * *

(c) * * *

[1] 5 U.S.C. 552 (a)(1), (a)(4)(A)(i), and (a)(6)(E)(i).

[2] 82 FR 9505 (Feb. 7, 2017).

[3] Public Law 114–185, 130 Stat. 538 (2016).

[4] 82 FR at 9506 (Feb. 7, 2017).

[5] 83 FR 63061 at 63064–65 (Dec. 7, 2018).

[6] The comments can be found on the Copyright Office's website at *https://www.copyright.gov/rulemaking/foia2016/.*

[7] NARA Comment at 1.

[8] Jenna Rainey Comment at 1.

[9] 5 U.S.C. 552a.

[10] *See Template for Agency FOIA Regulations, https://www.justice.gov/oip/template-agency-foia-regulations* (last updated Feb. 22, 2017).

[11] *See Nat'l Mining Ass'n* v. *McCarthy,* 758 F.3d 243, 250 (D.C. Cir. 2014) (''The critical feature of a procedural rule is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.'') (internal quotation marks omitted); 5 U.S.C. 553(b)(A) (notice and comment not required for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'').

(1)(i) Whenever the Office cannot meet the statutory time limit for processing a request because of ''unusual circumstances,'' as defined in paragraph (c)(2) of this section, the Office will notify the requester in writing of the unusual circumstances and the estimated date of determination, and alert requesters to the availability of the Office of Government Information Services (OGIS) to provide dispute resolution services. Where an extension of time greater than 10 days is required, the Office will give the requester the opportunity to:

* * * * *

§ 203.10 [Amended]

■ 3. Amend § 203.10 by removing ''General Records Schedule 14'' and adding in its place ''General Records Schedule 4.2''.

■ 4. Amend § 203.11 by revising paragraphs (j) and (k) to read as follows:

§ 203.11 Fees.

* * * * *

(j) *Other statutes specifically providing for fees.* The provisions of this section do not apply with respect to the charging of fees for which the copyright law requires a fee to be charged. Requests processed under the Privacy Act of 1974, 5 U.S.C. 552a, shall be subject to the fee schedule found in § 204.6 of this chapter. Fees for services by the Office in the administration of the copyright law are contained in § 201.3 of this chapter. In instances where records responsive to a request are subject to the statutorily-based fee schedule, the Office will inform the requester of the service and appropriate fee.

(k) *Requirements for waiver or reduction of fees.* (1) Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) The Office shall furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that the factors described in paragraphs (k)(2)(i) through (iii) of this section are satisfied:

(i) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested information is likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

(B) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public will be considered. The Office will presume that a representative of the news media will satisfy this consideration.

(iii) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, the Office will consider the following criteria:

(A) The Office shall identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(B) If there is an identified commercial interest, the Office shall determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (k)(2)(i) and (ii) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. The Office ordinarily will presume that when a news media requester has satisfied factors in paragraphs (k)(2)(i) and (ii) of this section, the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(4) Requests for a waiver or reduction of fees should be made when the request is first submitted to the Office and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester shall be required to pay any costs incurred up to the date the fee waiver request was received.

Dated: January 28, 2019.

Karyn A. Temple,

Acting Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2019–02181 Filed 2–12–19; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0212; FRL–9989–23–Region 5]

Air Plan Approval; Wisconsin; Reasonable Further Progress Plan and Other Plan Elements for the Moderate Nonattainment Chicago Area for the 2008 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of a revision to the Wisconsin State Implementation Plan (SIP) to meet the base year emissions inventory, reasonable further progress (RFP), RFP contingency measure, nitrogen oxides (NO_X) reasonably available control technology (RACT), and motor vehicle inspection and maintenance (I/M) requirements of the Clean Air Act (CAA) for the Wisconsin portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin nonattainment area (Chicago area) for the 2008 ozone National Ambient Air Quality Standards (NAAQS or standards). EPA is also finalizing approval of the 2017 and 2018 transportation conformity motor vehicle emissions budgets (MVEBs) for the Wisconsin portion of the Chicago area for the 2008 ozone NAAQS. EPA proposed approval of these attainment planning elements on August 16, 2018,

and received no adverse comments germane to this action. Therefore, EPA is finalizing approval of this SIP revision pursuant to section 110 and part D of the CAA and EPA's regulations because it satisfies the emission inventory, RFP, RFP contingency measure, NO_X RACT, I/M, and transportation conformity requirements for the Wisconsin portion of the Chicago area, which is classified as moderate nonattainment for the 2008 ozone NAAQS.

DATES: This final rule is effective on March 15, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2017–0212. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Jenny Liljegren, Physical Scientist, at (312) 886–6832 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Jenny Liljegren, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6832, *Liljegren.Jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?
II. What action is EPA taking?
III. Statutory and Executive Order Reviews

I. What is the background for this action?

A. Background on the 2008 Ozone NAAQS

On March 27, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm).[1] Promulgation of a revised NAAQS triggers a requirement for EPA to designate areas of the country as nonattainment, attainment, or unclassifiable for the standards. For the ozone NAAQS, this also involves classifying any nonattainment areas at the time of designation.[2] Ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area's ''design value,'' which represents air quality in the area for the most recent three years). The classifications for ozone nonattainment areas are marginal, moderate, serious, severe, and extreme.[3]

Areas that EPA designates nonattainment for the ozone NAAQS are subject to certain requirements, including the general nonattainment area planning requirements of CAA section 172 and the ozone-specific nonattainment planning requirements of CAA section 182. Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For marginal areas, a state is required to submit a baseline emissions inventory, adopt provisions into the SIP requiring emissions statements from stationary sources in the area, and implement a nonattainment new source review (NSR) program for the relevant ozone NAAQS.[4] For moderate areas, a state needs to comply with the marginal area requirements, plus additional moderate area requirements, including the requirement to submit a modeled demonstration that the area will attain the NAAQS as expeditiously as practicable but no later than six years after designation, the requirement to submit an RFP plan, the requirement to adopt and implement certain emissions controls, such as RACT and I/M, and the requirement for greater emissions offsets for new or modified major stationary sources under the state's nonattainment NSR program.[5]

B. Background on the Chicago 2008 Ozone Nonattainment Area

On June 11, 2012,[6] EPA designated the Chicago area as a marginal nonattainment area for the 2008 ozone NAAQS. The Chicago area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties and part of Grundy and Kendall Counties in Illinois; Lake and Porter Counties in Indiana; and the eastern portion of Kenosha County in Wisconsin. On May 4, 2016,[7] pursuant to section 181(b)(2) of the CAA, EPA determined that the Chicago area failed to attain the 2008 ozone NAAQS by the July 20, 2015, marginal area attainment deadline and thus reclassified the area from marginal to moderate nonattainment. In that action, EPA established January 1, 2017, as the due date for all moderate area nonattainment plan SIP requirements applicable to newly reclassified areas.

II. What action is EPA taking?

As explained in the proposed rulemaking,[8] EPA is approving revisions to Wisconsin's SIP pursuant to section 110 and part D of the CAA and EPA's regulations. Wisconsin's April 17, 2017, submission and January 23, 2018, supplement along with a prior submission made on August 15, 2016, satisfy the emission inventory, RFP, RFP contingency measure, NO_X RACT, emissions statement, I/M, and transportation conformity requirements for the Wisconsin portion of the Chicago area for the 2008 ozone NAAQS.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

[1] 73 FR 16436.
[2] CAA sections 107(d)(1) and 181(a)(1).
[3] CAA section 181(a)(1).
[4] CAA section 182(a).
[5] CAA section 182(b).
[6] 77 FR 34221, effective July 20, 2012.
[7] 81 FR 26697.
[8] 83 FR 40715 (August 16, 2018).

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 15, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: December 20, 2018.

James O. Payne,

Acting Deputy Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.2585 is amended by adding paragraph (ff) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(ff) Approval—On April 17, 2017, as supplemented on January 23, 2018, Wisconsin submitted a revision to its State Implementation Plan along with a prior submission on August 15, 2016, to satisfy the emissions statement, emission inventory, reasonable further progress (RFP), RFP contingency measure, oxides of nitrogen (NO_X) reasonably available control technology (RACT), motor vehicle inspection and maintenance (I/M), and transportation conformity requirements for the Wisconsin portion of the Chicago area for the 2008 ozone NAAQS moderate nonattainment plan. These elements of the plan meet the requirements of section 110 and part D of the CAA for the Wisconsin portion of the Chicago area, which was reclassified on May 4, 2016, as moderate nonattainment for the 2008 ozone NAAQS. The April 17, 2017, submittal as supplemented on January 23, 2018, also established new Motor Vehicle Emissions Budgets (MVEB) for volatile organic compounds (VOC) and NO_X for the years 2017 and 2018. The MVEBs for the Wisconsin portion of the Chicago 2008 ozone NAAQS nonattainment area, which is the portion of Kenosha County inclusive and east of Interstate 94, are now: 1.56 tons per summer day of VOC emissions and 3.05 tons per summer day of NO_X emissions for the year 2017, and 1.44 tons per summer day of VOC emissions and 2.75 tons per summer day of NO_X emissions for the year 2018.

[FR Doc. 2019–02057 Filed 2–12–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2018–0700; FRL–9988–46–Region 7]

Air Plan Approval; Missouri; Emissions Inventory for the Missouri Jackson County and Jefferson County 2010 Sulfur Dioxide National Ambient Air Quality Standard Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving two submissions from the Missouri Department of Natural Resources (MoDNR) revising the State Implementation Plan (SIP) for the State of Missouri. The SIP revision submissions address the Clean Air Act (CAA) section 172 requirement to submit a base year emissions inventory for Missouri's partial Jackson County and partial Jefferson County nonattainment areas of the 2010 1-hour Sulfur Dioxide (SO_2) National Ambient Air Quality Standard (NAAQS).

DATES: This final rule is effective on March 15, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2018–0700. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Tracey Casburn, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219, by telephone at (913) 551–7016, or by email at *casburn.tracey@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to the EPA.

I. What action is the EPA taking?
II. The EPA's Response to Comments
III. Statutory and Executive Order Reviews

I. What action is the EPA taking?

The EPA is approving two SIP revision submissions from the MoDNR addressing the CAA section 172(c)(3) requirement to submit a base year emissions inventory for Missouri's partial Jackson County and partial Jefferson County nonattainment areas of the 2010 1-hour SO_2 NAAQS. The EPA is finalizing its determination that these emission inventory SIP revision submissions were submitted in accordance with sections 110, 191(a), and 172(c)(3) of the CAA. On November 23, 2018, the EPA published a notice of proposed rulemaking proposing to approve the emissions inventories in the **Federal Register**. See 83 FR 59348. The public comment period opened on November 23, 2018 (the date of the proposed rule's publication in the **Federal Register**) and closed on December 24, 2018.

II. The EPA's Response to Comments

The EPA received comments in response to the notice of proposed rulemaking (see the docket for this action). The comments address subjects outside the scope of the proposed action, do not explain (or provide a legal basis for) how the proposed action should differ in any way, and make no specific mention of the proposed action. Therefore, the comments are not germane, and the EPA is not providing response.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Sulfur oxides.

Dated: December 28, 2018.

Edward H. Chu,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart—AA Missouri

■ 2. In § 52.1320, the table in paragraph (e) is amended by adding entries ''(76)'' and ''(77)'' in numerical order to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(76) Jackson County 1-Hour SO_2 NAA Baseline Emissions Inventory.	Jackson County	10/15/2015	2/13/2019, [Insert **Federal Register** citation].	[EPA–R07–OAR–2018–0700; FRL–9988–46–Region 7].

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
(77) Jefferson County 1-Hour SO_2 NAA Baseline Emissions Inventory.	Jefferson County	6/1/2015	2/13/2019, [Insert **Federal Register** citation].	[EPA–R07–OAR–2018–0700; FRL–9988–46–Region 7].

[FR Doc. 2019–02068 Filed 2–12–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0073; FRL–9989–22–Region 4]

Air Plan Approval; South Carolina: Revisions to Prevention of Significant Deterioration Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of a State Implementation Plan (SIP) revision submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), on September 5, 2017, that seek to revise certain New Source Review (NSR) regulations regarding the Prevention of Significant Deterioration (PSD) permitting program. EPA is finalizing this action pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective on March 15, 2019.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2018–0073. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Akers can be reached via telephone at (404) 562–9089 or via electronic mail at *akers.brad@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?

On September 5, 2017, SC DHEC submitted a SIP revision to EPA for approval that involves changes to South Carolina's NSR permitting regulations to make them consistent with federal requirements for NSR permitting, correct typographical errors, make internal references consistent, and update public noticing procedures.[1] These changes include revisions to NSR public notice requirements in SC DHEC Regulation 61–62.5, Standard No. 7—''Prevention of Significant Deterioration (PSD) at sections (q) and (w)(4) to address the federal rule entitled ''Revisions to Public Notice Provisions in Clean Air Act Permitting Programs,'' Final Rule, 81 FR 71613 (October 18, 2016) (also referred to as the e-Notice Rule). In this final action, EPA is approving the SIP revision that makes changes to South Carolina's NSR regulations at SC DHEC Regulation 61–62.5, Standard No. 7 which applies to the construction or modification of any major stationary source in areas designated as attainment or unclassifiable as required by part C of title I of the CAA, with the exception of the portions of the SIP revision related to the e-Notice Rule. EPA has addressed the e-notice portions of the SIP revision in a separate action on December 14, 2018 (83 FR 64285).

EPA is approving changes submitted in South Carolina's September 5, 2017, SIP revision to modify the PSD regulations to make minor edits for internal consistency and to adopt changes for consistency with EPA's 2016 permit rescission rule entitled ''Rescission of Preconstruction Permits Issued Under the Clean Air Act'' Final Rule, 81 FR 78043 (November 7, 2016). On September 21, 2018 (83 FR 47855), EPA published a notice of proposed rulemaking (NPRM) proposing to approve the portions of South Carolina's SIP revision described in Section II, of this preamble. The details of South Carolina's SIP revision and the rationale for EPA's actions are further explained in the NPRM. EPA received no adverse comments on the proposed approval.

II. Analysis of South Carolina's Submittal

The September 5, 2017, SIP revision makes several changes to Regulation 61–62.5, Standard No. 7 at section (w)—entitled ''Permit rescission''—to be consistent with the federal provisions for rescinding PSD permits.[2] Paragraph (w)(1) currently states that PSD permits issued pursuant to Standard No. 7 remain in effect until they expire or are rescinded. This subparagraph is revised in South Carolina's submittal to clarify that section (w) is the only provision under which permit rescission is allowed. Next, paragraph (w)(2) is revised to remove the date restriction that limits rescission to PSD permits issued under PSD rules in effect on or before July 30, 1987. South Carolina's revised language is consistent with the federal Permit Rescission Rule, allowing for permit rescission if the permit meets the requirement of paragraph (w)(3). Finally, paragraph (w)(3) is revised to change the word ''shall'' to ''may'' to clarify that this provision does not

[1] Also on September 5, 2017, South Carolina submitted separate SIP revisions with: Changes to Regulation 61–62.1, Section I—''Definitions'' and Regulation 61–62.5, Standard No. 5.2—''Control of Oxides of Nitrogen (NOx);'' the adoption of Regulation 61–62.97—''Cross State Air Pollution Rule (CSAPR) Trading Program;'' and changes to the regional haze SIP. The SIP revision related to Regulation 61–62.97 (CSAPR) was previously approved on October 13, 2017 (82 FR 47939). EPA will address the remaining SIP revisions in separate actions.

[2] South Carolina also revised Regulation 61–62.5, Standard No. 7 at paragraph (w)(4) to address EPA's eNotice Rule. As discussed above, EPA has addressed this change in a separate action.

create a mandatory duty for the State. This change is consistent with the Permit Rescission Rule at 40 CFR 52.21(w)(3).

The September 5, 2017, SIP revision also revises other paragraphs in Regulation 61–62.5, Standard No. 7 for consistency in formatting, to correct internal references, and to correct typographical errors. Section (b) is modified at paragraph (34), subparagraph (vi), to correct a typographical error in the definition of ''Net emissions increase.'' Next, sections (w), (aa), and (bb) are revised to be in bold font for internal consistency. Finally, Standard No. 7 is revised to make internal references and formatting consistent by making changes in section (aa) at (aa)(1)(i), (aa)(9), (aa)(11)(i), and (aa)(14)(i). EPA finds that South Carolina's revised rules are consistent with federal requirements and CAA section 110.

III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the SC DHEC regulatory paragraphs identified above in Section II within South Carolina Regulation 61–62.5, Standard No. 7, entitled ''Prevention of Significant Deterioration,'' state effective on August 25, 2017. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[3]

IV. Final Action

This is a final action based on the proposed rule (see 83 FR 47855). For the reasons discussed above, EPA is approving the aforementioned changes to the South Carolina SIP, submitted on September 5, 2017.

[3] *See* 62 FR 27968 (May 22, 1997).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120, ''all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' EPA notes this action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 15, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 21, 2018.

Mary S. Walker,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart PP—South Carolina

■ 2. Section 52.2120(c), is amended in the table under the heading ''Regulation No. 62.5 Air Pollution Control Standards'' by revising the entry for ''*Standard No. 7*'' to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Regulation No. 62.5	* * *.			
*	*	*	*	*
Standard No. 7	Prevention of Significant Deterioration.	8/25/2017	2/13/2019 [Insert **Federal Register**].	The SIP does not include the August 25, 2017 state-effective version of Standard No. 7, paragraphs (b)(32)(i)(a), (b)(32)(iii)(b)(t), and (i)(1)(vii)(t). Instead, the SIP includes the June 25, 2005 state-effective version of these paragraphs, conditionally approved by EPA on June 2, 2008, and fully approved on June 23, 2011. The SIP does not include Standard No. 7, paragraphs (b)(30)(v) and (b)(34)(iii)(d) because the state withdrew these paragraphs from EPA's consideration for approval on December 20, 2016. The SIP does not include the August 25, 2017 state-effective version of Standard No. 7, paragraph (b)(34)(iii)(c) because the state withdrew the August 25, 2017 state-effective version of this paragraph from EPA's consideration for approval on June 27, 2017. Instead, the SIP includes the June 25, 2005 state-effective version of this paragraph conditionally approved by EPA on June 2, 2008, and fully approved on June 23, 2011.
*	*	*	*	*

* * * * *

[FR Doc. 2019–02059 Filed 2–12–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2017–0056; FRL–9988–61–Region 6]

Approval and Promulgation of Implementation Plans; Texas; Reasonable Further Progress Plan for the Houston-Galveston-Brazoria Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving a revision to the Texas State Implementation Plan (SIP) to meet the Reasonable Further Progress (RFP) requirements for the Houston-Galveston-Brazoria (HGB) moderate 2008 8-hour ozone nonattainment area (HGB area). EPA is approving the RFP demonstration, contingency measures, motor vehicle emissions budgets (MVEBs) and an updated 2011 base year emissions inventory.

DATES: This rule is effective on March 15, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2017–0056. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Jacques, 214–665–7395, *jacques.wendy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our April 25, 2018 proposal (83 FR 17964). In that document we proposed to approve the RFP demonstration, contingency measures, MVEBs and an updated 2011 base year emissions inventory for the HGB area.

We received comments of support on the proposal from the Texas Commission on Environmental Quality and two relevant adverse comments from Environmental Integrity Project. Our response to the adverse comments are below.

II. Response to Comments

Comment: Environmental Integrity Project commented that (1) it is unclear whether episodic emissions of ozone forming pollutants resulting from unplanned startups, shutdowns, maintenance, upsets and other unauthorized emissions are included in the Emissions Inventory ozone season daily nitrogen oxide (NO_X) and volatile organic compound (VOC) values upon which the RFP plan is based and (2) to the extent that these values used to develop the baseline and future year emissions inventories do not include episodic emissions the RFP plan fails as a matter of law because the emissions inventories fail to include all actual emissions. The commenter notes that these emissions are quantifiable since companies report these episodic emissions to be included in TCEQ's emission inventory. The commenter also noted that researchers in the past have confirmed that these episodic emissions are important as they can sometimes result in large increases of ozone and are significant to the ozone problem in Houston and not including these episodic emissions in the RFP is erroneous. The commenter states that the RFP SIP must include a ''comprehensive, accurate, current inventory of actual emissions from all sources.''

Response: CAA section 182(a)(1) requires states with ozone nonattainment areas to submit a SIP revision with a comprehensive, accurate, current inventory of actual emissions from all sources in an ozone nonattainment area in accordance with guidance provided by the Administrator. CAA section 182(b)(1) requires ozone nonattainment areas classified as Moderate and above to submit a RFP SIP revision. To implement CAA emissions inventory requirements for the 2008 ozone NAAQS we promulgated ''Emissions inventory requirements'' at 40 CFR 51.1115. The emissions values are required to be an average day's emissions for a typical ozone season work weekday (40 CFR 51.1115(c) and 40 CFR 51.1100(cc)).

To implement the RFP requirements for the 2008 ozone NAAQS we promulgated ''Requirements for reasonable further progress'' at 40 CFR 51.1110. The values of the base year emissions inventory for RFP plans are to be an average day's emissions for a typical ozone season work weekday (40 CFR 51.1110(b) and 40 CFR 51.1100(cc)).

Texas submitted a 2011 base year emissions inventory SIP revision for the HGB area on July 16, 2014 and we approved it as meeting the emissions inventory requirements for the 2008 ozone standard on February 20, 2015 (80 FR 9204). The RFP demonstration updated the previously approved emissions inventory with better estimates of an average day's emissions for a typical ozone season work weekday. A summary of the update to the 2011 base year emissions inventory is found in table 1.

TABLE 1—UPDATE TO THE 2011 BASE YEAR EMISSIONS INVENTORY FOR THE HGB AREA

[Tons per day]

Source category	Previous NO_X	Updated NO_X	Previous VOC	Updated VOC
Point	108.44	108.33	94.83	95.99
Area	21.14	21.15	308.73	304.90
On-road Mobile	196.21	188.02	82.62	80.73
Non-road Mobile	121.11	142.44	49.93	49.78
Total	446.90	459.94	536.12	531.40

EPA's rules and guidance call for an estimate of typical ozone season day (summer weekday) emissions to set the RFP baseline. EPA's emission inventory guidance recommends including Startup, Shutdown, and Maintenance emissions in the RFP baseline and future year weekday ozone season day emission inventory values if the emissions can be reasonably and sufficiently quantified with regular and predictable emissions.[1] Similarly, Texas emission inventory guidance is to include all authorized/planned [2] Start-up, Shutdown and Maintenance emissions in the ozone season day emissions reported in annual emission inventories submitted by sources that are used by TCEQ for the RFP baseline and future year RFP inventories.[3] In their RFP SIP, TCEQ included authorized/planned Start-up, Shutdown, and Maintenance (SSM) emissions from 2011 in their 2011 baseline inventory and also included authorized/planned emissions that occurred in 2014 in the 2014 inventory that they used to project the 2017 future RFP inventory. Since the amount and magnitude of authorized/planned events varies from day to day, Texas includes the average value of these emissions in the RFP average weekday inventory.[4] So, Texas does include an estimate of authorized/planned Start-up, Shutdown, and Maintenance emissions.

Texas does not include unplanned startups, shutdowns, maintenance, upsets and other unauthorized emissions in their RFP inventories. This is consistent with EPA's guidance which states;[5] ''Since malfunctions are, by nature, unpredictable and given the myriad different types of malfunctions that can occur, malfunction emissions would be difficult to estimate and future-year malfunction events cannot be readily predicted. Thus, states are not obligated to include malfunction emissions in the base inventory for the NAA, ROP/RFP plans, or attainment projected inventory for the NAA. However, to the extent that malfunctions become a regular and predictable event, then such emissions should be quantified with regular and predictable emissions and included in emission inventories for planning purposes. The elimination of high emissions during routinely reoccurring malfunctions could potentially help achieve significant emissions reductions needed by a state in attaining the relevant NAAQS.'' Malfunctions in EPA's terminology are very similar to unplanned events in TCEQ's regulatory structure. Because of the unpredictability and variability of unplanned and/or unauthorized emissions due to malfunctions, as explained in the EPA guidance it is reasonable that Texas did not include these emissions in its estimate of average ozone season weekday emissions.

Although these unauthorized emissions are not appropriate to be included in the RFP plan, TCEQ recognizes the importance of emissions from startups, shutdowns, maintenance, and upsets/malfunctions. These episodic emissions (planned and unplanned) are quantified and included in the attainment demonstration modeling which better lends itself for utilization of day to day variation of emissions because daily emissions from specific historic episodes are modeled versus typical ozone season day weekday emissions used in the RFP inventories.[6] Furthermore, based on the evolving knowledge about unplanned episodic emissions and the potential impacts on ozone levels, TCEQ has conducted a number of studies that have resulted in best management practice improvements for some point source categories to reduce episodic emission events.[7] For example, TCEQ's studies have included best management practice improvements for flaring, which is one of the sources related with malfunctions and that may have the potential to impact ozone levels. These best management practice improvements are expected to result in emission reductions, but EPA acknowledges that quantification of baseline and future year emission events and non-authorized/unplanned start-up, shutdown, and maintenance emissions (future year would be expected to be different than baseline) with the certainty required for a RFP SIP is not reasonably possible.

In sum, Texas's approach is consistent with our emissions inventory guidance regarding non-authorized/unplanned episodic/malfunction emissions. EPA believes these emissions can vary significantly and unpredictably from day to day and therefore it is acceptable these emissions not be included in the periodic emissions inventory required under 40 CFR 51.1115(b) or the emissions inventory for RFP purposes. We note Texas recognizes the importance of these emissions and has undertaken efforts to reduce episodic emissions. In conclusion, TCEQ has met the requirements of 40 CFR 51.1110, 40 CFR 51.1115 and sections 182(a)(1) and 182(b)(1) of the CAA.

Comment: Environmental Integrity Project also stated that we may not rely on motor vehicle emissions reductions that we intend to discontinue. The comment stated that the single largest anticipated vehicle emissions reduction is from the Federal Motor Vehicle Control Program (FMVCP) and referred to an April announcement that we would work with the National Highway Traffic Safety Administration to revise the greenhouse gas (GHG) emissions standards and Corporate Average Fuel Economy (CAFE) standards for model year 2022 and 2025 light-duty vehicles.

Response: EPA agrees that SIPs can only rely upon reductions that are enforceable for the purpose and years addressed by the SIP. However, it is incorrect that the RFP SIP relies on motor vehicle emissions reductions that we intend to discontinue. The RFP SIP addresses NO_x and VOC emission levels for the year 2011 to 2018, and during that time period the SIP relies on NO_x and VOC emission reductions that have already occurred. In the case of the contingency measure reductions, these are expected to occur in 2018 due to regulations that have been implemented. In addition, it is important to note that the SIP relies upon EPA's emissions standard regulations which reduce criteria pollutant emissions. The GHG

[1] ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations''; EPA–454/B–17–003, July 2017; pages 79–80. And ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations'', EPA–454/B–17–003; July 2017, page 19, Section 2.5.2.

[2] The commenter discussed unplanned and unauthorized emissions and TCEQ guidance centers around authorized and non-authorized and does not use the unplanned/planned language. For this Response to Comment we are interpreting that the commenter was equating planned with authorized and unplanned with non-authorized.

[3] TCEQ RG–360A/11 ''2011 Emission Inventory Guidelines'' pages 65–70 and TCEQ RG–360A/14, ''2014 Emission Inventory Guidelines'' pages 70–72.

[4] Texas receives data on the hours that the emissions occurred for each occurrence and then totals the emissions during ozone season and divides by the total number of hours that these types of emissions occurred to yield an average emission rate (lb/hr that is translated to OSD) that is included in the RFP inventories.

[5] ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations''; EPA–454/B–17–003, July 2017; page 80.

[6] EPA–R06–OAR–2017–0053–0004; ''Appendix B: Emissions Modeling for the HGB Attainment Demonstration sip Revision for the 2008 Eight-Hour Ozone Standard''

[7] For a discussion of the studies please see pages 248–251 of the Technical Support Document for the Houston Galveston Brazoria Modeling and Other Analyses Attainment Demonstration (HGB–MOAAD) at *https://www.regulations.gov/document?D=EPA-R06-OAR-2013-0387-0002*. Also see documents available at *https://www.tceq.texas.gov/airquality/stationary-rules/stakeholder/flare_stakeholder.html.*

regulations cited by the commenter do not affect criteria pollutant emissions standards and are also not related to the years addressed by the SIP.

III. Final Action

We are approving the HGB RFP SIP revision submitted on December 29, 2016, to meet the RFP requirements for the HGB moderate 2008 8-hour ozone nonattainment area as well as an updated 2011 base year emissions inventory for the 2008 Ozone NAAQS. This action is being taken under section 110 of the Act.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 15, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 6, 2019.

Anne Idsal,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

■ 2. In § 52.2270(e), the second table titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding an entry at the end for ''HGB Area Reasonable Further Progress (RFP) Plan, RFP Contingency Measures, RFP Motor Vehicle Emission Budgets for 2017, and Revised 2011 Base Year Emissions Inventory for the 2008 Ozone NAAQS'' to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Comments
* * *	*	*	*	*
HGB Area Reasonable Further Progress (RFP) Plan, RFP Contingency Measures, RFP Motor Vehicle Emission Budgets for 2017, and Revised 2011 Base Year Emissions Inventory for the 2008 Ozone NAAQS.	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller Counties, TX.	12/29/2016	2/13/2019, [Insert **Federal Register** citation].	

* * * * *

[FR Doc. 2019–02021 Filed 2–12–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0147; FRL–9989–33–Region 5]

Air Plan Approval; Indiana; Reasonable Further Progress Plan and Other Plan Elements for the Chicago Nonattainment Area for the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Indiana State Implementation Plan (SIP) to meet the base year emissions inventory, reasonable further progress (RFP), RFP contingency measure, nonattainment new source review (nonattainment NSR), volatile organic compound (VOC) reasonably available control technology (RACT), and motor vehicle inspection and maintenance (I/M) requirements of the Clean Air Act (CAA) for the Indiana portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin area (Chicago area) for the 2008 ozone national ambient air quality standard (NAAQS or standard). EPA is also approving the 2017 transportation conformity motor vehicle emissions budgets (MVEBs) for the Indiana portion of the Chicago area for the 2008 ozone NAAQS. EPA is approving the state's submission as a SIP revision pursuant to section 110 and part D of the CAA and EPA's regulations because it satisfies the emission inventory, RFP, RFP contingency measure, nonattainment NSR, VOC RACT, I/M, and transportation conformity requirements for areas classified as moderate nonattainment for the 2008 ozone NAAQS. This final action permanently stops the Federal Implementation Plan (FIP) clock triggered by EPA's February 3, 2017 finding that Indiana failed to submit a marginal ozone nonattainment NSR plan. EPA proposed to approve these provisions on August 28, 2018 and received public comments.

DATES: This final rule is effective March 15, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2017–0147. All documents in the docket are listed in the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. What is being addressed in this document?

This rule addresses revisions to the Indiana SIP submitted by the Indiana Department of Environmental Management (IDEM) on February 28, 2017 and supplemented on January 9, 2018. EPA is approving a number of nonattainment plan elements included in that submission, specifically a revised 2011 base year emissions inventory for VOC and oxides of nitrogen (NO_X), a 15% RFP plan, a 3% RFP contingency measure plan, 2017 VOC and NO_X motor vehicle emissions budgets, a nonattainment NSR certification, a VOC RACT certification, and an enhanced I/M certification. The background for this action is discussed in detail in EPA's proposal, dated August 28, 2018 (83 FR 43825). As discussed in the proposal, final approval of Indiana's nonattainment NSR certification permanently stops the FIP clock triggered by EPA's February 3, 2017 finding that Indiana failed to submit a marginal ozone nonattainment NSR plan.

II. What comments did we receive on the proposed rule?

EPA provided a 30-day review and comment period for the August 28, 2018, proposed rule. The comment period ended on September 27, 2018. We received a number of anonymous comments that address subjects outside the scope of our proposed action, do not explain (or provide a legal basis for) how the proposed action should differ in any way, and make no specific mention of the substantive aspects of the proposed action. Consequently, these comments are not germane to this rulemaking and require no further response. In addition, one commenter submitted several comments that do not suggest a change in or specific problems with our proposed action. Therefore, these comments also require no further response.

III. What action is EPA taking?

Based on the above and the information contained in EPA's proposed rule, EPA is approving revisions to Indiana's SIP pursuant to section 110 and part D of the CAA and EPA's regulations because Indiana's February 28, 2017 nonattainment plan submission and January 1, 2018, supplement satisfy the emissions inventory, RFP, RFP contingency measures, transportation conformity, VOC RACT, I/M, and nonattainment moderate area NSR requirements of the CAA for the Indiana portion of the Chicago area for the 2008 ozone NAAQS. Final approval of Indiana's SIP as meeting these nonattainment NSR requirements of the CAA for the 2008 ozone NAAQS permanently stops the and FIP clock triggered by EPA's February 3, 2017 finding that Indiana failed to submit a marginal ozone nonattainment NSR plan.

IV. Statutory and Executive Order Reviews

Under the CAA the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 15, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

Dated: December 21, 2018.

James O. Payne,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 52.770, the table in paragraph (e) is amended by adding an entry in alphabetical order for ''Lake and Porter Counties 2008 8-hour Ozone Moderate Planning Elements'' to read as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
*	*	*	*
Lake and Porter Counties 2008 8-hour Ozone Moderate Planning Elements.	2/28/2017 and 1/9/2018	2/13/2019, [Insert **Federal Register** citation].	2011 base year emissions inventory, Reasonable Further Progress (RFP) plan, RFP contingency measure plan, 2017 VOC and NO_X motor vehicle emissions budgets, nonattainment new source review certification, VOC reasonable further progress certification, and enhanced motor vehicle inspection and maintenance program certification.
*	*	*	*

[FR Doc. 2019–02212 Filed 2–12–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R05–OAR–2018–0600; FRL–9989–36–Region 5]

Air Plan Approval; Indiana; Negative Declarations for Commercial and Industrial Solid Waste Incineration and Sewage Sludge Incineration Units for Designated Facilities and Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is notifying the public that we have received from Indiana requests for withdrawals of the previously approved state plans and notification of negative declarations for Commercial and Industrial Solid Waste Incineration (CISWI) units and Sewage Sludge Incineration (SSI) units. The Indiana Department of Environmental Management (IDEM) submitted its CISWI withdrawal and negative declaration by letter dated July 31, 2017 and its SSI withdrawal and negative

declaration by letter dated July 31, 2017. IDEM notified EPA in its negative declaration letters that there are no CISWI or SSI units subject to the requirements of the Clean Air Act (Act) currently operating in Indiana. On October 3, 2018, EPA published a notice of proposed rulemaking for these negative declarations.

DATES: This final rule is effective on March 15, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2018–0600. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Margaret Sieffert, Environmental Engineer, at (312) 353–1151 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Margaret Sieffert, Environmental Engineer, Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604, (312) 353–1151, *sieffert.margaret@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. Background
II. What public comments were received on the proposed approval and what is EPA's response?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. Background

IDEM submitted a CISWI state plan on December 20, 2002. EPA approved the state plan and it became effective on August 11, 2003. 68 FR 35181. On July 31, 2017, IDEM submitted its CISWI negative declaration, in which it certified that there are no longer any CISWI units currently operating in Indiana.[1]

IDEM submitted a SSI state plan on February 27, 2013. EPA approved the state plan and it became effective on August 12, 2013. 78 FR 34918. On July 31, 2017, IDEM submitted its SSI withdrawal and negative declaration, in which it certified that there are no longer any existing SSI units currently operating in Indiana. Because there are no existing sources subject to the 2013 state plan, IDEM is requesting to withdraw the 2013 state plan and replace it with a negative declaration.

On October 3, 2018, EPA published a notice of proposed rulemaking (NPRM) proposing notice of Indiana's negative declarations for CISWI and SSI. The specific details of Indiana's request and the rationale for EPA's approval are discussed in the NPRM and will not be restated here.

II. What public comments were received on the proposed approval and what is EPA's response?

EPA received one anonymous comment on its November 1, 2018, proposal. This comment addresses subjects outside the scope of our proposed action, does not explain (or provide a legal basis for) how the proposed action should differ in any way, and makes no specific mention of the substantive aspects of the proposed action. Therefore, this comment is not germane to this rulemaking and requires no further response.

III. What action is EPA taking?

EPA is notifying the public of EPA's receipt of IDEM's negative declarations for both CISWI and SSI facilities and amending 40 CFR part 62 to reflect both negative declarations. EPA received the CISWI and SSI negative declarations and withdrawal requests by letters dated July 31, 2017. In this action, EPA is finalizing its notification. EPA is also revising 40 CFR part 62.3660 and 62.3670 to reflect these notifications.

IV. Statutory and Executive Order Reviews

A. General Requirements

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and therefore is not subject to review by the Office of Management and Budget under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under E.O. 12866. This action merely approves state law as meeting Federal requirements and merely notifies the public of EPA's receipt of negative declarations from an air pollution control agency without any existing CISWI or SSI units in its state. This action imposes no requirements beyond those imposed by the state. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule pertains to pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely provides notice of receipt of negative declarations, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it just notifying the public regarding receipt of the negative declarations.

In reviewing state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. With regard to negative declarations for designated facilities

[1] Previously, an incinerator located at Covance Laboratories, Inc. was listed by Indiana as subject to the CISWI. In a letter dated June 18, 2018, however, EPA determined that Covance's incinerator was not a ''CISWI unit'' under the regulations.

received by EPA from states, EPA's role is to notify the public of the receipt of such negative declarations and revise 40 CFR part 62 accordingly. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state plan submission or negative declaration for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan or negative declaration submission, to use VCS in place of a state plan or negative declaration submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 15, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Administrative practice and procedure, Air pollution control, Environmental protection, Commercial and Industrial Solid Waste Incinerators, Intergovernmental relations, Sewage Sludge Incineration Units, Reporting and record-keeping requirements.

Dated: December 21, 2018.

James O. Payne,

Acting Regional Administrator, Region 5.

40 CFR part 62 is amended as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Revise § 62.3660 to read as follows:

§ 62.3660 Identification of plan—negative declaration.

On July 31, 2017, the Indiana Department of Environmental Management submitted a negative declaration letter to EPA certifying that there are no existing Commercial and Industrial Solid Waste Incineration (CISWI) units in the State of Indiana subject to the emissions guidelines at 40 CFR part 60, subpart DDDD.

■ 3. Revise § 62.3670 to read as follows:

§ 62.3670 Identification of plan—negative declaration.

On July 31, 2017, the Indiana Department of Environmental Management submitted a negative declaration letter to EPA certifying that there are no existing Sewage Sludge Incineration (SSI) units in the State of Indiana subject to the emissions guidelines at 40 CFR part 60, subpart MMMM.

§ 62.3671 [Removed and Reserved]

■ 4. Section 62.3671 is removed and reserved.

§ 62.3672 [Removed and Reserved]

■ 5. Section 62.3672 is removed and reserved.

[FR Doc. 2019–02209 Filed 2–12–19; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 511, 517, 532, 536, 543, 546, and 552

[GSAR Change 98; GSAR Case 2015–G503; Docket No. 2016–0015; Sequence No. 1]

RIN 3090–AJ63

General Services Administration Acquisition Regulation (GSAR); Construction Contract Administration

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: This final rule amends the General Services Administration Acquisition Regulation (GSAR) coverage on construction contracts, including provisions and clauses for solicitations and resultant contracts, to clarify, update, and incorporate existing construction contract administration procedures. This final rule includes new information collection requirements that will be submitted to OMB for review and approval.

DATES: *Effective Date:* This final rule is effective on March 15, 2019.

FOR FURTHER INFORMATION CONTACT: For clarification about content, contact Mr. Tony O. Hubbard, Acquisition Policy Division, by phone at 202–357–5810 or by email at *tony.hubbard@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat division by mail at 1800 F Street NW, Washington, DC 20405, or by phone at 202–501–4755. Please cite the GSAR Case 2015–G503, Construction Contract Administration.

SUPPLEMENTARY INFORMATION:

I. Background

GSA published a proposed rule in the **Federal Register** at 81 FR 62434 on September 9, 2016 to revise sections of GSAR part 536, Construction and Architect-Engineer Contracts, and related parts, to maintain consistency with the Federal Acquisition Regulation (FAR) and to clarify, update and incorporate existing construction contract administration guidance previously implemented through internal Public Building Service (PBS) policies. No comments were submitted on the proposed rule.

II. Discussion and Analysis

Beyond a minor technical correction, no changes were made to the rule. The minor technical correction regards GSAR Clause 552.243–71 *Equitable Adjustments.* The proposed rule discussion and analysis section noted incorrectly that only the prescription for this existing clause changed. The text of the clause in addition to the prescription is revised to include the changes clause for simplified acquisitions and the differing site conditions clause. The CFR amendments to the clause prescription and clause text identified in the proposed rule were correct.

III. Executive Orders 12866 and 13563

Executive Order (E.O.) 12866 of September 30, 1993, Regulatory Planning and Review, directs agencies to assess all costs and benefits of

available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 6(b) of the E.O. requires the OMB Office of Information and Regulatory Affairs (OIRA) to review regulatory actions that have been identified as significant regulatory actions by the promulgating agency or OIRA. This rule is not a significant regulatory action and was therefore not subject to OIRA review. This rule is not a ''major rule,'' as defined by 5 U.S.C. 804.

IV. Executive Order 13771

This final rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

GSA does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, at 5 U.S.C. 601, *et. seq.,* because the rule will incorporate clauses that are currently in use in GSA construction solicitations and contracts and contractors are familiar with and are currently complying with these practices. However, a Final Initial Regulatory Flexibility Analysis (FRFA) has been prepared. There were no comments submitted in response to the initial regulatory flexibility analysis provided in the proposed rule.

The FRFA has been prepared consistent with the criteria of 5 U.S.C. 604 and is summarized as follows:

This final rule amends the General Services Administration Acquisition Regulation (GSAR) coverage on construction contracts, including provisions and clauses for solicitations and resultant contracts, to clarify, update, and incorporate existing construction contract administration procedures.

The objective of this rule is to amend the GSAR to revise sections of GSAR Part 536, Construction and Architect-Engineer Contracts, and related parts, to maintain consistency with the FAR and to incorporate existing agency guidance previously implemented through internal PBS policies.

There were no comments submitted and therefore no significant issues raised by the public in response to the initial regulatory flexibility analysis provided in the proposed rule.

The final rule changes will apply to approximately 3,900 GSA construction contracts. Of these, approximately 3,500 (90 percent) construction contracts are held by small businesses. The rule is unlikely to affect small businesses awarded GSA construction contracts as it implements clauses currently in use in construction solicitations and contracts. The rule does not pose any new reporting, recordkeeping or other compliance requirements.

The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) does apply because the final rule contains six clauses and provisions with information collection requirements. However, five of these clauses and provisions do not impose additional information collection requirements to the paperwork burden previously approved under existing OMB Control Numbers. Only one of the six involves information collection requirements that have not previously been approved by OMB.

Clauses and Provisions Already Covered by Existing Information Collections

The new clause at GSAR 552.211–13 *Time Extensions* requires the contractor to submit a written request detailing an analysis to justify a time extension. However, the clause does not add burden to what is already estimated for FAR Clause 52.243–4 *Changes* under OMB Control Number 9000–0026 *Change Order Accounting.*

The new clause at GSAR 552.211–70 *Substantial Completion* requires the contractor to submit a written notice of proposed substantial completion date for the construction work. However, the clause does not add burden to what is already estimated for FAR Clause 52.236–15 *Schedules for Construction Contracts* under OMB Control Number 9000–0058 *Schedules for Construction Contracts.*

The new clause at GSAR 552.232–5 *Payments under Fixed-Price Construction Contracts* requires the contractor to use certain GSA forms to submit the information necessary for a complete payment request. However, the clause does not add burden to what is already estimated for GSAR 532.905–70 *Final Payment—Construction and Building Service Contracts,* FAR Clause 52.232–5 *Payments under Fixed-Price Construction Contracts,* and FAR Clause 52.232–27 *Prompt Payment for Construction Contracts* under OMB Control Numbers 3090–0080 *Contract Financing Final Payment,* 9000–0070 *Payments,* and 9000–0102 *Prompt Payment.*

The new clause at GSAR 552.236–15 *Schedules for Construction Contracts* requires the contractor to identify a schedule of values, to provide updates specifically weekly or monthly, and to follow a critical path method in some cases. However, the clause does not add burden to what is already estimated for FAR Clause 52.236–15 *Schedules for Construction Contracts* under OMB Control Number 9000–0058 *Schedules for Construction Contracts.*

The new provision at GSAR 552.236–76 *Basis of Award-Sealed Bidding Construction* removes the use of alternates in sealed bidding. The provision was previously GSAR 552.236–73 *Basis of Award-Construction Contracts.* The provision title and prescription are revised to provide clarity, and the provision regulations are simplified. This provision change will reduce the complexity to businesses during contract solicitation as bid sheet line items will be more clearly understood for pricing. The provision does not add burden to what is already estimated under OMB Control Number 3090–0163 *Information Specific to a Contract or Contracting Action.*

Clauses and Provisions Not Covered by Existing Information Collections

The new clause at GSAR 552.236–72 *Submittals* involves an existing information collection requirement that has never been previously approved by OMB. The information collected is used by PBS to evaluate a contractor's proposals, negotiate contract modifications, evaluate a contractor's progress, and review payment requests during contract administration. The clause was previously GSAR 552.236–78 *Shop Drawings, Coordination Drawings, and Schedules.* The clause is simplified, including removing the requirement for a specific number of prints and copies of various submittals. This simplification will ease the compliance burden for the contractor during contract administration from the current state.

Public reporting burden for GSAR 552.236–72 *Submittals* is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual public reporting burden is estimated as follows:

Respondents: 3,758.
Responses per respondent: 1.
Total annual responses: 3,758.
Preparation hours per response: 8.
Total response burden hours: 30,064.
Cost per hour: $54.30.

Estimated cost burden to the public: $1,632,475.

The estimated cost of $54.30 per hour is based on the task being accomplished by mid-level contractor personnel equivalent to a GS–12, Step 5 salary (Base Pay and Rest of US Locality Pay) (Salary Table 2018–GS, Effective January 2018), with fringe of 36.25 percent (OMB Memo M–08–13).

Government burden for GSAR 552.236–72 *Submittals* is estimated to average 2 hours per response, including the time to review the submittal documents.

The annual government burden is estimated as follows:

Total annual responses: 3,758.

Review hours per response: 2.

Total review time: 7,516.

Cost per hour: $54.30.

Estimated cost burden to the public: $408,119.

The estimated cost of $54.30 per hour is based on the task being accomplished by mid-level government personnel equivalent to a GS–12, Step 5 salary (Base Pay and Rest of US Locality Pay) (Salary Table 2018–GS, Effective January 2018), with fringe of 36.25 percent (OMB Memo M–08–13).

GSA solicited public comments on this information collection requirement at the proposed rule stage. There were no public comments received. GSA will submit to OMB a request to review and approve this new information collection requirement. For a copy of the information collection documents, contact the Regulatory Secretariat Division by mail at 1800 F Street NW, Washington, DC 20405, or by phone at 202–501–4755. Please cite OMB Control Number 3090–0308, Construction Contract Administration.

List of Subjects in 48 CFR Parts 501, 511, 517, 532, 536, 543, 546, and 552.

Government procurement.

Dated: February 4, 2019.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.

For the reasons described in the preamble, GSA amends 48 CFR parts 501, 511, 517, 532, 536, 543, 546, and 552 as set forth below:

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

■ 1. The authority citation for 48 CFR part 501 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 2. Amend section 501.106 in the table by—

■ a. Removing the entry for ''532.111(c)'';

■ b. Revising the entry for ''532.905–70'';

■ c. Removing the entry for ''532.905–71''; and

■ d. Adding, in numerical sequence, entries for ''552.211–13(a)'', ''552.211–70(b)'', ''552.232–5'', ''552.236–15'' and ''552.236–72''.

The revision and additions read as follows:

501.106 OMB approval under the Paperwork Reduction Act.

GSAR reference	OMB Control No.
* * * * *	
532.905–70	3090–0080
* * * * *	
552.211–13(a)	9000–0026
552.211–70(b)	9000–0058
* * * * *	
552.232–5	3090–0080, 9000–0070, and 9000–0102
* * * * *	
552.236–15	9000–0058
552.236–72	3090–0308
* * * * *	

PART 511—DESCRIBING AGENCY NEEDS

■ 3. The authority citation for 48 CFR part 511 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 4. Revise section 511.404 to read as follows:

511.404 Contract clauses.

(a) *Supplies or services*—(1) *Shelf-life items.* The contracting officer shall use the following clauses in solicitations and contracts that require delivery of shelf-life items within a specified number of months from the date of manufacture or production:

(i) The contracting officer shall insert 552.211–79, Acceptable Age of Supplies, if the required shelf-life period is 12 months or less, and lengthy acceptance testing may be involved. For items having a limited shelf-life, substitute Alternate I when required by the program director.

(ii) The contracting officer shall insert 552.211–80, Age on Delivery, if the required shelf-life period is more than 12 months, or when source inspection can be performed within a short time period.

(2) *Stock replenishment contracts.* The contracting officer shall insert 552.211–81, Time of Shipment, in solicitations and stock replenishment contracts that do not include the Availability for Inspection, Testing, and Shipment/Delivery clause at 552.211–83 and require shipment within 45 calendar days after receipt of the order. If shipment is required in more than 45 days, the contracting officer shall use Alternate I of 552.211–81.

(3) *Indeterminate testing time.* The contracting officer shall insert 552.211–83, Availability for Inspection, Testing, and Shipment/Delivery, in solicitations and contracts that provide for source inspection by Government personnel and that require lengthy testing for which time frames cannot be determined in advance. If the contract is for stock items, the contracting officer shall use Alternate I of 552.211–83.

(4) *Stock program supply delivery time.* The contracting officer shall insert the clause at 552.211–94, Time of Delivery, in solicitations and contracts for supplies for the Stock Program when neither of the FAR delivery clauses (FAR 52.211–8 or 52.211–9) is suitable.

(b) *Construction.* (1) The contracting officer shall insert the clause at 552.211–10, Commencement, Prosecution, and Completion of Work, in solicitations and contracts when a fixed-price construction contract is contemplated.

(2) The contracting officer shall insert the clause at 552.211–70, Substantial Completion in solicitations and contracts when a fixed-price construction contract is contemplated.

■ 5. Add subpart 511.5 to read as follows:

Subpart 511.5—Liquidated Damages

511.504 Contract clauses.

(a) The contracting officer shall insert the clause at 552.211–12, Liquidated Damages-Construction, in solicitations and contracts for construction, other than cost-plus-fixed-fee, when the contracting officer determines that liquidated damages are appropriate (see FAR 11.501(a)).

(b) The contracting officer shall insert the clause at 552.211–13, Time Extensions, in solicitations and contracts for construction that use the clause at 552.211–12, Liquidated Damages-Construction.

PART 517—SPECIAL CONTRACTING METHODS

■ 6. The authority citation for 48 CFR part 517 is revised to read as follows:

Authority: 40 U.S.C. 121(c).

■ 7. Revise sections 517.200 and 517.202 to read as follows:

517.200 Scope of subpart.

(a) Except as provided in paragraph (b) of this section, this subpart applies to contracts for supplies and services, including architect-engineer services.

(b) Policies and procedures for the use of options in solicitation provisions and contract clauses for services involving construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property are prescribed in 536.270. FAR subpart 17.2 and this subpart do not apply to the use of options in solicitation provisions and contract clauses for services involving construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property.

517.202 Use of options.

(a) Options may be used when they meet one or more of the following objectives:

(1) Reduce procurement lead time and associated costs.

(2) Ensure continuity of contract support.

(3) Improve overall contractor performance.

(4) Facilitate longer term contractual relationships with those contractors that continually meet or exceed quality performance expectations.

(b) An option is normally in the Government's interest in the following circumstances:

(1) There is an anticipated need for additional supplies or services during the contract term.

(2) When there is both a need for additional supplies or services beyond the basic contract period and the use of multi-year contracting authority is inappropriate.

(3) There is a need for continuity of supply or service support.

(c) An option shall not be used if the market price is likely to change substantially and an economic price adjustment clause inadequately protects the Government's interest.

PART 532—CONTRACT FINANCING

■ 8. The authority citation for 48 CFR part 532 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 9. Revise section 532.111 to read as follows:

532.111 Contract clauses for non-commercial purchases.

Insert the clause at 552.232–5, Payments under Fixed-Price Construction Contracts, in solicitations and contracts when a fixed-price construction contract is contemplated.

PART 536—CONSTRUCTION AND ARCHITECT–ENGINEER CONTRACTS

■ 10. The authority citation for 48 CFR part 536 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 11. Revise subparts 536.2 and 536.5 to read as follows:

Subpart 536.2—Special Aspects of Contracting for Construction

Sec.
536.270 Options in construction contracting.
536.270–1 Use of options.
536.270–2 Solicitations.
536.270–3 Evaluation.
536.270–4 Exercise of options.
536.270–5 Solicitation provisions and contract clauses.

536.270 Options in construction contracting.

536.270–1 Use of options.

(a) Subject to the limitations in this section, contracting officers may include options in contracts when it is in the Government's interest.

(b) The scope of work in the base contract at award shall require the contractor to provide a discrete and fully functional deliverable. Options shall not be used to incrementally deliver work required to fulfill the requirements of the scope of work for the base contract.

(c) Contracting officers shall justify in writing the use of options.

(d) Including an option may be in the Government's interest when, in the judgment of the contracting officer:

(1) Additional work beyond the base contract is reasonably foreseeable;

(2) It would not be advantageous to award a separate contract;

(3) It would not be advantageous to permit an additional contractor to work on the same site;

(4) Services arising out of or relating to the underlying construction contract may be required during or after substantial completion of the scope of work. For instance, if building equipment (*e.g.,* mechanical and electrical equipment) will be installed under the construction contract, it may be advantageous to have the construction contractor maintain and service the equipment. In such an instance, the services performed may be included as an option to the underlying construction contract. Contracting officers shall ensure that the applicable clauses are included in any such option (*e.g.,* Service Contract Act); or

(5) It is otherwise justified.

(e) Options for construction work may provide for an economic price adjustment based on cost or price indexes of labor or materials (see FAR 16.203–4(d)). Subject to the approval of the Head of the Contracting Activity (HCA), the contracting officer may develop and insert a project-specific price adjustment clause into the solicitation.

536.270–2 Solicitations.

Solicitations containing options shall:

(a) Include appropriate option provisions and clauses when resulting contracts will provide for the exercise of options (see 536.270–5);

(b) State the period within which the options may be exercised; and

(c) State whether the basis of evaluation is inclusive or exclusive of the options (if exclusive, see 536.270–4(c)).

536.270–3 Evaluation.

For sealed bidding that includes options:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for the base bid and all options designated to be evaluated.

(b) Before opening bids that include options, the contracting officer must determine, and record in the contract file, the amount of funds available for the project. The amount recorded must be announced at the beginning of the bid opening. This amount may be increased later when determining the items to be awarded to the low bidder if the following condition is met: The award amount of the base bid and evaluated options does not exceed the amount offered for the base bid, the evaluated options, and the same combination of items by any other responsible bidder whose bid conforms to the solicitation. This requirement prevents the displacement of the low bidder by manipulating the options to be used.

536.270–4 Exercise of options.

(a) The contracting officer shall exercise options in writing within the time period specified in the contract.

(b) The contracting officer may exercise options only after determining, in writing, that all the following conditions exist:

(1) Funds are available.

(2) The requirement covered by the option fulfills an existing Government need.

(3) Exercising the option is the most advantageous method of satisfying the Government's need, price and other factors considered.

(4) The contractor is not listed in the System for Award Management Exclusions (see FAR 9.405–1).

(5) The contractor's performance under the contract met or exceeded the Government's expectation for quality performance, unless another circumstance justifies an extended contractual relationship.

(6) Exercising the option is in accordance with the terms of the option.

(7) The option price is fair and reasonable, unless already determined as such (*e.g.,* at time of award).

(c) The contract modification, or other written document which notifies the contractor of the exercise of the option, must cite the option clause as authority. If exercising an unpriced or unevaluated option, cite the statutory authority permitting the use of other than full and open competition (see FAR 6.302).

(d) When the contract provides for economic price adjustment and the contractor requests a revision of the price, the contracting officer shall determine the effect of the adjustment on prices under the option before the option is exercised.

536.270–5 Solicitation provisions and contract clauses.

(a) Insert a provision substantially the same as the provision at 552.236–74, Evaluation of Options, in solicitations for fixed-price construction contracts when the solicitation contains an option clause and options will be included in the evaluation for award purposes.

(b) Insert a provision substantially the same as the provision at 552.236–75, Evaluation Exclusive of Options, in solicitations for fixed-price construction contracts when the solicitation includes an option clause and options will not be included in the evaluation for award purposes.

(c) Insert a provision substantially the same as the provision at 552.236–76, Basis of Award-Sealed Bidding Construction, in solicitations for fixed-price construction contracts when contracting by sealed bidding. Use the provision with its Alternate I when the solicitation contains an option clause.

(d) Insert a clause substantially the same as the clause at 552.236–77, Government's Right to Exercise Options, in solicitations and contracts for construction that include options.

Subpart 536.5—Contract Clauses

Sec.

536.506 Superintendence by the contractor.
536.511 Use and possession prior to completion.
536.515 Schedules for construction contracts.
536.521 Specifications and drawings for construction.
536.570 Authorities and limitations.
536.571 Contractor responsibilities.
536.572 Submittals.
536.573 Subcontracts.

536.506 Superintendence by the contractor.

Insert the clause at 552.236–6, Superintendence by the Contractor, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.511 Use and possession prior to completion.

Insert the clause at 552.236–11, Use and Possession Prior to Completion, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.515 Schedules for construction contracts.

Insert the clause at 552.236–15, Schedules for Construction Contracts, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause—

(a) With its Alternate I when the contract amount is expected to be above the simplified acquisition threshold and a design-bid-build project delivery method will be followed; or

(b) With its Alternate II when the contract amount is expected to be above the simplified acquisition threshold and a design-build project delivery method will be followed.

536.521 Specifications and drawings for construction.

Insert the clause at 552.236–21, Specifications and Drawings for Construction, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause with its Alternate I when a design-build project delivery method will be followed.

536.570 Authorities and limitations.

Insert the clause at 552.236–70, Authorities and Limitations, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.571 Contractor responsibilities.

Insert the clause at 552.236–71, Contractor Responsibilities, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause with its Alternate I when a design-build project delivery method will be followed.

536.572 Submittals.

Insert the clause at 552.236–72, Submittals, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause with its Alternate I when a design-build project delivery method will be followed.

536.573 Subcontracts.

Insert the clause at 552.236–73, Subcontracts, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

PART 543—CONTRACT MODIFICATIONS

■ 12. The authority citation for 48 CFR part 543 is revised to read as follows:

Authority: 40 U.S.C. 121(c).

■ 13. Revise section 543.205 to read as follows:

543.205 Contract clauses.

The contracting officer shall insert 552.243–71, Equitable Adjustments, in solicitations and contracts containing FAR 52.243–4, Changes, FAR 52.243–5, Changes and Changed Conditions, or FAR 52.236–2, Differing Site Conditions.

PART 546—QUALITY ASSURANCE

■ 14. The authority citation for 48 CFR part 546 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 15. Add section 546.704 to read as follows:

546.704 Authority for use of warranties.

FAR clause 52.246–21, Warranty of Construction, is approved by the agency for use in solicitations and contracts when a fixed-price construction contract is contemplated.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 16. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 17. Add sections 552.211–10, 552.211–12, 552.211–13 and 552.211–70 to read as follows:

552.211–10 Commencement, Prosecution, and Completion of Work.

As prescribed in 511.404, insert the following clause:

Commencement, Prosecution, and Completion of Work (Mar 2019)

FAR 52.211–10, Commencement, Prosecution, and Completion of Work, is supplemented as follows:

(a) The Contractor shall not commence work until the Contracting Officer issues a notice to proceed.

(b) Notwithstanding paragraph (a) of this clause, the Contractor must submit any required safety plans before commencing any construction work.

(c) The Contractor shall diligently prosecute the work so as to achieve substantial completion of the work within the time specified in the contract. If the contract specifies different completion dates for different phases or portions of the work, the Contractor shall diligently prosecute the work so as to achieve substantial completion of such phases or portions of the work within the times specified.

(End of clause)

552.211–12 Liquidated Damages-Construction.

As prescribed in 511.504, insert the following clause:

Liquidated Damages (Mar 2019)

FAR 52.211–12, Liquidated Damages-Construction, is supplemented as follows:

(a) If the Contractor fails to achieve substantial completion of the work within the time specified in the contract, the Contractor shall be liable to the Government for liquidated damages at the rate specified for each calendar day following the required completion date that the work is not substantially complete.

(b) If the contract requires different completion dates for different phases or portions of the work, the Contractor shall be liable for liquidated damages at the specified rate for each calendar day following the required completion date that the phase or portion of work is not substantially complete. If a single rate is specified, the specified rate shall be apportioned between the different phases or portions of the work.

(c) If the Government elects to accept any portion of the work not specifically designated as a phase or portion of work with its own required completion date, the liquidated damage rate shall be apportioned between accepted work and uncompleted work, and the Contractor's liability for liquidated damages shall be computed accordingly.

(End of clause)

552.211–13 Time Extensions.

As prescribed in 511.504, insert the following clause:

Time Extensions (Mar 2019)

FAR 52.211–13, Time Extensions, is supplemented as follows:

(a) If the Contractor requests an extension of the time for substantial completion, the Contractor shall base its request on an analysis of time impact using the project schedule as its baseline, and shall propose as a new substantial completion date to account for the impact. The Contractor shall submit a written request to the Contracting Officer setting forth facts and analysis in sufficient detail to enable the Contracting Officer to evaluate the Contractor's entitlement to an extension of time.

(b) The Contractor shall only be entitled to an extension of time to the extent that—

(1) Substantial completion of the work is delayed by causes for which the Contractor is not responsible under this contract; and

(2) The actual or projected substantial completion date is later than the date required by this contract for substantial completion.

(c) The Contractor shall not be entitled to an extension of time if the Contractor has not updated the project schedule in accordance with the contract.

(d) The Government shall not be liable for any costs to mitigate time impacts incurred by the Contractor that occur less than 30 calendar days after the date the Contractor submits a request for extension of time in compliance with this clause.

(End of clause)

552.211–70 Substantial Completion.

As prescribed in 511.404, insert the following clause:

Substantial Completion (Mar 2019)

(a) *General.* (1) For the purposes of FAR 52.211–10, Commencement, Prosecution and Completion of Work, and FAR 52.211–12, Liquidated Damages-Construction, the work shall be deemed complete when it is ''substantially complete.''

(2) There may be different completion dates required for different phases or portions of the work, as established in the contract. However, the work shall be deemed ''substantially complete'' if and only if the Contractor has completed the work and related contract obligations in accordance with the contract documents, such that the Government may enjoy the intended access, occupancy, possession, and use of the entire work without impairment due to incomplete or deficient work, and without interference from the Contractor's completion of remaining work or correction of deficiencies in completed work.

(3) In no event shall the work be deemed ''substantially complete'' if all fire and life safety systems are not tested and accepted by the authority having jurisdiction, where such acceptance is required under the contract.

(4) Unless otherwise specifically noted, or otherwise clear from context, all references in the contract to ''acceptance'' shall refer to issuance of a written determination of substantial completion by the Contracting Officer.

(b) *Notice of Substantial Completion.* (1) With reasonable advance notice, the Contractor shall submit to the Contracting Officer a written proposal recommending a substantial completion date.

(2) If the Contracting Officer takes exception to the notice of substantial completion, the Contractor shall be entitled to a written notice of conditions precluding determination of substantial completion. The Contractor shall only be entitled to an extension of time to address such conditions if, and to the extent that, the Contracting Officer provides notice of such conditions more than 30 calendar days after receipt of the notice of substantial completion.

(c) *Acceptance of Substantial Completion.* (1) The Contracting Officer shall conduct inspections and make a determination of substantial completion within a reasonable time.

(2) Substantial Completion shall be established by the Contracting Officer's issuance of a written determination specifying the date upon which the work is substantially complete.

(d) *Contract Completion.* (1) The Contract is complete if and only if the Contractor has completed all work and related contract obligations, corrected all deficiencies and all punch list items, and complied with all conditions for final payment.

(2) The Contractor shall not be entitled to final payment or release of any retainage held by the Government until after contract completion. If the Contractor does not achieve contract completion within the time required by this contract, the Government shall be entitled, after providing notice to the Contractor, to complete any work remaining unfinished. The Contractor shall be liable to the Government for all costs incurred by the Government to complete such work.

(End of clause)

■ 18. Add section 552.232–5 to read as follows:

552.232–5 Payments under Fixed-Price Construction Contracts.

As prescribed in 532.111, insert the following clause:

Payments Under Fixed-Price Construction Contracts (Mar 2019)

FAR 52.232–5, Payments under Fixed-Price Construction Contracts, is supplemented as follows:

(a) Before submitting a request for payment, the Contractor shall, unless directed otherwise by the Contracting Officer, attend pre-invoice payment meetings, as scheduled, with the designated Government representative for the purpose of facilitating review and approval of payment requests. Payment meetings will be conducted and may be in person. The Contractor shall provide documentation to support the prospective payment request.

(b) The Contractor shall submit its invoices to the Contracting Officer, unless directed otherwise by the Contracting Officer. Separate payment requests shall be submitted for progress payments, payments of retainage, and partial or final payments.

(c) The Contractor shall use GSA Form 2419 *Certification of Progress Payments Under Fixed-Price Construction Contracts* to provide the certification required under FAR 52.232–5(c).

(d) The Contractor shall use GSA Form 1142 *Release of Claims* to provide the certification required under FAR 52.232–5(h).

(e) If an invoice does not meet the requirements of FAR 52.232–27 and GSAM

552.232–27, the Contracting Officer may return the invoice to the Contractor without payment for correction. If the Contracting Officer disputes the requested payment amount, the Government may pay the portion of the requested payment that is undisputed.

(f) GSA will not be obligated to issue final payment unless the Contractor has furnished to the Contracting Officer a release of claims against the Government relating to the contract, and submitted all required product warranties, as-built drawings, operating manuals, and other items as specified in the contract. The Contractor may reserve from the release specific claims only if such claims are explicitly identified with stated claim amounts.

(End of clause)

■ 19. Add sections 552.236–6, 552.236–11, 552.236–15, and 552.236–21 to read as follows:

552.236–6 Superintendence by the Contractor.

As prescribed in 536.506, insert the following clause:

Superintendence by the Contractor (Mar 2019)

The requirements of the clause entitled ''Superintendence by the Contractor'' at FAR 52.236–6, are supplemented as follows:

(a) The Contractor shall employ sufficient management and contract administration resources, including personnel responsible for project management, field superintendence, change order administration, estimating, coordination, inspection, and quality control, to ensure the proper execution and timely completion of the contract. The Contractor shall designate a principal of the firm or other senior management official to provide executive oversight and problem resolution resources to the project for the life of the contract.

(b) The Contractor shall employ, and require its subcontractors to employ, qualified personnel to perform the contract. The Government reserves the right to exclude, or remove from the site or building, any personnel for reasons of incompetence, carelessness, or insubordination, who violate rules and regulations concerning conduct on federal property, or whose continued employment on the site is otherwise deemed by the Government to be contrary to the public interest.

(c) The Contractor shall be responsible for coordinating all activities of subcontractors, including all of the following activities:

(1) Preparation of shop drawings produced by different subcontractors where their work interfaces or may potentially conflict or interfere.

(2) Scheduling of work by subcontractors.

(3) Installation of work by subcontractors.

(4) Use of the project site for staging and logistics.

(d) Repeated failure or excessive delay to meet the superintendence requirements by the Contractor may be deemed a default for the purposes of the termination for default clause.

(End of clause)

552.236–11 Use and Possession Prior to Completion.

As prescribed in 536.511, insert the following clause:

Use and Possession Prior to Completion (Mar 2019)

Exercise by the Government of the right conferred by FAR 52.236–11 shall not relieve the Contractor of responsibility for completing any unfinished components of the work.

(End of clause)

552.236–15 Schedules for Construction Contracts.

As prescribed in 536.515, insert the following clause:

Schedules for Construction Contracts (Mar 2019)

The requirements, of the clause entitled ''Schedules for Construction Contracts'' at FAR 52.236–15, are supplemented as follows:

(a) *Purpose.* The project schedule shall be a rational, reasonable, and realistic plan for completing the work, and conform to the requirements specified in this clause and elsewhere in the contract. The Contractor understands and acknowledges that the preparation and proper management of the project schedule is a material component of the contract.

(b) *Use of the schedule.* The Contracting Officer shall be entitled, but not required, to rely upon the project schedule to evaluate the Contractor's progress, evaluate entitlement to extensions of time, and determine the criticality or float of any activities described in such project schedule.

(c) *Submission.* Prior to notice to proceed, or such other time as may be specified in the contract, the Contractor shall submit the project schedule.

(d) *Milestones.* The project schedule shall incorporate milestone events specified in the contract, including, as applicable, notice to proceed, substantial completion, and milestones related to specified work phases and site restrictions. The project schedule shall also include Contractor-defined milestones to identify target dates for critical events, based upon the Contractor's chosen sequence of work.

(e) *Activities.* The project schedule shall depict all major activities necessary to complete the work.

(f) *Schedule of values.* (1) The Contractor shall prepare and submit for approval a cost breakdown of the Contract price, to be referred to as the ''schedule of values'', assigning values to each major activity necessary to complete the work.

(2) Values must include all direct and indirect costs, although a separate value for bond costs may be established.

(3) The schedule of values must contain sufficient detail to enable the Contracting Officer to evaluate applications for payment.

(g) *Conflicting terms.* (1) If at any time the Contracting Officer finds that the project schedule does not comply with any contract requirement, the Contracting Officer will provide written notice to the Contractor.

(2) Within 30 calendar days of written notice, or such other time as may be specified, from the Contracting Officer, the Contractor shall take one of the following actions:

(i) Revise the project schedule.

(ii) Adjust activity progress.

(iii) Provide sufficient information demonstrating compliance.

(3) If the Contractor fails to sufficiently address the Contracting Officer's exceptions to the project schedule, the Contracting Officer may—

(i) Withhold retainage until the project is substantially complete or until such time as the Contractor has complied with project schedule requirements; or

(ii) Terminate the contract for default.

(h) *Revisions to the schedule.* If the Contractor revises the project schedule after initial approved submission, the Contractor shall provide in writing a narrative describing the substance of the revision, the rationale for the revision, and the impact of the revision on the projected substantial completion date and the available float for all activities. The addition of detail to prospective activities shall not be deemed a revision if the overall duration of the detailed activity does not change.

(i) *Updates.* Unless a different period for updates is specified elsewhere, the Contractor shall update the project schedule weekly to reflect actual progress in completing the work, and submit the updated project schedule by the following Monday.

(End of clause)

Alternate I (Mar 2019). As prescribed in 536.515(a), substitute the following paragraphs (c), (e), (h), and (i) for paragraphs (c), (e), (h), and (i) of the basic clause:

(c) *Submission.* Within 30 calendar days of notice to proceed, or such other time as may be specified in the contract, the Contractor shall submit the project schedule, together with a written narrative describing the major work activities, activities on the critical path, and major constraints underlying the sequence and logic of the project schedule.

(e) *Activities.* (1) The Contractor shall use a critical path method project schedule to plan, coordinate, and perform the work.

(2) The project schedule shall depict all activities necessary to complete the work, including, as applicable, all submittal and submittal review activities, all procurement activities, and all field activities, including mobilization, construction, start-up, testing, balancing, commissioning, and punchlist.

(3) Activities shall be sufficiently detailed and limited in duration to enable proper planning and coordination of the work, effective evaluation of the reasonableness and realism of the project schedule, accurate monitoring of progress, and reliable analysis of schedule impacts.

(4) Activity durations shall be based upon reasonable and realistic allocation of the resources required to complete each activity, given physical and logistical constraints on the performance of the work. All logic shall validly reflect physical or logistical constraints on relationships between

activities. Except for the first and last activities in the project schedule, each activity shall have at least one predecessor and one successor relationship to form a logically connected network plan from notice to proceed to the contract completion date.

(h) *Revisions to the schedule.* (1) The Contractor should anticipate that the initial submittal of the project schedule will be subject to review and may require revision. The Contractor shall devote sufficient resources for meetings, revisions, and resubmissions of the project schedule to address any exceptions taken to the initial submittal. The Contractor understands and acknowledges that the purpose of the initial review and resolution of exceptions is to maximize the usefulness of the project schedule for contract performance.

(2) If the Contractor revises the project schedule after initial approved submission, the Contractor shall provide in writing a narrative describing the substance of the revision, the rationale for the revision, and the impact of the revision on the projected substantial completion date and the available float for all activities. The addition of detail to prospective activities shall not be deemed a revision if the overall duration of the detailed activity does not change.

(i) *Updates.* Unless a different period for updates is specified elsewhere, the Contractor shall update the project schedule monthly to reflect actual progress in completing the work, and submit the updated project schedule within 5 working days of the end of each month.

Alternate II (Mar 2019). As prescribed in 536–515(b), substitute the following paragraphs (c), (e), and (i) for paragraphs (c), (e), and (i) of the basic clause:

(c) *Submission.* (1) Within 30 calendar days of notice to proceed, or such other time as may be specified in the contract, the Contractor shall submit the project schedule, together with a written narrative describing the major design and construction activities. The project schedule may indicate construction activities in summary form prior to completion of final design documents.

(2) Within 30 calendar days of completion of final design documents, the Contractor shall submit a revised project schedule depicting all activities necessary to complete construction work activities, together with a written narrative describing the major work activities, activities on the critical path, and major constraints underlying the sequence and logic of the project schedule.

(e) *Activities.* (1) The Contractor shall use a critical path method project schedule to plan, coordinate, and perform the work.

(2) Activities shall be sufficiently detailed and limited in duration to enable proper planning and coordination of the work, effective evaluation of the reasonableness and realism of the project schedule, accurate monitoring of progress, and reliable analysis of schedule impacts.

(3) Activity durations shall be based upon reasonable and realistic allocation of the resources required to complete each activity, given physical and logistical constraints on the performance of the work. All logic shall validly reflect physical or logistical constraints on relationships between activities. Except for the first and last activities in the project schedule, each activity shall have at least one predecessor and one successor relationship to form a logically connected network plan from notice to proceed to the contract completion date.

(i) *Updates.* Unless a different period for updates is specified elsewhere, the Contractor shall update the project schedule monthly to reflect actual progress in completing the work, and submit the updated project schedule within 5 working days of the end of each month.

552.236–21 Specifications and Drawings for Construction.

As prescribed in 536.521, insert the following clause:

Specifications and Drawings for Construction (Mar 2019)

The requirements of the clause entitled ''Specifications and Drawings for Construction'' at FAR 52.236–21, are supplemented as follows:

(a) In case of difference between small and large-scale drawings, the large-scale drawings shall govern.

(b) Schedules on any contract drawing shall take precedence over conflicting information on that or any other contract drawing.

(c) On any of the drawings where a portion of the work is detailed or drawn out and the remainder is shown in outline, the parts detailed or drawn out shall apply also to all other like portions of the work.

(d) Where the word ''similar'' occurs on the drawings, it shall have a general meaning and not be interpreted as being identical, and all details shall be worked out in relation to their location and their connection with other parts of the work.

(e) Standard details or specification drawings are applicable when listed, bound with the specifications, noted on the drawings, or referenced elsewhere in the specifications.

(1) Where notes on the specification drawings indicate alterations, such alterations shall govern.

(2) In case of difference between standard details or specification drawings and the specifications, the specifications shall govern.

(3) In case of difference between the standard details or specification drawings and the drawings prepared specifically for this contract, the drawings prepared specifically for this contract shall govern.

(f) Different requirements within the contract documents shall be deemed inconsistent only if compliance with both cannot be achieved.

(g) Unless otherwise noted, the drawings shall be interpreted to provide for a complete construction, assembly, or installation of the work, without regard to the detail with which material components are shown in the drawings.

(End of clause)

Alternate I (Mar 2019). As prescribed in 536.521, add the following paragraph to the basic clause:

(h) For the purposes of this clause, specifications and drawings refer only to those included among the contract documents, and not to those produced by the Contractor pursuant to its responsibilities under the contract.

552.236–70 [Removed]

■ 20. Remove section 552.236–70.

552.236–71 [Redesignated as 552.236–70 and Amended]

■ 21. Redesignate section 552.236–71 as section 552.236–70 and revise newly redesignated section 552.236–70 to read as follows:

552.236–70 Authorities and Limitations.

As prescribed in 536.570, insert the following clause:

Authorities and Limitations (Mar 2019)

(a) All work shall be performed under the general direction of the Contracting Officer. The Contracting Officer alone shall have the power to bind the Government and to exercise the rights, responsibilities, authorities and functions vested in him by the contract documents. The Contracting Officer may designate contracting officer's representatives (CORs) to act for him. Wherever any provision in this contract specifies an individual (such as, but not limited to, Construction Engineer, Resident Engineer, Inspector or Custodian) or organization, whether Governmental or private, to perform any act on behalf of or in the interests of the Government, that individual or organization shall be deemed to be the COR under this contract but only to the extent so specified. The Contracting Officer may, at any time during the performance of this contract, vest in any such COR additional power and authority to act for him or designate additional CORs, specifying the extent of their authority to act for him. A copy of each document vesting additional authority in a COR or designating an additional COR shall be furnished to the Contractor.

(b) The Contractor shall perform the contract in accordance with any order (including but not limited to instruction, direction, interpretation, or determination) issued by a COR in accordance with his authority to act for the Contracting Officer; but the Contractor assumes all the risk and consequences of performing the contract in accordance with any order (including but not limited to instruction, direction, interpretation, or determination) of anyone not authorized to issue such order.

(c) If the Contractor receives written notice from the Contracting Officer of non-compliance with any requirement of this contract, the Contractor must initiate action as may be appropriate to comply with the specified requirement as defined in the notice. In the event the Contractor fails to initiate such action within a reasonable period of time as defined in the notice, the Contracting Officer shall have the right to order the Contractor to stop any or all work under the contract until the Contractor has complied or has initiated such action as may

be appropriate to comply within a reasonable period of time. The Contractor will not be entitled to any extension of contract time or payment for any costs incurred as a result of being ordered to stop work for such cause.

(End of clause)

■ 22. Add new section 552.236–71 to read as follows:

552.236–71 Contractor Responsibilities.

As prescribed in 536.571, insert the following clause:

Contractor Responsibilities (Mar 2019)

(a) The Contractor shall be responsible for compliance with applicable codes, standards and regulations pertaining to the health and safety of personnel during performance of the contract.

(b) Unless expressly stated otherwise in the contract, the Contractor shall be responsible for all means and methods employed in the performance of the contract.

(c) The Contractor shall immediately bring to the Contracting Officer's attention any hazardous materials or conditions not disclosed in the contract documents discovered by or made known to the Contractor during the performance of the contract.

(d) The Contractor shall be responsible for providing professional design services in connection with performance of the work or portions of the work only if this responsibility is expressly stated in the contract, and the contract documents provide the performance and design criteria that such services will be required to satisfy. In the performance of such work, the Contractor shall be responsible for retaining licensed design professionals, who shall sign and seal all drawings, calculations, specifications and other submittals that the licensed professional prepares. The Contractor shall be responsible for, and GSA shall be entitled to rely upon, the adequacy and completeness of all professional design services provided under the contract.

(e) Where installation of separate work components as shown in the contract will result in conflict or interference between such components or with existing conditions, including allowable tolerances, it is the Contractor's responsibility to bring such conflict or interference to the attention of the Contracting Officer and seek direction before fabrication, construction, or installation of any affected work. If the Contractor fabricates, constructs, or installs any work prior to receiving such direction, the Contractor shall be responsible for all cost and time incurred to resolve or mitigate such conflict or interference.

(f) Where drawings show work without specific routing, dimensions, locations, or position relative to other work or existing conditions, and such information is not specifically defined by reference to specifications or other information supplied in the contract, the Contractor is responsible for routing, dimensioning, and locating such work in coordination with other work or existing conditions in a manner consistent with contract requirements.

(g) It is not the Contractor's responsibility to ensure that the contract documents comply with applicable laws, statutes, building codes and regulations. If it comes to the attention of the Contractor that any of the contract documents do not comply with such requirements, the Contractor shall promptly notify the Contracting Officer in writing. If the Contractor performs any of the work prior to notifying and receiving direction from the Contracting Officer, the Contractor shall assume full responsibility for correction of such work, and any fees or penalties that may be assessed for non-compliance.

(End of clause)

Alternate I (Mar 2019). As prescribed in 536.571, delete paragraphs (d), (e), (f), and (g) of the basic clause, and insert paragraphs (d), (e), (f), and (g) as follows:

(d) The Contractor shall be responsible for providing professional design services unless this responsibility is expressly excluded from the contract. In the performance of such work, the Contractor shall be responsible for retaining licensed design professionals, who shall sign and seal all drawings, calculations, specifications and other submittals that the licensed professional prepares. The Contractor shall be responsible for, and GSA shall be entitled to rely upon, the adequacy and completeness of all professional design services provided under the contract.

(e) The Contractor's responsibilities include the responsibilities of the Architect-Engineer Contractor, as specified in FAR 52.236–23.

(f) The Contractor shall include in all subcontracts that require professional design services express terms establishing GSA as a third party beneficiary. No other person shall be deemed a third party beneficiary of the contract.

(g) The Contractor shall determine whether the information contained in the contract documents complies with applicable laws, statutes, building codes and regulations. If it comes to the attention of the Contractor that any of the contract documents do not comply with such requirements, the Contractor shall promptly notify the Contracting Officer in writing. If the Contractor performs any of the work prior to notifying and receiving direction from the Contracting Officer, the Contractor shall assume full responsibility for correction of such work, and any fees or penalties that may be assessed for non-compliance.

■ 23. Add section 552.236–72 to read as follows:

552.236–72 Submittals.

As prescribed in 536.572, insert the following clause:

Submittals (Mar 2019)

(a) The Contractor shall prepare and submit all submittals as specified in the contract or requested by the Contracting Officer.

(1) Submittals may include: safety plans, schedules, shop drawings, coordination drawings, samples, calculations, product information, or mockups.

(2) Shop drawings may include fabrication, erection and setting drawings, manufacturers' scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, and performance and test data.

(b) Unless otherwise provided in this contract, or otherwise directed by the Contracting Officer, submittals shall be submitted to the Contracting Officer.

(c) The Contractor shall be entitled to receive notice of action on submittals within a reasonable time, given the volume or complexity of the submittals and the criticality of the affected activities to substantial completion as may be indicated in the project schedule.

(d) Review of submittals will be general and shall not be construed as permitting any departure from the contract requirements.

(e) The Contractor shall not proceed with construction work or procure products or materials described or shown in submittals until the submittal is reviewed. Any work or activity undertaken prior to review shall be at the Contractor's risk. Should the Contracting Officer subsequently determine that the work or activity does not comply with the contract, the Contractor shall be responsible for all cost and time required to comply with the Contracting Officer's determination. The Contracting Officer shall have the right to order the Contractor to cease execution of work for which submittals have not been reviewed. The Government shall not be liable for any cost or delay incurred by the Contractor attributable to the proper exercise of this right.

(f) The Contractor shall identify, in writing, all deviations or changes in resubmitted submittals. In the absence of such written notice, review of a resubmission shall not include or apply to such deviations or changes.

(End of clause)

Alternate I (Mar 2019) As prescribed in 536.572, add the following paragraph to the basic clause:

(g) The Contractor shall submit design documents for review in accordance with PBS–P100. The Government shall review submittals for the limited purpose of verifying that the documents conform to the design criteria expressed in the contract documents.

552.236–73 through 552.236–81 [Removed]

■ 24. Remove sections 552.236–73 through 552.236–81.

552.236–82 [Redesignated as 552.236–73 and Amended]

■ 25. Redesignate section 552.236–82 as section 552.236–73 and revise the introductory text of newly redesignated section 552.236–73 to read as follows:

552.236–73 Subcontracts.

As prescribed in 536.573, insert the following clause:

* * * * *

■ 26. Add new sections 552.236–74 through 552.236–77 to read as follows:

552.236–74 Evaluation of Options.

As prescribed in 536.270–5(a), insert the following provision:

Evaluation of Options (Mar 2019)

The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

(End of provision)

552.236–75 Evaluation Exclusive of Options.

As prescribed in 536.270–5(b), insert the following provision:

Evaluation Exclusive of Options (Mar 2019)

The Government will evaluate offers for award purposes by including only the price for the basic requirement. Options will not be included in the evaluation for award purposes.

(End of provision)

552.236–76 Basis of Award—Sealed Bidding Construction

As prescribed in 536.270–5(c), insert the following provision:

Basis of Award—Sealed Bidding Construction (Mar 2019)

A bid may be rejected as nonresponsive if the bid is materially unbalanced as to bid prices. A bid is unbalanced when the bid is based on prices significantly less than cost for some work and significantly overstated for other work.

(End of provision)

Alternate I (Mar 2019). As prescribed in 536.270–5(c), designate the basic provision as paragraph (a) and add the following paragraph to the basic provision:

(b)(1) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for:

(i) The base requirement; plus

(ii) All options designated to be evaluated.

(2) The evaluation of options will not obligate the Government to exercise the options.

552.236–77 Government's Right to Exercise Options.

As prescribed in 536.270–5(d), insert the following clause:

Government's Right to Exercise Options (Mar 2019)

(a) The Government may exercise any option in writing in accordance with the terms and conditions of the contract within _____ [*insert the period of time within which the Contracting Officer may exercise the option*]. Unless otherwise specified, options may be exercised within 90 calendar days of contract award.

(b) If the Government exercises the option, the contract shall be considered to include this option clause.

(End of clause)

■ 27. Amend section 552.243–71 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (a) ''FAR 52.243–4,'' and adding ''FAR 52.243–4, the ''Changes and Changed Conditions'' clause prescribed by FAR 52.243–5,'' in its place; and

■ c. Revising paragraph (c).

The revisions read as follows:

552.243–71 Equitable Adjustments.

* * * * *

Equitable Adjustments (Mar 2019)

* * * * *

(c) The proposal shall be submitted within the time specified in the ''Changes'', ''Changes and Changed Conditions'', or ''Differing Site Conditions'' clause, as applicable, or such other time as may reasonably be required by the Contracting Officer.

* * * * *

[FR Doc. 2019–01565 Filed 2–12–19; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160426363–7275–02]

RIN 0648–XG769

Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; 2018–2019 Commercial Run-Around Gillnet Closure for King Mackerel

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) through this temporary rule for commercial harvest of king mackerel in the southern zone of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) using run-around gillnet gear. NMFS has determined that the commercial annual catch limit (equivalent to the commercial quota) for king mackerel using run-around gillnet gear in the southern zone of the Gulf EEZ has been reached. Therefore, NMFS closes the southern zone to commercial king mackerel fishing using run-around gillnet gear in the Gulf EEZ on February 8, 2019. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective from 12 p.m., eastern time, on February 8, 2019, until 6 a.m., eastern time, on January 21, 2020.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *kelli.odonnell@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 Gulf migratory group king mackerel (Gulf king mackerel) below apply as either round or gutted weight.

King mackerel in the Gulf is divided into western, northern, and southern zones, which have separate commercial quotas. The southern zone for Gulf king mackerel encompasses an area of the EEZ south of a line extending due west from the boundary of Lee and Collier Counties on the Florida west coast, and south of a line extending due east from the boundary of Monroe and Miami-Dade Counties on the Florida east coast, which includes the EEZ off Collier and Monroe Counties in south Florida (50 CFR 622.369(a)(1)(iii)).

The commercial quota for Gulf king mackerel in the southern zone is 585,900 lb (265,760 kg) for vessels using run-around gillnet gear (50 CFR 622.384(b)(1)(iii)(B)), for the current fishing year, July 1, 2018, through June 30, 2019.

Regulations at 50 CFR 622.8(b) and 622.388(a)(1) require NMFS to close any component of the king mackerel commercial sector when its quota has been reached, or is projected to be reached, by filing a notification with the Office of the Federal Register. NMFS has determined that the Gulf king mackerel commercial quota for vessels using run-around gillnet gear in the southern zone has been reached. Accordingly, commercial fishing using such gear in the southern zone is closed at 12 p.m., eastern time, on February 8, 2019, until 6 a.m., eastern time, on January 21, 2020, the beginning of the next fishing season, *i.e.,* the day after the 2020 Martin Luther King, Jr. Federal holiday. Vessel operators that have been issued

a Federal commercial permit to harvest Gulf king mackerel using run-around gillnet gear in the southern zone must have landed ashore and bartered, traded, or sold such king mackerel prior to 12 p.m., eastern time, on February 8, 2019.

Persons aboard a vessel for which a Federal commercial permit for Gulf king mackerel has been issued, except persons who also possess a king mackerel gillnet permit, may fish for or retain Gulf king mackerel harvested using hook-and-line gear in the southern zone unless the commercial quota for hook-and-line gear has been met and the hook-and-line component of the commercial sector has been closed. In addition, as long as the recreational sector for Gulf king mackerel is open (50 CFR 622.384(e)(1)), a person aboard a vessel that has a valid Federal commercial gillnet permit for king mackerel may continue to retain king mackerel under the bag and possession limits set forth in 50 CFR 622.382(a)(1)(ii) and (a)(2).

During the closure, Gulf king mackerel harvested using run-around gillnet gear in the southern zone may not be purchased or sold. This prohibition does not apply to Gulf king mackerel harvested using run-around gillnet gear in the southern zone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor (50 CFR 622.384(e)(2)).

Classification

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

This action is taken under 50 CFR 622.8(b) and 622.388(a)(1) 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 prior notice and opportunity for public comment.

This action responds to the best scientific information available. The NOAA Assistant Administrator for Fisheries (AA) finds that the need to immediately implement this action to close the commercial fishery component that uses run-around gillnet gear 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), because prior notice and opportunity for public comment on this temporary rule is unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the commercial quota and the associated AM has already been subject to notice and comment, and all that remains is to notify the public of the closure. Prior notice and opportunity for public comment is contrary to the public interest, because any delay in the closure of the commercial harvest could result in the commercial quota being exceeded. There is a need to immediately implement this action to protect the king mackerel resource, because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment on this action would require time and would potentially result in a harvest well in excess of the established quota.

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

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

Dated: February 8, 2019.

Alan D. Risenhoover,

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

[FR Doc. 2019–02193 Filed 2–8–19; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042–8884–02]

RIN 0648–XG787

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category Fishery

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

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS transfers 26 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category January 2019 period (from January 1 through March 31, 2019, or until the available subquota for this period is reached, whichever comes first). This action is based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: The quota transfer is effective February 8, 2019, through March 31, 2019.

FOR FURTHER INFORMATION CONTACT: Uriah Forest-Bulley, 978–675–2154, or Sarah McLaughlin, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014). NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

NMFS published a final rule (*i.e.,* the ''quota rule'' (83 FR 51391, October 11, 2018)) that increased the baseline U.S. BFT quota from 1,058.79 mt to 1,247.86 mt consistent with a 2017 ICCAT recommendation and accordingly increased the domestic category quotas for 2018, until changed via a subsequent ICCAT recommendation. Within the General category quota, each time period (January, June through August, September, October through November, and December) is further allocated a subquota or portion of the annual General category quota. Although it is called the ''January'' subquota, the regulations allow the General category fishery under this quota to continue until the subquota is reached or March 31, whichever comes first. The baseline subquotas for each time period are as follows: 29.5 mt for January; 277.9 mt for June through August; 147.3 mt for September; 72.2 mt for October through November; and 28.9 mt for December. Any unused General category quota rolls forward from one time period to

the next and is available for use in subsequent time periods within the fishing year, which coincides with the calendar year. Effective January 1, 2019, NMFS transferred 19.5 mt of the 28.9-mt General category quota allocated for the December 2019 period to the January 2019 period, resulting in an adjusted subquota of 49 mt for the January period and a subquota of 9.4 mt for the December 2018 period (83 FR 67140, December 28, 2018).

Transfer of 26 mt From the Reserve Category to the General Category

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering regulatory determination criteria at § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to the General category fishery. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT over the longest time-period allowable would support the collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS considered the catches of the General category quota to date (including during the winter fishery in the last several years), and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). As of February 5, 2019, the General category landed 37 mt (76 percent) of its adjusted January 2019 subquota of 49 mt. Without a quota transfer, NMFS would have to close the January 2019 General category fishery, while unused quota remains in the Reserve category and while commercial-sized BFT remain available in the areas where General category permitted vessels operate at this time of year.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. NMFS anticipates that all 26 mt of quota will be used by March 31. In the unlikely event that any of this quota is unused by March 31, the unused quota will roll forward to the next subperiod within the calendar year (*i.e.,* the June through August time period), and NMFS anticipates that it would be used by the subquota category before the end of the fishing year.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2019 landings and dead discards. In the last several years, total U.S. BFT landings have been below the total available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2019 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and NMFS anticipates having sufficient quota to do that, even with this 26-mt transfer to the General category.

This transfer would be consistent with the current U.S. quota, which was established and analyzed in the 2018 BFT quota final rule, and with objectives of the 2006 Consolidated HMS FMP and amendments (§ 635.27(a)(8)(v) and (vi)). At this time, there is a relatively small amount of quota in the Reserve category available to transfer to other categories or use for scientific research and for prudent responsive management. In the past, NMFS has conducted the annual reallocation of unused Purse Seine category quota to the Reserve category early in the calendar year, which resulted in more Reserve category quota available at this time of year. However, a government shutdown occurred due to a lack of appropriations during December 2018-January 2019, which resulted in an administrative backlog that will delay that action for 2019. Given that consideration, current catch rates, and the availability of fish on the fishing grounds, NMFS is moving forward with this inseason transfer based on the immediate needs of the General category fishery. Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota equitably without exceeding it based on the goals of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)).

NMFS also anticipates that some underharvest of the 2018 adjusted U.S. BFT quota will be carried forward to 2019 and placed in the Reserve category, in accordance with the regulations, later this year. This, in addition to the fact that any unused General category quota will roll forward to the next subperiod within the calendar year and NMFS' plan to actively manage the subquotas to avoid any exceedances, makes it likely that General category quota will remain available through the end of 2019 for December fishery participants. NMFS also may transfer unused quota from the Reserve or other categories, inseason, based on consideration of the determination criteria, as it did in 2018 (*i.e.,* transferred 60 mt from the Reserve category effective September 18, 2018 (83 FR 47843, September 21, 2018); 40 mt form the Harpoon category and 15 mt from the Reserve category effective October 4, 2018 (83 FR 50857, October 10, 2018); and 9.9 mt from the Harpoon category and 129.2 mt from the General category effective November 29, 2018 (83 FR 62512, December 4, 2018). NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in 2019, through active inseason management measures, such as retention limit adjustments and/or the timing of quota transfers, as practicable. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds to the extent consistent with the available amount of transferrable quota and other management objectives, while avoiding quota exceedance.

Based on the considerations above, NMFS is transferring 26 mt from the Reserve category to the General category for the January 2019 fishery, resulting in a subquota of 75 mt for the January 2019 fishery and 3.5 mt in the Reserve category.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded

dead within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov* or by using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional action (*e.g.,* quota adjustment or closure) is necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason quota transfers to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. These fisheries are currently underway and the currently available quota for the subcategory is projected to be reached shortly. Affording prior notice and opportunity for public comment to implement the quota transfer is impracticable and contrary to the public interest as such a delay would result in would likely result in exceedance of the General category January fishery subquota or earlier closure of the fishery while fish are available on the fishing grounds. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there also is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.27(a)(9) (Inseason adjustments) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: February 8, 2019.

Alan D. Risenhoover,

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

[FR Doc. 2019–02190 Filed 2–8–19; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170816769–8162–02]

RIN 0648–XG973

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2019 total allowable catch of pollock for Statistical Area 620 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 8, 2019, through 1200 hrs, A.l.t., March 10, 2019.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The A season allowance of the 2019 total allowable catch (TAC) of pollock in Statistical Area 620 of the GOA is 23,236 metric tons (mt) as established by the final 2018 and 2019 harvest specifications for groundfish in the GOA (83 FR 8768, March 1, 2018) and inseason adjustment (84 FR 33, January 4, 2019).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2019 TAC of pollock in Statistical Area 620 of the GOA is necessary to account for the incidental catch in other anticipated fisheries. Therefore, the Regional Administrator is establishing a directed fishing allowance of 23,000 mt and is setting aside the remaining 236 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 620 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 7, 2019.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 8, 2019.

Alan D. Risenhoover,

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

[FR Doc. 2019–02148 Filed 2–8–19; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170817779–8161–02]

RIN 0648–AKR–A001

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 Feet (18.3 Meters) Length Overall Using Jig or Hook-and-Line Gear in the Bogoslof Pacific Cod Exemption Area in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the limit of Pacific cod for catcher vessels less than 60 feet (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 10, 2019, through 2400 hrs, A.l.t., December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

In accordance with § 679.22(a)(7)(i)(C)(*2*), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that 113 metric tons of Pacific cod have been caught by catcher vessels less than 60 feet (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof exemption area described at § 679.22(a)(7)(i)(C)(*1*). Consequently, the Regional Administrator is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishery closure of Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 7, 2019.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.22 and is exempt from review under Executive Order 12866.

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

Dated: February 8, 2019.

Alan D. Risenhoover,

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

[FR Doc. 2019–02195 Filed 2–8–19; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170816769–8162–02]

RIN 0648–XG776

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2019 total allowable catch of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 10, 2019, through 1200 hrs, A.l.t., March 10, 2019.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The A season allowance of the 2019 total allowable catch (TAC) of pollock in Statistical Area 630 of the GOA is 7,593 metric tons (mt) as established by the final 2018 and 2019 harvest specifications for groundfish in the GOA (83 FR 8768, March 1, 2018) and inseason adjustment (84 FR 33, January 4, 2019).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2019 TAC of pollock in Statistical Area 630 of the GOA is necessary to account for the incidental catch in other anticipated fisheries. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,300 mt and is setting aside the remaining 293 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and

opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 7, 2019.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 8, 2019.

Alan D. Risenhoover,

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

[FR Doc. 2019–02171 Filed 2–8–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 30
Wednesday, February 13, 2019

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AN76

Prevailing Rate Systems; Special Appropriated Fund Wage Schedules for U.S. Insular Areas

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule that would amend the special appropriated fund wage schedules for U.S. insular areas, to designate the Department of Defense (DOD) as the sole lead agency for American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Midway, and the U.S. Virgin Island. The Federal Prevailing Rate Advisory Committee (FPRAC) approved this change by consensus.

DATES: We must receive comments on or before March 15, 2019.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, by telephone at (202) 606–2838 or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: OPM is issuing a proposed rule to amend section 532.259(a) of title 5, Code of Federal Regulations. This section provides that lead agencies establish and issue special wage schedules for U.S. civil service wage employees in certain U.S. insular areas.

When the Federal Wage System (FWS) was established in 1972, certain agency policies and practices, including the special wage schedules for U.S. civil service wage employees in certain U.S. insular areas, were continued as special schedules under the FWS. These U.S. insular areas special schedules are currently codified in 5 CFR 532.259. Section 532.259(a) lists DOD as the lead agency for Guam, Midway, and the U.S. Virgin Islands; the Department of Transportation (DOT) as the lead agency for American Samoa; and the Department of the Interior (DOI) as the lead agency for the Commonwealth of the Northern Mariana Islands. DOT was given lead agency responsibility for American Samoa and DOI was given lead agency responsibility for the Commonwealth of the Northern Mariana Islands because they were the only agencies with wage employees in those duty locations at the time the original lead agency determinations were made.

The Department of the Army now has five wage employees in American Samoa. DOI has two wage employees in American Samoa and four wage employees in the Commonwealth of the Northern Mariana Islands. DOT no longer has wage employees in American Samoa.

Under 5 CFR 532.259(b), the special schedules for U.S. insular areas must be established at the same time and with rates identical to the foreign area appropriated fund wage schedules established under section 532.255. DOD is the lead agency for the foreign area appropriated fund wage schedules.

Since these U.S. insular areas special schedules must be identical to the foreign wage schedule issued by DOD, the administration of the U.S. insular areas wage schedules would be streamlined if DOD becomes the sole lead agency issuing these special schedules. DOT and DOI agree with this determination.

FPRAC, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, reviewed and concurred by consensus with these changes. These changes would apply on the first day of the first applicable pay period beginning on or after 30 days following publication of the final regulations.

Regulatory Impact Analysis

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

Reducing Regulation and Controlling Regulatory Costs

This proposed rule is not expected to be subject to the requirements of E.O. 13771 because this proposed rule is not significant under E.O. 12866.

Regulatory Flexibility Act

OPM certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

Federalism

We have examined this rulemaking in accordance with Executive Order 13132, Federalism, and have determined that this proposed rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This proposed regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Act of 1995

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

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory

Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act

This proposed rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

Accordingly, OPM is proposing to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. Section 532.259 is amended by revising paragraph (a) to read as follows:

§ 532.259 Special appropriated fund wage schedules for U.S. insular areas

(a) The lead agency shall establish and issue special wage schedules for U.S. civil service wage employees in certain U.S. insular areas. The Department of Defense is the lead agency for American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Midway, and the U.S. Virgin Islands. These schedules shall provide rates of pay for nonsupervisory, leader, supervisory, and production facilitating employees.

* * * * *

[FR Doc. 2019–02113 Filed 2–12–19; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–1073; Airspace Docket No. 18–AEA–17]

RIN 2120–AA66

Proposed Amendment of VOR Federal Airways V–8, V–92, V–214, and V–438 in the Vicinity of Grantsville, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify VHF Omnidirectional Range (VOR) Federal airways V–8, V–92, V–214, and V–438 due to planned decommissioning of the Grantsville, MD, VOR/DME navigation aid which provides navigation guidance for segments of the routes.

DATES: Comments must be received on or before April 1, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1 (800) 647–5527 or (202) 366–9826. You must identify FAA Docket No. FAA–2018–1073; Airspace Docket No. 18–AEA–17 at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

FAA Order 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11C at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the VOR Federal airway route structure in the eastern United States to maintain the efficient flow of air traffic.

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2018–1073; Airspace Docket No. 18–AEA–17 and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2018–1073; Airspace Docket No. 18–AEA–17''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRM's

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and

5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018 and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify the descriptions of VOR Federal airways V–8, V–92, V–214, and V–438, due to the planned decommissioning of the Grantsville, MD, VOR/DME. The proposed route changes are described below.

V–8: V–8 currently consists of two sections with a gap in between. The first section extends between the intersection of radials from the Seal Beach, CA, VORTAC and the Ventura, CA, VOR/DME (*i.e.,* the charted DOYLE, CA, fix) and the Flag City, OH, VORTAC. The second section extends between the Briggs, OH, VOR/DME and the Washington, DC, VOR/DME. The FAA proposes to remove the airway segments that extend between the Briggs, OH, VOR/DME and the Martinsburg, WV, VORTAC. As amended, that portion of V–8 between the DOYLE, CA, fix and the Flag City, OH, VORTAC would remain unchanged. The second section of the airway would extend between the Martinsburg, WV, VORTAC and the Washington, DC, VOR/DME.

V–92: V–92 currently consists of two sections. The first section extends between the Chicago Heights, IL, VORTAC and the Goshen, IN, VORTAC. The second section extends between the Newcomerstown, OH, VOR/DME and the Armel, VA, VOR/DME. This proposal would remove the airway segments between the Bellaire, OH, VOR/DME and the Armel, VA, VOR/DME. As amended, V–92 would extend between Chicago Heights, IL, and Goshen, IN; and between Newcomerstown, OH and Bellaire, OH.

V–214: V–214 currently extends, in two sections, between the Kokomo, IN, VORTAC and the Muncie, IN, VOR/DME; and between the intersection of radials from the Appleton, OH, VORTAC and the Zanesville, OH, VOR/DME (*i.e.,* the charted GLOOM, OH, fix) and the Teterboro, NJ, VOR/DME. This proposal would remove the segments between the Bellaire, OH, VOR/DME and the Martinsburg, WV, VORTAC. As amended, V–214 would consists of three separate sections:

The first section would extend between Kokomo, IN and Goshen, IN (no change from current configuration). The second section would extend between the intersection of radials from the Appleton, OH, VORTAC and the Zanesville, OH, VOR/DME, and the Bellaire, OH, VOR/DME. The third section would extend between the Martinsburg, WV, VORTAC and the Teterboro, NJ, VOR/DME.

V–438: V–438 currently extends between the Grantsville, MD, VOR/DME and the intersection of radials from the Hagerstown, MD, VOR, and the Martinsburg, WV, VORTAC (*i.e.,* the charted LUCKE, VA, fix). This proposal would remove the airway segment between the Grantsville, MD, VOR/DME and the Hagerstown, MD, VOR. The amended V–438 would extend between the Hagerstown, MD, VOR, and the LUCKE, VA, fix.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document would be subsequently published in the Order.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–8 [Amended]

From INT Seal Beach, CA, 266° and Ventura, CA, 144° radials; Seal Beach; Paradise, CA; 35 miles, 7 miles wide (3 miles SE and 4 miles NW of centerline) Hector, CA; Goffs, CA; INT Goffs 033° and Morman Mesa, NV, 196° radials; Morman Mesa; Bryce Canyon, UT; Hanksville, UT; Grand Junction, CO; Rifle, CO; Kremmling, CO; Mile High, CO; Akron, CO; Hayes Center, NE; Grand Island, NE; Omaha, NE; Des Moines, IA; Iowa City, IA; Moline, IL; Joliet, IL; Chicago Heights, IL; Goshen, IN; to Flag City, OH. From Martinsburg, WV; to Washington, DC. The portion outside the United States has no upper limit.

V–92 [Amended]

From Chicago Heights, IL; to Goshen, IN. From Newcomerstown, OH; to Bellaire, OH.

V–214 [Amended]

From Kokomo IN, Marion, IN; to Muncie, IN. From INT Appleton, OH, 236° and Zanesville, OH, 274° radials; Zanesville; to Bellaire, OH. From Martinsburg, WV; INT Martinsburg 094° and Baltimore, MD, 300° radials; Baltimore; INT Baltimore 093° and Dupont, DE, 223° radials; Dupont; Yardley, PA; to Teterboro, NJ.

V–438 [Amended]

From Hagerstown, MD, to the INT of Hagerstown 157° and the Martinsburg, WV, 130° radials.

* * * * *

Issued in Washington, DC, on February 5, 2019.

Rodger A. Dean, Jr.,

Manager, Airspace Policy Group.

[FR Doc. 2019–02067 Filed 2–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 107

[Docket No.: 2018–1086; Notice No. 18–08]

RIN 2120–AL26

Safe and Secure Operations of Small Unmanned Aircraft Systems

AGENCY: Federal Aviation Administration (FAA).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FAA is considering additional rulemaking in response to public safety and national security concerns associated with the ongoing integration of unmanned aircraft systems (UAS) into the National Airspace System (NAS). The FAA is seeking information from the public in response to the questions contained in this ANPRM. Specifically, the FAA seeks comment on whether and in what circumstances the FAA should promulgate new rulemaking to require stand-off distances, additional operating and performance restrictions, the use of UAS Traffic Management (UTM), and additional payload restrictions. The FAA also seeks comment on whether it should prescribe design requirements and require that unmanned aircraft be equipped with critical safety systems.

DATES: Send comments on or before April 15, 2019.

ADDRESSES: Send comments identified by docket number FAA–2018–1086 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For small UAS policy questions concerning this ANPRM, contact Ben Walsh, Flight Technologies and Procedures Division, Federal Aviation Administration, 470 L'Enfant Plaza SW, Suite 4102, Washington, DC 20024; telephone 1–844–FLY–MY–UA; email *UAS-Security@faa.gov.*

SUPPLEMENTARY INFORMATION:

Tips for Preparing Your Comments. The FAA seeks public comment on the areas outlined within this ANPRM. The FAA also seeks comments on how this rulemaking could be implemented to meet the objective of the proposal in a manner that maximizes benefits without imposing excessive, unjustified, or unnecessary costs.

Specific questions are included in this ANPRM immediately following the discussion of the relevant issues. The FAA asks that commenters provide as much information as possible on any questions of interest to the commenter. In some areas, the FAA requests very specific information. Whenever possible, please provide citations and copies of any relevant studies or reports on which you rely, including cost data as well as any additional data which supports your comment. It is also helpful to explain the basis and reasoning underlying your comment. Each commenting party should include the identifying number of the specific question(s) to which it is responding.

The FAA will use comments to make decisions regarding the content and direction of potential notices of proposed rulemaking (NPRM) or other future rulemakings. Some proposals for addressing national security and other concerns may exceed the FAA's authority to regulate independently and may necessitate a broader Federal Executive or Legislative action. Comments, including proposals for rulemaking, will be considered within the context of the FAA's existing statutory authority.

I. Authority for This Rulemaking

This ANPRM is promulgated pursuant to 49 U.S.C. 40103(b)(1) and (2), which charge the FAA with issuing regulations: (1) To ensure the safety of aircraft and the efficient use of airspace; and (2) to govern the flight of aircraft for purposes of navigating, protecting and identifying aircraft, and protecting individuals and property on the ground. In addition, 49 U.S.C. 44701(a)(5) charges the FAA with prescribing regulations that the FAA finds necessary for safety in air commerce and national security.

The primary authority for this ANPRM is 49 U.S.C. 44807, which directs the Secretary of Transportation to determine whether ''certain unmanned aircraft systems may operate safely in the national airspace system [NAS].'' Section 44807 directs the Secretary to use a risk-based approach in making such determinations and provides such determinations may occur notwithstanding the completion of the comprehensive plan and rulemaking required in other sections of the statute. Section 44807(b) directs the Secretary to consider a specific list of factors in determining which types of UAS may operate safely: The Secretary must consider size, weight, speed, operational capability, proximity to airports and populated areas, operation over people, and operation within or beyond the visual line of sight, or operation during the day or night. The Secretary must determine, based on these factors, whether operations of the UAS do not create a hazard to users of the NAS or the public.

This action also relies on other DOT and FAA statutory authorities.

II. Executive Summary

The purpose of this advance notice of proposed rulemaking (ANPRM) is to seek comment regarding proposals for FAA rulemaking to reduce risks to public safety and national security as UAS are integrated into the NAS.

Consistent with its statutory authority, the FAA seeks to ensure that

small UAS [1] operations will not create a hazard to users of the NAS or the public or pose a threat to national security. This ANPRM is intended to gather information from the public to help inform the FAA's efforts to assess options for reducing risks to public safety and national security associated with further integration of UAS into the NAS. The FAA may consider initiating one or more rulemaking efforts based on the comments received in response to this ANPRM.

In a separate but related rulemaking action published elsewhere in this issue of the **Federal Register**, the Operation of Small Unmanned Aircraft Systems over People NPRM, the FAA is proposing to amend part 107 to allow small UAS operations at night and over people. Because these operations have a potential impact on public safety and national security, the FAA does not intend to promulgate a final rule to allow these operations until a regulation finalizes the requirements regarding remote identification of small UAS, as discussed further in Related Agency Actions.

III. Background

A. Integration of UAS Into the NAS

The FAA is working to safely integrate small UAS operations into the NAS using a phased, incremental, and risk-based approach to rulemaking within the FAA's existing statutory authority.[2] In 2012, Congress passed the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95). Section 333 of Public Law 112–95 [3] directed the Secretary to determine which types of UAS do not create a hazard to users of the NAS or the public or pose a threat to national security. Based on such findings, Congress directed the Secretary to establish requirements for the safe operation of UAS. On June 28, 2016, the FAA published the final rule for Operation and Certification of Small Unmanned Aircraft Systems (sUAS Operation and Certification final rule) (part 107 final rule),[4] which was a first step in integrating civil small UAS operations that were not model aircraft under the statute in effect at the time of publication.[5]

As the next step, the FAA's regulatory plan calls for the agency to issue an NPRM that would propose to allow small UAS operations at night and over people without a waiver issued under § 107.200. During the development process, the FAA heard from a number of government and industry stakeholders expressing support for the potential increase in commercial viability of UAS operations, but also concerns over the potential impacts on public safety, national security, and law enforcement.

B. Public Safety and National Security Concerns

As technology continues to improve and new uses for small UAS are identified, the FAA anticipates an increased demand for flexibility in operational restrictions under part 107. These new types of operations may have public safety and national security risks that were not anticipated or envisioned. This ANPRM seeks public comment on existing and future operational requirements and limitations in part 107 that may be necessary to reduce risks to the public and users of the NAS in accordance with 49 U.S.C. 44807.

In addition, public safety and national security entities have expressed a need to distinguish between small UAS that may pose a threat and those that do not, especially when operating in close proximity to large public gatherings, critical infrastructure or certain other facilities and assets.[6] In light of this, the FAA is constantly assessing the ability of the regulations to ensure that small UAS operations do not pose a threat to public safety or national security.

C. Related Agency Actions

1. Operation of Small Unmanned Aircraft Systems Over People NPRM

The Operations of Small UAS over People rulemaking would promulgate performance-based standards applicable to manufacturers of small UAS, as well as some requirements applicable to operators. The rule proposes three operational categories.[7] Category 1 would limit the weight of the small unmanned aircraft. Categories 2 and 3 would limit the severity of potential injuries based on impact kinetic energy thresholds and exposed rotating parts limitations. For operations of small UAS at night, the rule would require the remote pilot in command to complete a knowledge test or the appropriate training prior to operating at night and would require that the small UAS be equipped with anti-collision lighting visible for at least 3 statute miles.

2. Remote Identification and Tracking Aviation Rulemaking Committee

Section 2202 of the FAA Extension, Safety, and Security Act of 2016 (FESSA) required the FAA Administrator, in consultation with the Secretary of Transportation, the President of RTCA, Inc., and the Director of the National Institute of Standards and Technology, to convene industry stakeholders to facilitate the development of consensus standards for remotely identifying operators and owners of unmanned aircraft systems and associated unmanned aircraft.

FESSA required that, as part of any standards developed, the Administrator shall consider requirements for remote identification of unmanned aircraft systems; appropriate requirements for different classifications of unmanned aircraft systems operations, including public and civil; and the feasibility of the development and operation of a publicly accessible online database of unmanned aircraft and the operators thereof, and any criteria for exclusion from the database.

The FAA convened the UAS Identification and Tracking Aviation Rulemaking Committee (ARC) to make recommendations for the identification and tracking of small UAS. The FAA has reviewed the ARC recommendations and initiated a separate rulemaking (RIN 2120–AL31) to propose remote identification requirements for UAS, but has not yet published any proposals in the **Federal Register**.[8] As previously explained, the FAA does not intend to promulgate the Operations of Small UAS over People final rule until the

[1] A small UAS is defined as a small unmanned aircraft and its associated elements (including communication links and the components that control the small unmanned aircraft) that are required for the safe and efficient operation of the small unmanned aircraft in the national airspace system (NAS). A small unmanned aircraft is defined as an unmanned aircraft weighing less than 55 pounds on takeoff, including everything that is on board or otherwise attached to the aircraft. 14 CFR 107.3.

[2] For more information regarding the operation of small unmanned aircraft, see *http://www.faa.gov/uas.*

[3] Section 347 of Public Law 115–254 repealed Section 333, but replaced the relevant substantive provisions, codified at 49 U.S.C. 44807.

[4] 81 FR 42063.

[5] Public Law 112–95, section 336 (Feb. 14, 2012). Section 336 was repealed by Section 349 of Public Law 115–254 (Oct. 5, 2018) and replaced with 49 U.S.C. 44809. Section 44809 provides an exception for limited recreational UAS operations, provided the operations satisfy eight specific conditions. See 49 U.S.C. 44809(a)(1)–(8).

[6] The Departments of Defense, Energy, Homeland Security, and Justice have authority to address threats posed by UAS under certain circumstances to certain facilities and assets identified by statute. 10 U.S.C. 130i; 50 U.S.C. 2661; and section 1602 of Public Law 115–254 (to be codified at 6 U.S.C. 124n).

[7] The 3 categories proposed for civil small UAS operations over people are unrelated to the Department of Defense UAS categories which are divided into 5 groups that distinguish UAS by weight and other characteristics.

[8] A copy of the report is available at *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/media/UAS%20ID%20ARC%20Final%20Report%20with%20Appendices.pdf.*

remote identification rulemaking is finalized.

3. Section 2209 Process for UAS-Specific Airspace Restrictions

Section 2209 of FESSA requires the Secretary of Transportation to establish a process to allow certain fixed-site facility owners or operators to petition the FAA to prohibit or restrict the operation of unmanned aircraft in close proximity to certain facilities, such as national security sites, critical infrastructure, amusement parks and other locations that warrant such a restriction. That process is currently under development.[9]

IV. Discussion and Questions Concerning Proposal Under Consideration

This ANPRM is intended to gather information from the public to help inform the FAA's efforts to assess options for reducing risks to public safety and national security associated with further integration of UAS into the NAS, including options for additional rulemaking. Examples of subjects for additional rulemaking may include operating limitations, such as stand-off distances, payload restrictions, altitude, airspeed and performance limitations.

A. Stand-Off Distances

Small UAS have the capability to operate in locations that are inaccessible to manned aircraft as well as operate at reduced horizontal and vertical stand-off distances from people and structures compared to manned aircraft. This capability is a major benefit of small UAS operations to both the public and private sectors, but also presents unique safety and security concerns. Because small UAS can operate in places that manned aircraft cannot, such as in confined locations, under bridges, or close to buildings, they are capable of capturing useful information for inspection, investigation, and other purposes. In certain cases, small UAS may be able to observe people, structures, and areas on the ground from a vantage point that cannot be achieved by manned aircraft or by persons on the ground. On the other hand, when small UAS are operated too close to sensitive locations; critical infrastructure; certain mobile assets, including vessels and ground vehicle convoys; government activities, such as firefighting, search and rescue operations; certain law enforcement activities; over large gatherings of people; or near manned aircraft, it raises safety and security concerns within the NAS.

Stand-off distances are the amount of space between a small UAS and the closest person or object. They can have a horizontal component, a vertical component, or be measured directly using a slant range. Stand-off distances are sometimes referred to as minimums, such as in a minimum separation or minimum stand-off distance, and are typically measured in feet. They may help to ensure a small UAS does not pose a hazard to people on the ground or assess whether a UAS poses a threat to national security.

Currently, small UAS operated under part 107 do not have any prescriptive horizontal or vertical stand-off distances from people or structures. Rather, remote pilots must comply with performance-based rules that reduce risk by ensuring that small UAS will pose no undue hazard to people, aircraft, or property in the event of a loss of control of the small unmanned aircraft for any reason (§ 107.19(c)) and avoiding operations over any person who is not directly involved in the flight operation unless that person is under an appropriate covered structure or inside a vehicle (§ 107.39).

In a separate rulemaking action, specifically the Operation of Small Unmanned Aircraft Systems over People NPRM, the FAA is proposing to amend § 107.39 to allow certain small UAS to operate over people under specific conditions. Those small UAS would be required to meet safety thresholds that ensure the small UAS will not cause a serious injury to people if an impact occurs, and while the subject of stand-off distances is addressed, the rule does not propose to establish any specific stand-off requirements.

As discussed in the part 107 final rule, the FAA considered requiring minimum stand-off distances, but ultimately determined that, due to the wide range of possible small unmanned aircraft and small UAS operations, a prescriptive numerical stand-off distance requirement would be more burdensome than necessary for some operations while not being stringent enough for other operations. This decision by the FAA provided flexibility to small UAS operators to determine the appropriate stand-off distance, if any, for low-risk operations, but the FAA notes that as UAS operations continue to expand and the FAA works to integrate them into the NAS, stand-off distances may be considered to reduce public safety and national security hazards presented by higher-risk UAS operations.

While part 107 currently does not contain any prescriptive stand-off distances, there are examples of small UAS regulations from other countries that include stand-off distances. For example, in the United Kingdom, small UAS must be operated at least 150 feet away from people and property and 500 feet away from large crowds and built-up areas, unless given special permission.[10] In addition, proposed rules from Canada and EASA both include prescriptive stand-off distances for small UAS operations.

Questions for the Public: The FAA is considering rulemaking to address public safety and national security concerns associated with small UAS and invites input from the public as follows—

A1. If the FAA were to establish specific horizontal or vertical stand-off distances for all small UAS operations, what should those stand-off distances be and why?

A2. If the FAA were to establish horizontal or vertical stand-off distances for only certain types of small UAS operations, what types of operations should require a stand-off distance, what should the stand-off distance be, and why? Examples of types of operations include, but are not limited to, night operations, operations in controlled airspace under an ATC authorization, and beyond-visual-line-of-sight operations.

A3. What types of operations, if any, should be excluded from a proposed stand-off distance requirement and why?

A4. How would a horizontal or vertical stand-off distance requirement help reduce hazards to public safety and national security?

A5. What are the incremental costs[11] of introducing a stand-off distance requirement compared to how operations are conducted today?

A6. Does requiring a minimum stand-off distance necessitate additional instrumentation? If yes, provide costs and other relevant information.

A7. If minimum stand-off distances are required, would training or testing be necessary? If yes, provide estimate of time and cost.

B. Altitude, Airspeed, and Other Performance Limitations

Due to their potential small size, light weight, and propulsion capabilities, small UAS can have relative performance that far exceeds that of conventional manned aircraft. These capabilities allow for operations that manned aircraft are not capable of or

[9] *See* RIN 2120–AL33.

[10] *https://www.caa.co.uk/Consumers/Unmanned-aircraft-and-drones/.*

[11] For the purposes of this ANPRM, the FAA is requesting incremental costs, which is the difference between current and future operations.

cannot conduct safely. Some small UAS are capable of speeds in excess of 150 knots (172 mph), altitudes of 10,000 feet or more, and climb rates in excess of 6,000 feet per minute. Some can accelerate from 0 to 60 mph in less than 1 second. They can have extreme maneuverability and the capability to hover for extended periods of time. These performance capabilities provide considerable benefits and advantages to UAS operations but also create unique safety and security concerns.

Because of their performance capabilities, small UAS can operate in confined areas with speed and agility and, with their maneuverability, are capable of operating in close proximity to buildings, vehicles, and people, which allows for the gathering of imagery and data that cannot otherwise be obtained from the air or ground. However, with their capability for speed, maneuverability, and extreme acceleration, both horizontally and vertically, they can pose a hazard to other aircraft or persons on the ground. Also, those performance capabilities could lead to risks when operating in close proximity to sensitive government locations, large gatherings of people, law enforcement activities, search and rescue operations, and other aircraft.

Currently, small UAS operated under part 107 are limited to a maximum groundspeed of 87 knots (100 mph) and a maximum altitude of 400 feet above ground level, unless operated within a 400-foot radius of a structure, in which case the limit is 400 feet above the structure's uppermost limit. As discussed in the part 107 final rule, a small UAS travelling at high speed poses a higher risk to persons, property, and other aircraft than one traveling at a lower speed. The rule also noted that a speed limit would have safety benefits outside of a loss-of-positive-control scenario because a small unmanned aircraft traveling at a lower speed is generally easier to control. Also, the rule states that the speed and altitude limitations reduce the risk of collision with other aircraft. As stated in the part 107 final rule, a maximum speed limit of 87 knots is appropriate because the remote pilot in command will have to implement mitigations commensurate with the risk posed by his or her specific small UAS operation, such as operating at a speed less than 87 knots. Section 107.51 also includes limitations on flight visibility and cloud clearances, but does not have any operating limitations for vertical climb or descent rates or rates of acceleration.

As new uses for small UAS are identified and new types of operations are introduced into the NAS, the FAA continues to assess possible performance limitations, such as airspeed and altitude, to mitigate potential hazards.

Questions for the Public: The FAA is considering rulemaking to address public safety and national security concerns associated with small UAS and invites input from the public as follows—

B1. If the FAA were to establish additional operating or performance limitations for small UAS, what should those operating or performance limitations be and why?

B2. If the FAA were to establish additional operating or performance limitations for only certain types of small UAS operations, what types of small UAS operations should require additional operating or performance limitations, what should they be, and why?

B3. How would additional operating or performance limitations help to reduce risks to public safety or national security?

B4. What types of current small UAS operations would be impacted by establishing additional operating or performance limitations?

B5. What are the incremental costs of altitude, airspeed, and other performance limitations?

C. Unmanned Traffic Management (UTM) Operations

Small UAS pose a unique public safety and security risk to other aircraft and persons and property on the ground because they can operate more readily in sensitive areas and it can be difficult to identify non-compliant operations. Applying more structure to the airspace and operations may reduce public safety or national security risks in the NAS by removing the anonymity of the operations and establishing operating norms, which can then be used to highlight anomalous activity that may indicate malicious intent.

Many entities in both the public and private sector are developing a decentralized communication architecture identified as UAS Traffic Management (UTM), which could support more structured airspace and operations for small UAS without active control from the FAA's Air Traffic Organization. Increased communication between operators on planned and actual flight paths, deconfliction capability, additional information sources, and new service suppliers are intended to allow for optimized flight paths with increased safety. While UTM is focused on managing the safe and efficient operation of an increasing number of UAS operating in the NAS, especially beyond visual line of sight (BVLOS), there may be opportunities to mitigate public safety and national security risks at the same time.

Section 2208 of the FESSA directed the FAA to conduct research and establish a pilot program with NASA regarding UTM, both of which are currently underway with the ultimate goal of informing future rulemaking. Further, in conjunction with completing the pilot program required by FESSA, Section 376 of Public Law 115–254 requires the FAA, in coordination with NASA and industry stakeholders, to develop an implementation plan for UTM services that expand operations beyond visual line of sight, have full operational capability, and ensure the safety and security of all aircraft. The UTM implementation plan, which must address safety standards among other matters and delineate the roles and responsibilities of public and private actors, is to be completed within one year of the conclusion of the UTM pilot program.

In the part 107 rulemaking, the FAA found the risk to public safety and national security acceptable without requiring any type of UTM coordination, even considering the inherent structure it would provide. Because operations under part 107 (conducted without a waiver) are limited to visual line of sight and small UAS must yield the right-of-way to all other aircraft, the FAA determined that a certificated remote pilot can operate a small UAS safely without the need to coordinate its flight path with other operators. Consistent with the direction in Section 376, however, as UAS operations in the NAS continue to evolve and increase in number, the FAA anticipates there will be a need for additional airspace coordination and management to ensure those operations do not pose a risk to public safety or national security.

Questions for the Public: The FAA is considering rulemaking to address public safety and national security concerns associated with small UAS and invites input from the public as follows—

C1. How can additional information sharing (*e.g.,* intended flight path, operational boundary) via UTM help reduce risks to public safety and national security? What suite of capabilities should UTM have?

C2. What types of small UAS operations should be subject to UTM requirements? Should any be excluded? Should the requirement be based on geographical location, the type of operation, or other factors? Please

provide data or explanations to justify your response.

C3. For small UAS subject to UTM requirements, what type of information should be available to the general public? What type of information should be available to security personnel?

C4. What are the initial nonrecurring investment costs associated with establishing a UTM architecture? Once implemented, what are the annual recurring operation and maintenance costs?

C5. For questions C.1., C.2., and C.3., please include information in your response identifying the costs that would be necessary to equip small UAS to comply with UTM requirements.

C6. Would additional testing or training be required for a remote pilot to safely operate a small unmanned aircraft subject to UTM requirements? Please explain.

C7. What would be the costs for information sharing if UAS operations are subject to UTM requirements?

D. Payload Restrictions

Small UAS are readily available for purchase in home electronic and general merchandise stores by individuals who may have little or no familiarity with the civil aviation regulations that are applicable to them. Some of these small UAS have very small visual, radar, and acoustic signatures, which may make them more difficult to detect, identify, and track compared to manned aircraft. On the other hand, small UAS that weigh close to 55 pounds could carry a significant amount of internal or external payload. If a small UAS is determined to present a threat to public safety or national security, currently there are limited ways to mitigate the threat. As a result, the increased integration of UAS operations in the NAS poses unique public safety and national security concerns.

Given their size, propulsion systems, and navigational capabilities, small UAS can operate in close proximity to buildings, persons, vehicles and other objects without anyone's awareness. With the current and expected improvements in technical capabilities available on small UAS, they can circumvent measures used to protect security-sensitive sites and operations, which, if accessed or damaged, could threaten national security or introduce hazards to public safety. The FAA is aware of situations where small UAS have been used to conduct illegal surveillance and industrial espionage; to deliver contraband to prison inmates; to deliver incendiary, explosive, chemical and radiological payloads; to damage or disrupt critical infrastructure, including communications networks; and to conduct malicious cyber activity. There have been instances in which small UAS were used in ways that interfere with law enforcement, firefighting, and aviation operations.

Recently, Congress enacted section 363 of Public Law 115–254, responding to several payload and installed equipment concerns. Unless authorized by the Administrator, section 363 prohibits a person from operating a UAS equipped or armed with a dangerous weapon as defined in 18 U.S.C. 930(g)(2).[12]

Further, § 107.36 prohibits the carriage of hazardous materials as defined in 49 CFR 171.8. This definition includes many types of hazardous substances, such as chemicals or hazardous waste, but does not address all types of payloads or sensors that could pose a threat to public safety or national security. Part 107 does allow for the transportation of property for compensation or hire, but only if the aircraft, including its attached systems, payload, and cargo weigh less than 55 pounds total; the flight is conducted within visual line of sight and not from a moving vehicle or aircraft; and the flight occurs wholly within the bounds of a State and does not involve transport between (1) Hawaii and another place in Hawaii through airspace outside Hawaii; (2) the District of Columbia and another place in the District of Columbia; or (3) a territory or possession of the United States and another place in the same territory or possession.

Questions for the Public: The FAA is considering rulemaking to address public safety and national security concerns associated with small UAS and invites input from the public as follows—

D1. Should the prohibition from carrying hazardous materials in § 107.36 be expanded to include other types of payloads or installed equipment that could pose a threat to public safety or national security? If yes, what types of payloads should be prohibited and why?

D2. Should the FAA consider rulemaking to restrict the use of certain types of small UAS payloads or installed equipment? If yes, what types of payloads should be restricted, under what conditions should they be restricted? Should there be exceptions or special provisions applicable to certain conditions or other factors such as location, time, population density, or purpose? Please provide data or explanations to justify your response.

D3. What types of operations would be affected if additional restrictions are placed on the type of payloads and equipment that can be installed on a small UAS? Would there be any costs or lost revenues associated with those restrictions?

E. Small UAS Critical System Design Requirements

Public safety and national security concerns have been raised regarding the potential failure of critical systems on small UAS, which could result in the loss of control of the aircraft and increase the risk to persons and property on the ground and other users of the airspace. One way of designing critical systems on small UAS that has the potential to address these concerns from both a public safety and national security perspective is the use of redundancy. From a safety standpoint, redundancy helps to mitigate the risk of critical single-point system failures. For example, a battery failure on a UA with only one battery might result in a crash landing. If the UA was built with a redundant power system (multiple batteries or a backup), the UA could switch to the alternate power source and maintain safe flight. Another approach to increase safety is the use of fail-safe design features. A small UAS that has a fail-safe command and control (C2) link would improve the safety of the small UAS if a lost-link event occurs.

From a national security standpoint, redundancy of critical systems plays a more indirect role. Failure of some functions on an unmanned aircraft may lead to unplanned airspace or security violations. For example, a loss of navigation or lost-link could lead to an unmanned aircraft entering unauthorized airspace. Having a redundant navigation system or a fail-safe C2 system could reduce the risk of this happening. Additionally, critical systems could be a piece of a larger security strategy ensuring a robust capability to strengthen the overall security of the system. An example would be having redundant positioning solutions (*e.g.,* GPS, inertial) to ensure a high availability to broadcast the unmanned aircraft's position, if required.

Currently, small UAS operated under 14 CFR part 107 are not required to have an airworthiness certificate. Furthermore, they do not have any prescribed design standards or required

[12] The term ''dangerous weapon'' as defined in 18 U.S.C. 930(g)(2) means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length.

system redundancies. As a result, many small UAS operating today, especially those with relatively small size, do not have redundancies in their design. However, the FAA, through policy, may condition the grant of waiver from certain operational limitations in part 107 on equipage with redundant systems. For example, § 107.31—Visual line of sight aircraft operations and § 107.39—Operation over people, are both subject to waiver as prescribed in §§ 107.200 and 107.205. In evaluating waiver requests for §§ 107.31 and 107.39, the FAA may consider the need for design requirements, including redundancy, for critical UAS systems based upon the nature of the request and the need to mitigate any risks associated with the proposed operation.

In a related rulemaking action, specifically the Operation of Small Unmanned Aircraft Systems over People NPRM, the FAA is proposing to amend § 107.39 to allow small UAS to operate over people if they are tested and shown to fulfill certain safety standards intended to limit the severity of injuries to people on the ground. While manufacturers of small UAS qualified to operate over people may choose to have redundancy for critical systems in their designs, it is not required by the proposed rule.

Questions for the Public: The FAA is considering rulemaking to address public safety and national security concerns associated with small UAS and invites input from the public as follows—

E1. For small UAS operations beyond the visual line of sight of the remote pilot, should the FAA establish design requirements, such as redundancy, for systems critical to safety of flight? If yes, what should these requirements be and why? Are there other means the FAA should consider to address public safety and national security risk for BVLOS operations?

E2. For small UAS operations over people that exceed the NPRM safety thresholds indicated above and therefore still must seek a waiver to § 107.39 to operate over people, should the FAA establish design requirements, such as redundancy, for systems critical to safety of flight? If yes, what should these requirements be and why? Are there other means the FAA should consider to address public safety and national security risk for operations over people?

E3. Are there other types of small UAS operations besides BVLOS and operations over people that the FAA should establish design requirements for, such as redundancy, to address public safety and national security risk?

E4. What are the costs and benefits to incorporate redundant systems critical to safety of flight for BVLOS operations or operations over people that exceed the NPRM safety thresholds indicated above?

V. Regulatory Requirements and Executive Order Determinations

The FAA will address the following requirements in future small UAS safety and security rulemakings. Please provide comments that would assist the FAA in its consideration and analyses of these requirements.

A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This ANPRM is considered a significant regulatory action under section 3(f) of Executive Order 12866 and was reviewed by the Office of Management and Budget (OMB). It is considered a significant regulatory action under the Regulatory Policies and Procedures order issued by the Department of Transportation. 44 FR 11034 (Feb. 26, 1979).

Executive Orders 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), and 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' Executive Order 13610, ''Identifying and reducing Regulatory Burdens,'' 77 FR 28469 (May 14, 2012), urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies.

Additionally, Executive Orders 12866, 13563, and 13610 require agencies to provide a meaningful opportunity for public participation. Accordingly, FAA invites comments on these considerations, including any cost or benefit figures or factors, alternative approaches, and relevant scientific, technical and economic data. These comments will help FAA evaluate whether regulatory action is warranted and appropriate.

B. Executive Order 13771

On January 30, 2017, President Trump signed Executive Order 13771 (E.O. 13771), ''Reducing Regulation and Controlling Regulatory Costs.'' Under Section 2 of this Executive Order, unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it must identify at least two existing regulations to be repealed and offset any new incremental costs associated with new regulations by the elimination of existing costs associated with at least two prior regulations. FAA will need to determine if a future rulemaking is an E.O. 13771 regulatory or deregulatory action.

C. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may 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.'' FAA invites State and local governments with an interest in this rulemaking to comment on any effect that may result.

D. Executive Order 13175

Consistent with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' and FAA Order 1210.20, ''American Indian and Alaska Native Tribal Consultation Policy and Procedures,'' the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to uniquely or significantly affect their respective Tribes. At this point, the FAA has not identified any unique or significant effects, environmental or otherwise, on tribes resulting from this advance notice of proposed rulemaking. As it contemplated in the sUAS Operation and Certification final rule, the FAA has conducted outreach to tribes and responded to those tribes seeking information about small UAS operations conducted within their territory to see how their concerns can be addressed within the broader UAS integration effort.[13]

Since publication of the sUAS Operation and Certification final rule, the FAA has conducted outreach to tribes to ensure that they are familiar with the rules' provisions and how they might apply in Indian country, and that they are aware of FAA's plans for additional rulemakings to integrate UAS into the NAS. As part of that outreach the FAA has:

[13] 81 FR 42063 at 42189.

• Provided material on the sUAS Operation and Certification final rule to participants at the mid-year conference of the National Congress of American Indians (Spokane, WA, June 27–30, 2016);

• Presented at a workshop at the National Tribal Transportation Conference (Anaheim, CA October 4, 2016);

• Responded to inquiries from the Shoshone-Bannock Tribes and Muscogee (Creek) Nation regarding use of UAS;

• Presented information on UAS at a meeting of the Tribal Transportation Self-Governance Program Negotiated Rulemaking Meeting (Shawnee, OK October 18, 2016); and

• Provided information to The Choctaw Nation of Oklahoma, which is participating in the UAS Integration Pilot Program.[14] Through this program, the FAA will work with The Choctaw Nation to ensure safe UAS operations for the purposes of agriculture, public safety, and infrastructure inspections. Such operations may include operations over people and operations at night.

The FAA will continue to respond to tribes expressing interest in or concerns about UAS operations, and will engage in government-to-government consultation with tribes as appropriate, in accordance with Executive Orders and FAA guidance.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures

Under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.,* FAA must consider whether a rulemaking would have a ''significant economic impact on a substantial number of small entities.'' ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000.

Any future rulemaking would be developed in accordance with Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 68 FR 7990 (Feb. 19, 2003), and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts on small entities of a regulatory action are properly considered.

F. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* 5 CFR 1320.8(d) requires that FAA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This ANPRM does not impose new information collection requirements. FAA would have to consider information collection requirements for future rulemakings.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the Federal government's having first provided the funds to pay those costs. The FAA will need to determine if this rulemaking would result in costs of $155 million or more, adjusted for inflation, to either state, local, or tribal governments, in the aggregate, or to the private sector in any one year.

H. National Environmental Policy Act

The National Environmental Policy Act of 1969, 42 U.S.C. 4321–4375, requires that Federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations require Federal agencies to conduct an environmental review considering (1) the need for the proposed action, (2) alternatives to the proposed action, (3) probable environmental impacts of the proposed action and alternatives, and (4) the agencies and persons consulted during the consideration process. See 40 CFR 1508.9(b). FAA welcomes any data or information related to environmental impacts that may result from any future rulemaking.

I. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, see 65 FR 19477, or you may visit *http://www.regulations.gov.*

J. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609, ''Promoting International Regulatory Cooperation,'' 77 FR 26413 (May 4, 2012), agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, regulatory approaches developed through international cooperation can provide equivalent protection to standards developed independently while also minimizing unnecessary differences.

Similarly, the Trade Agreements Act of 1979, Public Law 96–39, as amended by the Uruguay Round Agreements Act, Public Law 103–465, prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. FAA welcomes any data or information related to international impacts that may result from future rulemaking.

K. Executive Order 13211

Executive Order 13211, 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' Under the executive order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation (including a notice of inquiry, ANPRM, and NPRM) that (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. The FAA would have to consider this executive order for future rulemaking.

[14] Federal Aviation Administration UAS Integration Pilot Program (May 7, 2018), available at *https://www.faa.gov/uas/programs_partnership/uas_integration_pilot_program/.*

Issued under the authority provided by 49 U.S.C. 106(f), 40101 note, and 44807, in Washington, DC, on January 28, 2019.

Daniel K. Elwell,

Acting Administrator, Federal Aviation Administration.

[FR Doc. 2019–00758 Filed 2–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Atlantic Ocean South of Entrance to Chesapeake Bay; Firing Range

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing to amend an existing permanent danger zone in the waters of the Atlantic Ocean south of the entrance to the Chesapeake Bay off of the coast of Virginia. For decades, the Dam Neck Surface Danger Zone (SDZ) served as a firing range for gunnery training at what is now Naval Air Station Oceana's Dam Neck Annex. While the Navy continues to use the SDZ for training, fixed-mount gunnery operations have not been conducted there for over 30 years. The proposed amendment is necessary to accurately identify the hazards associated with training and mission operations to protect the public. The proposed amendment will identify the area within the current danger zone boundary where live fire exercises are no longer conducted and no restriction to surface navigation exists. In addition, the proposed amendment will remove references to live fire range conditions and safety procedures as shore-to-sea gunnery operations are no longer conducted.

DATES: Written comments must be submitted on or before March 15, 2019.

ADDRESSES: You may submit comments, identified by docket number COE–2018–0007, by any of the following methods:

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

Email: david.b.olson@usace.army.mil. Include the docket number, COE–2018–0007, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW–CO–R (David B. Olson), 441 G Street NW, Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2018–0007. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *regulations.gov* or email. The *regulations.gov* website is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to the Corps without going through *regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with compact disc you may submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922, or Ms. Nicole Woodward, Corps of Engineers, Norfolk District, Regulatory Branch, at 757–201–7122.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is proposing amendments to regulations in 33 CFR part 334 for the amendment of an existing danger zone, in the waters of the Atlantic Ocean south of the entrance to the Chesapeake Bay off of the coast of Virginia. In a memorandum dated July 23, 2018, the Department of the Navy requested that the Corps modify 33 CFR 334.390 to amend the existing danger zone. The proposed danger zone amendment is necessary to protect the public from hazards associated with training and mission operations, and to improve vessel traffic throughput and maritime safety in the northeast region of the SDZ. The proposed modification identifies an area within the current of the danger zone where live fire exercises are no longer conducted and no restriction to surface navigation exists.

Procedural Requirements

a. Review Under Executive Orders 12866 and 13563

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 proposed rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this proposed 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.

The Corps determined this proposed rule is not a significant regulatory action. This regulatory action determination is based on the proposed rule governing the danger zone, which allow any vessel that needs to transit the danger zone to expeditiously transit through the danger zone when the small arms range is in use. When the range is not in use, the danger zone will be open to normal maritime traffic and to all activities, include anchoring and loitering. The proposed rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354). The Regulatory Flexibility Act generally requires an

agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (*i.e.,* small businesses and small governments). The danger zone is necessary to protect public safety during use of the small arms range. Unless information is obtained to the contrary during the comment period, the Corps certifies that the proposed rule would have no significant economic impact on the public. After considering the economic impacts of this proposed danger zone regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. Review Under the National Environmental Policy Act

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the comment period is closed and all comments have been received and considered.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Revise § 334.390 to read as follows:

§ 334.390 Atlantic Ocean south of entrance to Chesapeake Bay; firing range.

(a) *The danger zone.* (1) A section extending seaward for a distance of 12,000 yards between two radial lines bearing 030° True and 083° True, respectively, from a point on shore at latitude 36°46′48″ N, longitude 75°57′24″ W; and an adjacent sector extending seaward for a distance of 15 nautical miles between two radial lines bearing 083° True and 150° True, respectively, from the same shore position. The datum for these coordinates is WGS–1984.

(b) *The regulations.* (1) To accommodate ingress and egress within the southern approach to the Chesapeake Bay Federal navigation channels, no live fire exercise will take place within the area northeast of, and defined by a line intersecting points latitude 36°47′59″ N, longitude 75°46′05″ W and latitude 36°44′25″ N, longitude 75°38′ 57″ W, and this area is open to unrestricted surface navigation.

(2) Within the remainder of the danger zone vessels shall proceed through the area with caution and shall remain therein no longer than necessary for the purpose of transit.

(3) When firing is in progress during daylight hours, red flags will be displayed at conspicuous locations on the beach. When firing is in progress during periods of darkness, red flashing lights will be displayed from conspicuous locations on the beach which are visible from the water a minimum distance of four (4) nautical miles.

(4) Firing on the ranges will be suspended as long as any vessel is within the danger zone.

(5) Lookout posts will be manned by the activity or agency operating the firing range at the Naval Air Station Oceana, Dam Neck Annex, in Virginia Beach, Virginia. After darkness, night vision systems will be utilized by lookouts to aid in locating vessels transiting the area.

(6) There shall be no firing on the range during periods of low visibility which would prevent the recognition of a vessel (to a distance of 7,500 yards) which is properly displaying navigation lights, or which would preclude a vessel from observing the red range flags or lights.

(7) Throughout the entire danger zone anchoring, dredging, trawling and any bottom disturbing activities should be conducted with caution due to the potential of unexploded ordnance (UXO) and other munitions and explosives of concern (MEC) on the bottom.

(c) *Enforcement.* The regulation in this section shall be enforced by the Commander, Naval Air Force Atlantic, U.S. Fleet Forces Command, Norfolk, Virginia, and such agencies as he or she may designate.

Dated: February 7, 2019. Approved:

Thomas P. Smith,

Chief, Operations and Regulatory Division, Directorate of Civil Works.

[FR Doc. 2019–02157 Filed 2–12–19; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2018–0126; FRL–9989–32–Region 5]

Air Plan Approval; Indiana; Proposed Approval of a Revision to the Sulfur Dioxide State Implementation Plan for United States Steel-Gary Works

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a March 6, 2018 request by the Indiana Department of Environmental Management (IDEM) to revise its State Implementation Plan (SIP) for the United States Steel-Gary Works (US Steel-Gary Works). The proposed SIP revision pertains to the removal of all sulfur dioxide (SO_2) emission limitations for the facility's coke plant, which permanently ceased operation on March 30, 2015, and other administrative changes. The SIP revision provides for an overall reduction in SO_2 emissions at the facility.

DATES: Comments must be received on or before March 15, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2018–0126 at *http://www.regulations.gov,* or via email to *blakley.pamela@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment.

The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Emily Crispell, Environmental Scientist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8512, *crispell.emily@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background
II. Summary of Changes to Existing Rule
III. Summary of 110(l) Analysis
IV. What action is EPA taking?
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Background

US Steel-Gary Works is an integrated steel mill located in Gary, Indiana. On March 30, 2015, the facility permanently ceased the operation of its entire coke plant. The coke plant consisted of the coal handling facilities, coke oven batteries, coke byproducts recovery plant, coke oven desulfurization facility, and #2 coke plant boiler house.

IDEM amended 326 Indiana Administrative Code (326 IAC) 7–4.1–20 to remove SO_2 emission limitations applicable to the coke plant. IDEM held a public hearing on October 11, 2017 and received one question regarding whether US Steel-Gary Works would be required to reapply for permits if they chose to reopen the coke plant facility. IDEM confirmed that US Steel-Gary Works would have to reapply for permits if they chose to reopen the coke plant.

IDEM adopted the revised rule on October 11, 2017, which became effective on February 21, 2018.

II. Summary of Changes to Existing Rule

The existing rule 326 IAC 7–4.1–20 contained the SO_2 emission limitations for various emission units at US Steel-Gary Works, depending on the operation status of the coke oven gas desulfurization unit. The sole purpose of the coke oven gas desulfurization unit was to control coke oven gas emissions from the coke plant. IDEM revised 326 IAC 7–4.1–20 to remove all SO_2 sources and emission limits associated with the coke plant. IDEM renumbered and retained the remainder of the rule which contains SO_2 emission limitations for other operating units at the facility such as the turboblower boiler house units, number 4 boiler house units, blast furnace stove stacks, 84-inch hot strip mill units, number 3 sinter plant windbox gas cleaning systems, and baghouses.

III. Summary of 110(l) Analysis

According to Clean Air Act (CAA) Section 110(l), EPA cannot approve a revision of a SIP if the revision would interfere with any applicable requirement concerning attainment of the National Ambient Air Quality Standards and Reasonable Further Progress (as defined in Section 171 of the CAA). Indiana's submission is consistent with CAA Section 110(l) because the changes to the facility will result in a decrease in SO_2 emissions in excess of 3792.2 tons per year.

IV. What action is EPA taking?

EPA is proposing to approve IDEM's March 6, 2018 submittal as a revision to its existing SIP for US Steel-Gary Works. EPA is requesting comments on the proposed approval.

V. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference revisions to Indiana rule 326 IAC 7–4.1–20 U.S. Steel-Gary Works Sulfur Dioxide Emission Limitations, effective on February 21, 2018. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 21, 2018.

James O. Payne

Acting Regional Administrator, Region 5.

[FR Doc. 2019–02215 Filed 2–12–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2018–0764; FRL–9989–45–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County Reasonable Available Control Technology for the 2008 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of the Allegheny County Health Department (ACHD) for the purpose of satisfying the volatile organic compound (VOC) reasonably available control technology (RACT) requirements for source categories covered by control technique guidelines (CTGs) under the 2008 8-hour ozone national ambient air quality standard (NAAQS). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before March 15, 2019.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2018–0764 at *http://www.regulations.gov,* or via email to *spielberger.susan@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Megan Goold, (215) 814–2027, or by email at *goold.megan@epa.gov.*

SUPPLEMENTARY INFORMATION: On July 24, 2018, PADEP submitted, on behalf of ACHD, a SIP revision addressing the VOC CTG RACT requirements set forth by the CAA for the 2008 8-hour ozone NAAQS for Allegheny County (the 2018 VOC CTG RACT Submission for Allegheny County).

I. Background

A. General

Ozone is formed in the atmosphere by photochemical reactions between VOCs and oxides of nitrogen (NO_X) in the presence of sunlight. In order to reduce ozone concentrations, the CAA requires control of VOC and NO_X emission sources to achieve emission reductions in moderate or more serious ozone nonattainment areas. Among effective control measures, RACT controls significantly reduce VOC and NO_X emissions from major stationary sources.

RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.[1] CAA section 172(c)(1) provides that SIPs for nonattainment areas must include reasonably available control measures (RACM) for attainment of the NAAQS, including emissions reductions from existing sources through adoption of RACT. A major source in a nonattainment area is defined as any stationary source that emits or has the potential to emit NO_X or VOC emissions above a certain applicability threshold that is based on the ozone nonattainment classification of the area: Marginal, Moderate, Serious, or Severe. *See* ''major stationary source'' in CAA sections 182(b), 184(b) and 302. CAA sections 182(b)(2) and 182(f)(1) of the CAA require states with moderate (or worse) ozone nonattainment areas to implement RACT controls on all stationary sources and source categories covered by a CTG document issued by EPA and on all major sources of VOC and NO_X emissions located in the area. EPA's CTGs establish presumptive RACT control requirements for various VOC source categories. The CTGs typically identify a particular control level that EPA recommends as being RACT. In some cases, EPA has issued Alternative Control Techniques guidelines (ACTs) primarily for NO_X source categories, which in contrast to the CTGs, only present a range for possible control options but do not identify any particular option as the presumptive norm for what is RACT. CAA section 183(c) requires EPA to revise and update CTGs and ACTs as the Administrator determines necessary. EPA issued eleven new CTGs from 2006 through 2008. A list of CTGs issued by EPA can be found at *https://www.epa.gov/ground-level-ozone-pollution/control-techniques-guidelines-and-alternative-control-techniques.* States are required to implement RACT for the source categories covered by CTGs through the SIP. Source categories that are not covered by the CTGs are termed non-CTG sources (non-CTG sources are not covered by this SIP revision).

CAA section 184(a) of the CAA established a single ozone transport region (OTR), comprising all or part of 12 eastern states and the District of Columbia.[2] The entire Commonwealth of Pennsylvania is part of the OTR and, therefore, must comply with the RACT requirements in CAA section 184(b)(1)(B) and (2). Specifically, section 184(b)(1)(B) requires the implementation of RACT in OTR states with respect to all sources of VOC covered by a CTG. Additionally, section 184(b)(2) states that any stationary source with the potential to emit 50 tons per year (tpy) of VOCs shall be considered a major source and requires the implementation of major stationary source requirements in the OTR states as if the area were a moderate nonattainment area. A major source in a nonattainment area is defined as any stationary source that emits or has the potential to emit NO_X or VOC emissions above a certain applicability threshold

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[1] *See* December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas.'' *See also* 44 FR 53761, 53762 (September 17, 1979).

[2] Only a portion of the Commonwealth of Virginia is included in the OTR.

that is based on the ozone nonattainment classification of the area: Marginal, Moderate, Serious, or Severe. *See* ''major stationary source'' in CAA sections 182(b) and 184(b).

B. Allegheny County, Pennsylvania's Ozone RACT History

Allegheny County, Pennsylvania has been subject to the CAA RACT requirements because of previous ozone nonattainment designations. The Pittsburgh-Beaver Area (which included Allegheny County) was designated as a moderate 1-hour ozone nonattainment area. Allegheny County has implemented numerous RACT controls throughout the County to meet the CAA's RACT requirements under the 1-hour ozone standard.

Under the 1997 8-hour ozone NAAQS, the Pittsburgh-Beaver Valley area (which included Allegheny County) was designated as a moderate nonattainment area. As a result, Allegheny County continued to be subject to the CAA RACT requirements. *See* 69 FR 23858, 23931 (April 30, 2004). Allegheny County revised and promulgated its RACT regulations and demonstrated that it complied with the 1997 CAA RACT requirements in a SIP revision approved by EPA on June 10, 2013 (78 FR 34584).

Under CAA section 109(d), EPA is required to periodically review and promulgate, as necessary, revisions to the NAAQS to continue to protect human health and the environment. On March 27, 2008, EPA revised the 1997 8-hour ozone standard by lowering the 8-hour standard to 0.075 ppm (73 FR 16436). On May 21, 2012, EPA finalized attainment/nonattainment designations for the 2008 8-hour ozone NAAQS (77 FR 30087). Under the 2008 8-hour ozone standard, EPA designated 17 counties in Pennsylvania as marginal nonattainment including Allegheny County. The entire Commonwealth of Pennsylvania is in the OTR, and pursuant to CAA section 184(b)(1)(B), it is required to address the CAA RACT requirements by submitting to EPA a SIP revision that demonstrates how it meets RACT requirements under the revised 2008 ozone standard. Pennsylvania is required to implement RACT for the 2008 ozone NAAQS on all VOC sources covered by a CTG issued by EPA, *see* CAA sections 182(b)(2)(A), (B), 184(b)(1)(B), as well as all other major stationary sources located within the state boundaries, *see* CAA section 182(b)(2)(C).

C. EPA Guidance and Requirements

EPA has provided more substantive RACT requirements through final implementation rules for each ozone NAAQS, as well as guidance. On March 6, 2015, EPA issued its final rule for implementing the 2008 8-hour ozone NAAQS (the 2008 Ozone Implementation Rule). *See* 80 FR 12264. This rule addressed, among other things, control and planning obligations as they apply to nonattainment areas under the 2008 8-hour ozone NAAQS, including RACT and RACM. In this rule, EPA specifically required that states meet the RACT requirements either (1) through a certification that previously adopted RACT controls in their SIP revisions approved by EPA under a prior ozone NAAQS continue to represent adequate RACT control levels for attainment of the 2008 8-hour ozone NAAQS, or (2) through the adoption of new or more stringent regulations or controls that represent RACT control levels. A certification must be accompanied by appropriate supporting information such as consideration of information received during the public comment period and consideration of new data. Adoption of new RACT regulations will occur when states have new stationary sources not covered by existing RACT regulations, or when new data or technical information indicates that a previously adopted RACT measure does not represent a newly available RACT control level. Additionally, states are required to submit a negative declaration if there are no CTG sources of VOC emissions within the nonattainment area in lieu of, or in addition to, a certification.

II. Summary of SIP Revision

On July 24, 2018, PADEP submitted a SIP revision for Allegheny County to address the VOC CTG RACT requirements set forth by the CAA for the 2008 8-hour ozone NAAQS (the 2018 VOC CTG RACT Submission for Allegheny County). Specifically, the 2018 VOC CTG RACT Submission for Allegheny County includes: (1) A certification that for certain categories of sources, previously-adopted VOC RACT controls in the Allegheny County portion of Pennsylvania's SIP that were approved by EPA under the 1979 1-hour and 1997 8-hour ozone NAAQS continue to be based on the currently available technically and economically feasible controls, and continue to represent RACT for implementation of the 2008 8-hour ozone NAAQS; and (2) a negative declaration that certain CTG sources of VOC do not exist in Allegheny County, PA. This SIP revision does not cover non-CTG sources in Allegheny County. PADEP will address RACT for major sources of NO_X and for major non-CTG VOC sources for Allegheny County in another SIP submission.

Allegheny County's Regulations and Statutes, under Allegheny County Article XXI 2105.10, 2105.11, 2105.12, 2105.13, 2105.15, 2105.16, 2105.19, 2105.70, 2105.71, 2105.72., 2105.74, 2105.76, 2105.77, 2105.78, 2105.79, 2105.80, 2105.81, 2105.82, 2105.83, 2015.84, 2105.85, and 2105.86 contain the VOC CTG RACT controls that were implemented and approved into Pennsylvania's SIP under the 1-hour and 1997 8-hour ozone NAAQS. PADEP is certifying that these regulations, all previously approved by EPA into the SIP, continue to meet the RACT requirements for the 2008 8-hour ozone NAAQS for CTG-covered sources of VOCs in Allegheny County, PA. PADEP also submitted a negative declaration for the CTGs that have not been adopted due to no affected facilities in Allegheny County. More detailed information on these provisions as well as a detailed summary of EPA's review can be found in the Technical Support Document (TSD) for this action which is available on line at *www.regulations.gov,* Docket number EPA–R03–OAR–2018–0764.

III. Proposed Action

EPA has reviewed Pennsylvania's 2018 VOC CTG RACT Submission for Allegheny County and is proposing to approve Pennsylvania's SIP revision to the Allegheny County portion of the SIP on the basis that Allegheny County, PA has met the VOC RACT requirements for all sources of CTGs (issued prior to July 20, 2014) for the 2008 8-hour ozone NAAQS as set forth by CAA sections 182(b) and 184(b)(2). EPA is proposing to find that Pennsylvania's SIP revision satisfies the 2008 8-hour ozone NAAQS VOC RACT requirements for CTGs for Allegheny County, PA through (1) certification that previously adopted RACT controls in the Allegheny County portion of the Pennsylvania SIP that were approved by EPA under the 1979 1-hour ozone and 1997 8-hour ozone NAAQS continue to be based on the currently available technically and economically feasible controls, and that they continue to represent RACT; and (2) a negative declaration demonstrating that no facilities exist in Allegheny County for certain applicable VOC CTG categories.

EPA is proposing to find that Pennsylvania's 2018 VOC CTG RACT Submission for Allegheny County demonstrates that Allegheny County has adopted air pollution control strategies that represent RACT for the purposes of compliance with the 2008 8-hour ozone standard for all stationary sources of VOCs covered by a CTG issued prior to

July 20, 2014. EPA is soliciting public comments on the issues discussed in this document relevant to VOC CTG RACT requirements for the Allegheny County portion of the Pennsylvania SIP for the 2008 ozone NAAQS. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, Pennsylvania's 2018 VOC CTG RACT submission for Allegheny County does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 30, 2019.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

[FR Doc. 2019–02213 Filed 2–12–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2018–0769, FRL–9989–50–Region 10]

Air Plan Approval; ID, Kraft Pulp Mill Rule Revisions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve state implementation plan (SIP) revisions submitted by the Idaho Department of Environmental Quality (IDEQ) on November 2, 2018. The submitted revisions update Idaho's rules by removing obsolete and duplicative requirements as well as requirements less stringent than applicable Federal regulations.

DATES: Comments must be received on or before March 15, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2018–0769, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Randall Ruddick at (206) 553–1999, or *ruddick.randall@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to EPA.

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I. Background
II. EPA Evaluation of Idaho's SIP Revisions
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I. Background

Section 110 of the Clean Air Act (CAA) specifies the general requirements for states to submit State Implementation Plans (SIPs) and the EPA's actions regarding approval of those SIPs. SIPs are states' plans to implement, maintain, and enforce National Ambient Air Quality Standards (NAAQS) set by EPA. Idaho regularly submits parts of IDAPA 58.01.01 to the EPA for approval into the Federally approved Idaho SIP (generally those provisions that relate to the criteria pollutants regulated under section 110 of the CAA for which the EPA has promulgated NAAQS or other specific requirements of section 110).

Idaho's SIP includes Idaho's Rules for Control of Kraft Pulping Mills air emissions, IDAPA 58.01.01.815 through 817 and 58.01.01.821 through 826, effective as a matter of state law in 1994. Since 1994, there have been numerous revisions to Federal regulations related to air emissions from kraft pulping mills, specifically, EPA's promulgation of NSPS (40 CFR 60, subparts BB and BBa) and NESHAP (40 CFR 63, subparts S and MM) specific to kraft pulping mill air emissions. Idaho underwent state rulemaking to streamline their state kraft pulping mill rules by removing requirements that were obsolete, less

stringent than, or otherwise covered by existing Federal rules, and by clarifying reporting requirements. Those changes became effective as a matter of state law in 2012. On November 2, 2018, Idaho submitted a SIP revision to EPA requesting the Federally approved SIP be changed to reflect Idaho's current (2012) kraft pulping mill rules.

II. EPA Evaluation of Idaho's SIP Revisions

Idaho's November 2, 2018, SIP submittal requests that EPA remove Idaho's 1994 version of IDAPA 58.01.01.815 through 816 and 819 through 826 from the SIP and approve the State's current (2012) version of IDAPA 58.01.01.815 and 818 into the SIP.

Idaho's 1994 regulations included emission limits at kraft pulping mills for total reduced sulfur (TRS) and particulate matter. The current SIP does not include kraft pulping mill requirements for TRS because TRS is not a criteria pollutant or precursor. Although Idaho's November 2, 2018 SIP submittal included IDAPA 58.01.01.816 and .817, which contain revised requirements for TRS, Idaho specifically requested that EPA not approve the TRS requirements into the SIP.[1] The TRS requirements were submitted for informational purposes only, to provide a complete record of the rulemaking.

With respect to particulate matter standards for kraft pulping mills, Idaho's 2012 regulations repealed these standards and the related monitoring, recordkeeping, and reporting requirements. Idaho explained in its November 2018 submittal that the particulate matter requirements in the SIP are now duplicative of and less stringent than Federal NSPS and NESHAP standards applicable to kraft pulping mills. Idaho's SIP submittal includes a comparison, in the same units of measurement, of the particulate matter standards approved in the current SIP with the Federal standards that apply to kraft pulping mills. In each case, the more recent Federal standards are more stringent than the particulate matter standards currently in the Idaho SIP and that Idaho requests be removed from the SIP. We note that Idaho has incorporated by reference the Federal NSPS and NESHAP applicable to kraft pulping mills into its regulations as of July 1, 2017 and has received delegation to implement and enforce these Federal standards.

[1] The table in the cover letter to Idaho's submittal identifies the citations of the rules currently approved in the SIP, which they are requesting be updated to reflect the 2012 revisions, not the citations of the 2012 revisions.

Idaho's current SIP also required special studies to be completed of kraft pulping mills by December 1972. This requirement is obsolete, and its removal will therefore have no effect on NAAQS compliance.

The only two remaining requirements in Idaho's rules for kraft pulping mills that do not relate solely to TRS are revised IDAPA 58.01.01.815 and 818. IDAPA 58.01.01.815 which contain the revised ''Statement of Purpose'' for Idaho's rules for kraft pulping mills and reflects the changes made in IDAPA 58.01.01.816 through 826 and the much narrower scope of Idaho's current regulations for kraft pulping mills. IDAPA 58.01.01.818 is a new requirement for notification and reporting of emissions from gas venting regulated under 40 CFR part 63, subpart S. IDAPA 58.01.01.818 implements a reporting requirement in the SIP and does not in any way affect implementation of the NESHAP. Both IDAPA 58.01.01.815 and .818 are consistent with requirements for SIPs under CAA Section 110 and we therefore propose approval.

III. Proposed Action

EPA is proposing to approve, and incorporate by reference, in Idaho's SIP IDAPA 58.01.01.815 and .818 (state effective March 29, 2012) as requested by Idaho on November 2, 2018, and as described in Section II above.

EPA is also proposing, as requested by Idaho on November 2, 2018, to remove IDAPA 58.01.01.816, .817, and .821 through .826 from the Idaho SIP because they are outdated and, in many cases, less stringent than existing Federal CAA emissions limits, performance testing, monitoring, and reporting requirements, and Idaho has repealed them as a matter of state law (state effective March 29, 2012). See Section II above.

IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the provisions described above in Section III. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Orders Review

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The proposed SIP would not be approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not

impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 30, 2019.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2019–02217 Filed 2–12–19; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 84, No. 30
Wednesday, February 13, 2019

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 7, 2019.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by March 15, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

Rural Utilities Service

Title: 7 CFR 1717 Subpart D, Mergers and Consolidations of Electric Borrowers.

OMB Control Number: 0572–0114.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture. It makes mortgage loans and loan guarantees to finance electric, telecommunications, water and waste and water facilities in rural areas. Loan programs are managed in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.,* as amended and as prescribed by the Office of Management and Budget (OMB) Circular A–129, Policies for Federal Credit Programs and Non-tax Receivable, states that agencies must base on a review of a loan application determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance.

Need and Use of the Information: RUS will collect information to streamline procedures and allow borrowers the flexibility to meet new business challenges and opportunities. The information is necessary for RUS to conduct business with successor entity while protecting the security of Government loans and avoiding defaults and to grant merger approval when required.

Description of Respondents: Business or other for-profit.

Number of Respondents: 10.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 140.

Kimble Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–02104 Filed 2–12–19; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Nebraska 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 Nebraska Advisory Committee (Committee) will hold a meeting on Friday February 22, 2019 at 11 a.m. Central time. The Committee will review and discuss a project proposal to study civil rights in the state as they related to prison conditions for incarcerated individuals who are also living with mental illness.

DATES: The meeting will take place on Friday February 22, 2019 at 11 a.m. Central.

Public Call Information: Dial: 855–710–4181, Conference ID: 1929060.

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

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

Members of the public are 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, 230 S Dearborn, Suite 2120, Chicago, IL 60604. 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, Nebraska Advisory Committee link. 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 Nebraska: Prisons and Mental Health

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 circumstances of the federal government shutdown.

Dated: February 7, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–02108 Filed 2–12–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: U.S. Census Bureau.

Title: 2020 Census

The initial **Federal Register** Notice (''2020 Census,'' June 8, 2018, Vol. 83, Number 111, pp. 26643–26653, FR Doc No.: 2018–12365) described the 2020 Census in full. Approval for the 2020 Census is being sought from OMB in phases. The first phase of approval was for the 2020 Census Address Canvassing operation only, which was described in **Federal Register** Notice ''2020 Census,'' October 2, 2018 (Vol. 83, No. 191, pp. 49535–49539, FR Doc No.: 2018–21386). Address Canvassing creates the address list for the census and precedes census enumeration data collection. The remaining operations scoped for the 2020 Census data collection will be described below in this **Federal Register** Notice for an additional 30-day comment period; the full census description will be considered as a substantive change to the approved OMB materials. This notice was previously posted on December 28, 2018, (Volume 83, No. 248, pp 67213–67222, FR Doc No.: 2018–28164) for a 30-day comment period, but public comments could not be received during the partial government shutdown. In addition, this document has been updated to reflect pending litigation regarding the reinstatement of the citizenship question as well as some minor edits.

OMB Control Number: 0607–1006.

Form Number(s): D–CN(E/S) (included with Address Canvassing approval), D–Q, D–Q(E/S), D–Q–GE, D–Q–GE(S), D–Q–UL, D–Q–UL(E/S), D–Q–TL, D–Q–TL(S), D–Q–UE, D–Q–RA, D–Q–TLRA, D–Q–GERA, D–Q–MV, D–CQ–TL, D–CQ–TL(S), D–CQ–UE, D–CQ–RA, D–CQ–TLRA, D–Q–AS, D–Q–MI, D–Q–GU, D–Q–VI, D–Q–VI(S), D–CQ–AS, D–CQ–MI, D–CQ–GU, D–CQ–VI, D–CQ–VI(S), D–Q–GE–AS, D–Q–GE–MI, D–Q–GE–GU, D–Q–GE–VI, D–Q–GE–VI(S), D–Q–ULPR(E/S), D–Q–GEPR, D–Q–GEPR(S), D–Q–PR(E/S), D–Q–TLPR, D–Q–TLPR(S), D–CQ–TLPR, D–CQ–TLPR(S).

Type of Request: Revision of a currently approved collection.

Number of Respondents: 180,962,929 for all operations in the 2020 Census.

Average Hours per Response: 10 minutes for census enumeration.

Burden Hours: 26,531,594 for 2020 Census.

2020 CENSUS

Operation or category	Estimated number of respondents	Estimated time per response (minutes)	Total burden hours
Address Canvassing	15,786,734	5	1,315,561
Address Canvassing Listing QC	1,578,673	5	131,556
Address Canvassing Subtotal	17,365,407	.....	1,447,117
Geographic Areas Focused on Self-Response (this includes Mailout and Update Leave)			
Internet/Telephone/Paper	80,700,000	10	13,450,000
Update Leave	11,900,000	5	991,667
Update Leave QC	1,190,000	5	99,167
Nonresponse Followup	52,700,000	10	8,783,333
Nonresponse Followup Reinterview	2,760,000	5	230,000
Self-Response Quality Assurance	250,000	10	41,667
Field Verification	400,000	2	13,333
Field Verification QC	40,000	2	1,333
Coverage Improvement	3,200,000	7	373,333
Non-ID Processing Phone Followup	750,000	5	62,500
Self-Response Areas Subtotal	153,890,000	.....	24,046,333
Geographic Area Focused on Update Enumerate			
Update Enumerate Production	506,000	12	101,200
Update Enumerate Listing QC	50,600	5	4,217

2020 CENSUS—Continued

Operation or category	Estimated number of respondents	Estimated time per response (minutes)	Total burden hours
Update Enumerate Reinterview	25,300	10	4,217
Update Enumerate Subtotal	581,900		109,634
Group Quarters			
GQ Update Program	7,168	10	1,195
GQ Advance Contact (facility)	297,000	10	49,500
GQ Enumeration—eResponse (facility)	14,300	20	4,767
GQ Enumeration—person contact	8,000,000	5	666,667
Group Quarters QC	8,500	5	708
Group Quarters Subtotal	8,326,968		722,837
Enumeration at Transitory Locations—Advance Contact	50,000	10	8,333
Enumeration at Transitory Locations—Units	600,000	10	100,000
Federally Affiliated Count Overseas	82	5	7
Island Areas Censuses—Housing Units	138,281	40	92,187
Island Areas Censuses—Group Quarters	10,291	30	5,146
Totals	180,962,929		26,531,594

Overview of 2020 Census Operations

Below is a summary of the needs and uses of the 2020 Census, followed by a more detailed overview of data collection operations. The geographic areas discussed in this notice refer only to the 50 states, the District of Columbia, and Puerto Rico, unless otherwise noted. The 2020 Census also includes the Island Areas (U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

Needs and Uses: Article 1, Section 2 of the United States Constitution mandates that the U.S. House of Representatives be reapportioned every ten years by conducting a national census of all residents. In addition to the reapportionment of the U.S. Congress, census data are used to draw legislative district boundaries within states. Census data are also used by numerous agencies to determine funding allocations for the distribution of an estimated $675 billion of federal funds each year.

The Census Bureau plans to conduct the most automated, modern, and dynamic decennial census in history. The 2020 Census includes design changes in four key areas, discussed below:

(1) New methodologies to conduct the Address Canvassing operation.

(2) Innovative ways of optimizing self-response.

(3) The use of administrative records and third-party data to reduce the Nonresponse Followup (NRFU) operation workload.

(4) The use of technology to reduce the manual effort and improve the productivity of field operations, while decreasing the amount of physical space required to perform the field operations.

(1) Reengineering Address Canvassing

An accurate address list is the cornerstone of a successful census. In order to manage the work for the decennial census, the Census Bureau uses the address and physical location of each place where someone is, or could be, living. The Census Bureau maintains this address list and spatial data for the United States and Puerto Rico in its Master Address File (MAF)/Topologically Integrated Geographic Encoding and Referencing (TIGER) System database.

This database was created using the address files from the 1990 Census and has been subsequently and regularly updated using:

- Information collected from decennial census operation updates, including address and spatial updates.
- The Delivery Sequence File of addresses from the United States Postal Service (USPS).
- Input from tribal, state, and local governments and third parties, including address and boundary updates from various programs conducted over the decade, such as the Local Update of Census Addresses operation.
- Information collected in other Census Bureau programs, such as the American Community Survey.

The purpose of Address Canvassing is (1) to deliver a complete and accurate address list and spatial database for enumeration and tabulation, and (2) to determine the type and address characteristics for each living quarter. Prior to a field Address Canvassing data collection, the Census Bureau will delineate the entire land area of the United States, Puerto Rico, and Island Areas into Type of Enumeration Areas (TEAs). Most stateside United States living quarters will be delineated into the self-response area, where the census address list will be created before the census, census materials will be provided in the mail, and self-response modes will be supported and promoted. Other areas will be designated for Update Leave, Update Enumerate (including Remote Alaska), Military Enumeration, or Island Areas Enumeration.

For the 2020 Census, there will be a full Address Canvassing of the country that will consist of In-Office Address Canvassing complemented with In-Field Address Canvassing. In-Office Address Canvassing is the process of using empirical geographic evidence (*e.g.,* imagery, comparison of the Census Bureau's address list to address lists provided by the United States Postal Service and governmental units that partner with the Census Bureau) to assess the current address list and make changes where necessary. This component also detects and captures areas of change from high-quality administrative records and third-party data. Advancements in technology have enabled continual address and spatial updates to occur throughout the decade

as part of the In-Office Address Canvassing effort. Since 2015, satellite imagery has been used for the identification of areas where there are changes in living quarters. Where the necessary updates can be captured from electronic sources and are deemed to be sufficiently accurate, In-Office Address Canvassing will complete the update process prior to the census. The remaining blocks will become eligible to be sent to In-Field Address Canvassing for updating on the ground by field staff.

(2) Optimizing Self-Response

The goal of this innovation area is to make it as easy and efficient as possible for people to respond to the 2020 Census by offering new response options through the internet and telephone, in addition to the traditional mailback paper questionnaire option. Self-response reduces the need to conduct in-person follow-up operations to complete the enumeration, by far the most expensive method of data collection. To that end, the Census Bureau will motivate people to respond, as well as make it easy for people to respond, from any location at any time, even if they don't have the Census Bureau's preassigned ID for the address.

The importance of responding to the 2020 Census will be communicated in a variety of ways, including through mailings, questionnaire delivery, advertising, and partnership efforts. In particular, the Integrated Partnership and Communications operation is responsible for communicating the importance of responding to the 2020 Census.

Internet response represents a substantial innovation for the Census Bureau. The internet was not a response option in the 2010 Census. The internet response option has been included in multiple tests leading up to the 2020 Census: the 2014 Census Test; all three census tests performed in 2015; the 2016 Census Test; the 2017 Census Test; and the 2018 End-to-End Census Test. It has also been used in the American Community Survey since 2013.

(3) Utilizing Administrative Records and Third-Party Data

For the 2020 Census, ''administrative records'' and ''third-party data'' are terms used to describe microdata records contained in files collected and maintained by federal, state, and local government agencies (''administrative records'') and commercial entities (''third-party data'') for administering programs and providing services. For many decades, the Census Bureau has successfully and securely used administrative records and third-party data for statistical purposes. For the 2020 Census, the Census Bureau intends to use administrative records from both internal sources, such as data from prior decennial censuses and the American Community Survey, and from a range of other federal agencies, including the Internal Revenue Service (IRS), the Social Security Administration, the Centers for Medicare and Medicaid Services, the Department of Housing and Urban Development, the Indian Health Service, the Selective Service, and the U.S. Postal Service. The Census Bureau is also working to acquire state government administrative records from enrollment in federal block grant programs, such as the U.S. Department of Agriculture's Supplemental Nutrition Assistance Program and the Special Supplemental Nutrition Program for Women, Infants, and Children.

Throughout the decade, the Census Bureau continuously conducted analyses and assessments to verify that the proposed uses of administrative records and third-party data sources in the 2020 Census were appropriate in each instance. Based on this research, testing, and analyses, the Census Bureau announced its plans in November 2015 to utilize administrative records and third-party data in the 2020 Census. The 2020 Census Operational Plan calls for employing this information for the following purposes:

I. Consistent with previous decennial censuses, the Census Bureau will utilize administrative records from federal and state government agencies and third-party data to refine contact strategies and build and update the residential address list.

II. Also consistent with previous decennial censuses, the Census Bureau will utilize federal and state administrative records to edit or impute invalid, inconsistent, or missing responses.

III. The new use of administrative records for the 2020 Census is to use data exclusively from federal administrative records to improve the accuracy and efficiency of the NRFU operation by:

a. Reducing follow-up on vacant housing units and nonresidential addresses, as designated by administrative records.

b. Enumerating households that do not self-respond and whom we were unable to contact after six mailings and one in-person field visit.

For each of the purposes listed in items II, IIIa, and IIIb, the Census Bureau will use or plans to use administrative data only when it can confirm empirically across multiple sources that the data are consistent, of high quality, and can be accurately applied to the addresses and households in question. The Census Bureau plans to enumerate households utilizing administrative records only from federal government agencies, such as the IRS. Use of administrative records for nonresponding addresses will be evaluated under a strict set of Census Bureau rules throughout the process to ensure completeness and accuracy.

Based on the research and tests conducted, the Census Bureau estimates that under the current operational plan, federal administrative records will be used to enumerate up to 6.2 million households of the projected total of approximately 62 million addresses that are expected to be in the NRFU workload for the 2020 Census. These 6.2 million households represent less than five percent of the approximately 147 million addresses in the Census master address file. Where the Census Bureau does not have confidence in the data, such as when the data are inconsistent or missing in the federal administrative records, the household will remain in the NRFU workload to be enumerated in person.

(4) Reengineering Field Operations

The final innovation area, ''Reengineering Field Operations,'' has a goal of using technology to manage the 2020 Census fieldwork efficiently and effectively, and as a result, reduce the staffing, infrastructure, and brick and mortar footprint for the 2020 Census. The Census Bureau plans to provide most listers and enumerators with the capability to work completely remotely and perform all administrative and data collection tasks directly from a mobile device.

Supporting Documents About the 2020 Census Design and the 2020 Census Objectives

Multiple Census Bureau publications provide background on the plans for the 2020 Census. The 2020 Census Operational Plan describes each of the 35 operations scoped and defined for the census. Every task performed for the 2020 Census must be assigned to one of the 35 operations. The operational plan also summarizes the major findings of the census tests performed this decade. Moreover, this document shows the planned design of the 2020 Census as of December 2018 and identifies design decisions made, as well as remaining decisions to be made using census test results. Key design components for the 2020 Census for every operation are discussed in Chapter 5 of the 2020 Census Operational Plan. In addition, for most of the 2020 Census operations,

the Census Bureau is developing a detailed operational plan to document objectives and procedures of the operation, major tasks involved in implementation, the overall workflow, and the overall resources required. The 2020 Census operational plan and detailed operational plans are available at *https://www.census.gov/programs-surveys/decennial-census/2020-census/planning-management/memo-series.html* can be referenced for more details about the tasks performed for each operation.

Type of Enumeration Areas

Prior to the census, it is necessary to delineate all geographic areas into Type of Enumeration Areas (TEAs). These TEAs describe what methodology will be used for census material delivery and household enumeration in order to use the most cost-effective enumeration approach for achieving maximum accuracy and completeness. TEAs also describe what methodology will be used for updating the address frame. For the United States and Puerto Rico, TEAs are delineated at the block level based on the address and spatial data in the MAF/TIGER database.

The MAF/TIGER does not contain data for the Island Areas, so a separate TEA is designated for these areas. The TEAs designated for the 2020 Census are:

* TEA 1 = Self-Response.
* TEA 2 = Update Enumerate.
* TEA 3 = Island Areas.
* TEA 4 = Remote Alaska.
* TEA 5 = Military.
* TEA 6 = Update Leave.

The most common enumeration method by percentage of households is self-response (TEA 1), where materials will be delivered to each address through the mail, and self-response will be supported and promoted. After the initial self-response phase, nonresponding households will be enumerated in the NRFU operation. Update Enumerate uses the methodology of updating the address list and attempting household enumeration at the same time. This will be used for a very small portion of the addresses in the country, such as those with access problems or minimal mail service. The Island Areas are not included in MAF/TIGER. For these areas, the address list will be created and enumeration will be attempted at the same time. Remote Alaska uses the Update Enumerate methodology but in remote areas of Alaska that require a different schedule for enumeration due to changes in transportation accessibility and living situations related to the presence of ice. Military areas require special procedures due to security restrictions. Update Leave is an update of the address list at the same time that a questionnaire is left at each individual housing unit and the enumeration data is expected to be returned or submitted by a respondent. Puerto Rico is designated as entirely Update Leave (except for military locations) in order to create a current address list at the time of the census, in response to changes that may have occurred due to natural disasters.

A. Content and Forms Design

The Content and Forms Design (CFD) operation is responsible for identifying and finalizing the content and design of questionnaires and associated nonquestionnaire materials. To support the 2020 Census, the CFD operation ensures content consistency across data collection modes and operations, as question wording varies depending on mode of data collection. The CFD operation is responsible for creating, refining, and finalizing instrument specifications for all data collection modes—internet, phone, paper, and field enumeration. This is a significant departure from the 2010 Census, which relied on paper for virtually all data collection.

As required by law (Title 13, United States Code), the subjects planned for the 2020 Census were submitted to Congress on March 29, 2017, and the questions planned for the 2020 Census were submitted to Congress on March 29, 2018. The questions proposed for the 2020 Census questionnaire in the March 29, 2018 submission included age, citizenship, Hispanic origin, race, relationship, sex and tenure. Should the government prevail in pending litigation regarding the reinstatement of the citizenship question, the Census Bureau will include the citizenship question on the 2020 Census questionnaire.

B. Language Services

The Language Services operation provides questionnaires and related materials in non-English materials for respondents of Limited English Proficiency. For the 2020 Census, the internet instrument and Census Questionnaire Assistance will be available in Spanish, Chinese, Vietnamese, Korean, Russian, Arabic, Tagalog, Polish, French, Haitian Creole, Portuguese, and Japanese, in addition to English. The bilingual paper questionnaire, enumerator instrument, and field enumeration materials will be available in Spanish. In addition, language guides and language identification cards will be available in the following languages: Albanian, Amharic, Arabic, Armenian, Bengali, Bosnian, Bulgarian, Burmese, Chinese, Croatian, Czech, Dutch, Farsi, French, German, Gujarati, Greek, Haitian Creole, Hebrew, Hindi, Hmong, Hungarian, Igbo, Ilocano, Indonesian, Italian, Japanese, Khmer, Korean, Lao, Lithuanian, Malayalam, Marathi, Navajo, Nepali, Polish, Portuguese, Punjabi, Romanian, Russian, Serbian, Sinhala, Slovak, Somali, Spanish, Swahili, Tagalog, Tamil, Telugu, Thai, Tigrinya, Turkish, Twi, Ukrainian, Urdu, Vietnamese, Yiddish, and Yoruba.

C. Address Canvassing

Address Canvassing, as described above, consists of two major components: In-Office Address Canvassing and In-Field Address Canvassing. In-Office Address Canvassing is the process of using empirical geographic evidence (*e.g.,* imagery, comparison of the Census Bureau's address list to partner-provided lists) to assess the current address list and make changes where necessary. This component detects and captures areas of change from high-quality administrative records and third-party data. Advancements in technology have enabled continual address and spatial updates to occur throughout the decade as part of the In-Office Address Canvassing effort.

Areas not resolved by In-Office Address Canvassing become the universe of geographic areas worked during In-Field Address Canvassing. Only the In-Field component of Address Canvassing involves in-person collection of information from residents at their living quarters.

For In-Field Address Canvassing, an extract of addresses from the MAF is created, and this address list is verified and updated in the field, as needed. Updates can include adding units missing from the address list and removing nonexistent or nonresidential units from the list. In addition, living quarters are classified as housing units or group quarters. Group quarters are living quarters where people who are typically unrelated have group living arrangements and frequently are receiving some type of service. College/university student housing and nursing/skilled-nursing facilities are examples of group quarters.

The MAF also has geographic data for transitory locations, which include recreational vehicle parks, campgrounds, racetracks, circuses, carnivals, marinas, hotels, and motels. People residing at transitory locations during the census are recorded as living

in housing units located at transitory locations.

During In-Field Address Canvassing, listers knock on doors at every structure in the assignment in an attempt to locate living quarters and classify each living quarter as a housing unit, group quarter, or transitory location. If someone answers, the lister will provide a Confidentiality Notice and ask about the address in order to verify or update the information, as appropriate. The listers will then ask if there are any additional living quarters in the structure or on the property. If there are additional living quarters, the listers will collect or update that information, as appropriate. In addition, there will be a check on the quality of the address listing work on approximately 10 percent of the address listing workload.

The results of Address Canvassing are processed with MAF/TIGER and then used as input into the creation of the census address list for enumeration. This address list in turn, is used in conjunction with the TEA delineation to determine which materials should be printed for use in the operation(s) designated for each area of the country.

D. Forms Printing and Distribution

The Forms Printing and Distribution operation prints and distributes paper forms to support the 2020 Census mailing strategy and enumeration of the population. The Forms Printing and Distribution operation is responsible for the printing and distribution of mailed internet invitations, reminder cards or letters, and questionnaire mail packages where materials are mailed, in multiple languages as determined by the Language Services operation. The letters, reminder cards, and questionnaires are delivered according to the mailing contact strategy, which is part of the internet Self-Response operation (discussed below).

Every address record will be identified by an ID, which will be printed on questionnaires and letters and used for tracking responses. Paper questionnaires and responses from field operations will be linked to the ID in data capture. Internet and telephone respondents will be requested but not required to provide the ID. When an ID is not provided, the response will be considered a Non-ID response. The Non-ID operation is discussed below.

E. Internet Self-Response

The internet Self-Response (ISR) operation performs the following functions:

- Maximize online response to the 2020 Census through contact strategies and improved access for respondents.
- Collect response data via the internet to reduce paper and the NRFU universe.

Contact Strategies for Mailing Materials

''Contact strategies for mailing materials'' refers to all attempts by the Census Bureau to make direct contact with individual households by mail. Types of contact strategies include invitation letters, postcards, and questionnaires mailed to households.

A primary objective of the 2020 Census is for a majority of self-respondents to complete their census questionnaire online. An approach called ''internet First,'' in which the first mailing includes an invitation to respond to the census online, has been developed for TEA 1 areas to encourage respondents to use the internet. Subsequent mailings will be reminders to respond to the census online, until all remaining nonresponding households in the internet First areas receive a paper questionnaire in the fourth mailing. In TEA 1 areas with low internet coverage or connectivity or other characteristics that may make it less likely the respondents will complete the census questionnaire online, the ''internet Choice'' contact strategy will be designated for use instead. This strategy includes both an invitation to complete the census online and a paper questionnaire as part of the first mailing. The Census Bureau anticipates about 20 percent of the households in the self-response TEA will receive the internet Choice treatment.

In summary, the contact strategies for mailing materials including mailing date are outlined in the table below:

Panel	Cohort	Mailing 1 *Letter (Internet First) or Letter + Questionnaire (Internet Choice)*	Mailing 2 *Letter*	Mailing 3* *Postcard*	Mailing 4* *Letter + Questionnaire*	Mailing 5* *"It's not too late" Postcard*
Internet First	1	March 12, 2020	March 16, 2020	March 26, 2020	April 8, 2020	April 20, 2020
	2	March 13, 2020	March 17, 2020	March 27, 2020	April 9, 2020	April 20, 2020
	3	March 19, 2020	March 23, 2020	April 2, 2020	April 15, 2020	April 27, 2020
	4	March 20, 2020	March 24, 2020	April 3, 2020	April 16, 2020	April 27, 2020
Internet Choice	N/A	March 13, 2020	March 17, 2020	March 27, 2020	April 9, 2020	April 20, 2020

* Targeted only to nonrespondents.

Internet Self-Response Instrument

The internet application and all related support systems are designed to handle the volume of responses that are expected to be received by internet in the 2020 Census. It is imperative that the application and systems service the scale of the operation in order to ensure that users do not experience delays while completing the survey or unavailability of the application. In addition, the internet application and other associated systems were developed to adhere to the highest standards of data security in order to ensure that all respondent data are secure and confidential.

F. Census Questionnaire Assistance

The Census Questionnaire Assistance (CQA) operation has three primary functions:

- Provide questionnaire assistance by answering questions about specific items on the census questionnaire or other frequently asked questions about the census.

• Provide an option for respondents to complete a census interview over the telephone.

• Provide outbound calling in support of Coverage Improvement (discussed in the NRFU section below).

Respondents using the internet instrument will have the ability to contact CQA by telephone when web-based self-service help tools cannot answer their questions. Each of the 13 supported languages, including English, will have its own toll-free number for callers. Respondents calling the English and Spanish language lines will initially be presented with a self-service Interactive Voice Response system, offering an assortment of automated responses to Frequently Asked Questions. At any time, respondents may opt to transfer to a customer service representative, who is prepared to further assist and enumerate them. All callers who need assistance in other languages will be connected directly to an appropriately skilled customer service representative fluent in the language, based on the toll-free number called.

G. Update Leave

The Update Leave (UL) operation is designed for areas where the majority of housing units either do not have mail delivered to the physical location of the housing unit or the mail delivery information for the housing unit cannot be verified. Designated during TEA delineation, UL can occur in geographic areas that:

• Do not have city-style addresses.

• Do not receive mail through city-style addresses.

• Receive mail at post office boxes.

• Have been affected by major disasters.

The purpose of the UL operation is to update the address and feature data for the area assigned and to leave an internet Choice questionnaire package at every housing unit identified to allow the household to self-respond. Enumerators do not attempt to enumerate the household in person at this point.

Occupants can respond online, using the ID printed on the questionnaire, or they can fill out and mail back the paper questionnaire. If they have questions or wish to respond on the telephone, they can call the CQA number, which is provided in the package.

The UL operation includes mailing a reminder letter and a reminder postcard to addresses that are capable of receiving mail within the areas designated for UL. These mailed materials include the ID for the given address and the website address for the household to use in order to respond online. As in TEA 1, where all materials are mailed to housing units, any households that do not self-respond will be contacted during the NRFU operation. Finally, the UL operation performs a check on the quality of the address listing work (quality control [QC]) on approximately 10 percent of the production workload.

H. Update Enumerate

The Update Enumerate (UE) operation is designated for areas where the initial visit requires enumerating at the living quarters while updating the address list. The majority of the operation will occur in remote geographic areas that have unique challenges associated with accessibility. UE can occur in the following geographic areas:

• Remote Alaska.

• Areas that were a part of the 2010 Census Remote UE operation, such as northern parts of Maine and southeast Alaska.

• Select American Indian areas that request to be enumerated in person during the initial visit.

Note that the areas included in the 2010 Census Remote Update Enumerate operation might be delineated into TEA 1 or TEA 6 for the 2020 Census, based on changes in address type or mailability.

In the UE operation, field staff update the address and feature data and enumerate respondents in person. The address and feature data are updated on paper address registers and paper maps. The enumeration is collected on paper questionnaires. Field staff conducting UE follow a specific contact strategy for the remote locations and conduct any needed follow-up. The UE operation will promote the quality of the address work and of the enumeration data by having staff work in pairs and by supervisors reviewing all data collected for completion and any anomalies. Supervisors will rework an area to collect geographic and/or enumeration data when necessary to improve the quality of the collected data. Rework is expected on no more than 10 percent of the total workload of cases.

I. Non-ID Processing

For the 2020 Census, respondents will be encouraged, but not required, to use the Census Bureau's preassigned ID for the living quarters. Within the internet instrument, and, consequently, within CQA, it will be possible for respondents to submit their census response without the preassigned ID. Non-ID Processing is the effort to associate census responses that lack a Census ID with records included on the Census Bureau's 2020 Census address frame. This processing can occur through automated or clerical procedures. With the ISR instrument collecting the response and address data, it will be possible to perform automated processing to determine whether the address was already included on the address frame and extracted from the MAF. For those Non-ID responses not matched during automated processing, a clerical operation will make a further attempt to match the address to the 2020 Census address frame and validate nonmatching addresses. Some of the clerical work may require contacting the respondent to help determine a match or to verify the existence and location of the address; this is known as Non-ID Processing Phone Followup. Any nonmatching address whose existence and location cannot be verified by the clerical Non-ID operation will become a Field Verification assignment, handled as a component of the NRFU operation. Notably, Field Verification is only an address verification effort and does not include collection of the census questionnaire data.

J. Nonresponse Followup

The NRFU operation serves two primary purposes:

• Determines or resolves housing unit status for addresses included in the NRFU workload.

• Enumerates housing units that are determined to have a housing unit status of occupied.

The NRFU workload is comprised of addresses from a number of sources, including:

• Nonresponding addresses in TEAs 1 and 6.

• Blank mail returns or mail returns otherwise deemed to be too incomplete.

• Addresses considered to represent new or recently completed housing. These addresses are identified by the spring 2020 USPS Delivery Sequence File and other special efforts undertaken to identify new housing around the time of the census—New Construction and Housing Unit Count Review; addresses upheld in the Local Update of Census Addresses appeals process; and potentially other addresses determined to require follow-up after the initial enumeration universe is established.

• Addresses with a vacant status (reported as 0 occupants) from internet Self-Response.

• Field Verification cases.

• Coverage Improvement cases.

• Self-Response Quality Assurance cases.

The 2020 Census NRFU operation will be different from the NRFU operation conducted in the 2010

Census. The Census Bureau will implement a NRFU operational design that utilizes a combination of the following:

- Automation to facilitate data collection.
- Administrative records and third-party data usage to reduce the workload.
- Reengineering of staffing and management of field operations.
- A best-time-to-contact model to increase the likelihood of making contact attempts when an enumerator will find people at home.

After giving the population in the United States and Puerto Rico an opportunity to self-respond to the 2020 Census, the Census Bureau will use the most cost-effective strategy for contacting and counting people to ensure an accurate count.

During the NRFU operation, enumerators will visit each housing unit designated for follow-up and determine whether the unit exists and then the occupancy status of the unit on April 1, 2020. If the unit exists, they complete an interview using an automated application on a smartphone. The devices will use a secure Census Bureau-provided enumeration application solution for conducting the NRFU field data collection. Enumeration data and workload updates will be transmitted between the NRFU instruments and response processing systems on a regular basis. Various techniques will be used during NRFU to make the data collection as efficient as possible. The number of allowed attempts to contact will be controlled within the automated instrument, and best-time-to-contact modeling will be used in the creation of the daily assignments. Every case in the NRFU workload will initially have a maximum of six unique contact days. (During the Closeout phase of the operation, cases may receive additional attempts, as necessary, to resolve incomplete cases.) After a third attempt to contact a household does not yield a respondent, a case will become proxy-eligible. A proxy is a neighbor, landlord, real estate agent, or other knowledgeable person who can provide information about the unit and the people who live there. An enumerator should attempt three proxies after each noninterview for a proxy-eligible case.

In addition to the initial in-person contact attempt, these addresses will also receive a final mailing that encourages occupants to self-respond to the 2020 Census. If the initial in-person contact attempt is unsuccessful, the Census Bureau will use administrative records for the unit status or as the household response data when it has high-quality administrative records from trusted sources. Undeliverable-As-Addressed information from the USPS will serve as the primary administrative records source for the identification of vacant addresses and addresses that do not exist. Examples of sources of administrative records and third-party data used to enumerate occupied housing units include IRS Individual Tax Returns, IRS Information Returns, and the Center for Medicare and Medicaid Statistics Medicare Enrollment Database. Addresses will also be removed from the workload throughout the course of the NRFU operation as self-responses continue to be received.

Early NRFU

Early NRFU occurs in areas where there are high concentrations of college students living in off-campus housing who are unlikely to be present during the scheduled dates for regular NRFU. The enumeration procedures for early NRFU are the same as regular NRFU, but just conducted at an earlier time to accommodate the schedules of select colleges and universities. Any early NRFU addresses that are unresolved by the start of NRFU will receive additional field attempts during regular NRFU.

NRFU Reinterview

The NRFU Reinterview program will check the quality of the work done by enumerators in NRFU. A sample of approximately 5 percent of NRFU interviews will be selected for verification through NRFU Reinterview. The NRFU Reinterview program involves conducting an independent field reinterview for selected cases to verify that an enumerator conducted the interview and followed procedures. The NRFU Reinterview interviewer/enumerator always attempts to contact the respondent from the original interview, which may be a household member, neighbor, or some other proxy. If the original respondent confirms that he/she was contacted and an enumerator conducted the original interview, the NRFU Reinterview interviewer/enumerator collects roster names and ends the interview. If the respondent was not contacted or does not know if an enumerator conducted the original interview, the NRFU Reinterview interviewer/enumerator conducts a full interview with the respondent.

During the early weeks of NRFU, enumerators will conduct interviews with multiunit structure managers to determine the occupancy status of nonresponding units within the multiunit structure. This Manager Visit (MV) allows enumerators to identify several units as vacant or delete without having to attempt each unit individually. Enumerators have a maximum of two unique contact days to complete the MV cases. The MV Reinterview program will check the quality of work done by enumerators during the MV and will target MVs with high numbers of vacant and delete unit statuses. During the MV Reinterview, the enumerator will ask to speak to the manager from the original MV interview. If the respondent confirms that he/she was contacted and an enumerator conducted the original interview, the MV RI enumerator asks about a subset of the list checked during the MV. If the respondent was not contacted or does not know if an enumerator conducted the original MV interview, the MV Reinterview enumerator conducts a full interview and asks about the entire list during the MV.

The NRFU universe also includes cases from Non-ID Processing that were not able to be matched to the address frame. As discussed in the Non-ID section, these are Field Verification (FV) cases, where the enumerators attempt to locate the address in question and collect its Global Positioning System (GPS) coordinates. A sample of the FV cases is selected for verification through FV QC. Since FV cases only require an enumerator to determine the existence of an address and will not require an interview with a respondent, the FV QC program will consist of an independent check of the production enumerators where the FV QC enumerator will conduct the same procedures as the FV enumerator. FV cases, along with their QC component, have a maximum of one field contact day.

The Coverage Improvement operation resolves categories of erroneous enumerations (people counted in the wrong place or counted more than once) and omissions (people who were missed) identified through collected enumeration data. The Coverage Improvement operation will attempt to resolve these issues from both self-response and NRFU responses. All cases that are selected for Coverage Improvement with a valid phone number will be subject to an interview attempt by a CQA Customer Service Representative. The workload identified for the Coverage Improvement operation will be responses where a household enumeration shows a difference between the answer for the number of people within the household and the number of people enumerated, and answers to coverage questions in the initial enumeration that reflect potential

coverage errors. Automation and the internet self-response option should reduce the prevalence of these types of respondent errors as compared to the 2010 Census, which was completed almost entirely on paper questionnaires.

Self-Response Quality Assurance cases are generated as part of the quality assurance efforts for self-response. This re-collection of the enumeration data will also be worked within NRFU.

K. Group Quarters

The 2020 Census Group Quarters (GQ) operation will enumerate people living or staying in group quarters and will provide an opportunity for people experiencing homelessness and receiving service at a service-based location, such as a soup kitchen, to be counted in the census.

The 2020 Census GQ operation consists of the following components:

- In-Office GQ Advance Contact.
- GQ Enumeration.
- Service-Based Enumeration.
- Military Enumeration.
- Maritime Vessel (Shipboard) Enumeration.

In-Office GQ Advance Contact

The In-Office GQ Advance Contact is an in-office activity conducted in the area census offices. Preferred dates, times, methods of enumeration, and expected population on Census Day will be collected. Special instructions or concerns related to privacy, confidentiality, and security will also be addressed.

GQ Enumeration

The GQ Enumeration will cover all 50 states, the District of Columbia, and Puerto Rico. An additional late GQ enumeration phase allows for the stakeholder identification and enumeration of group quarters that may have been missed during the earlier time frame. The primary method of conducting in-person enumeration of people residing in group quarters will be by using the Individual Census Questionnaire as the paper data collection instrument. In-person interviewing is planned for all group quarter types that are part of the field enumeration workload.

GQ Enumeration—eResponse Data Transfer

eResponse uses electronic data transfer from GQ administrators to the Census Bureau. Client-level data from systems maintained by GQ Administrators can be transferred to a standardized Census Bureau system that will accept electronically submitted data in a standardized template. These data will be accepted in lieu of use of the Individual Census Questionnaire if data are deemed to be of sufficiently high quality and completeness.

Service-Based Enumeration

The Service-Based Enumeration is specifically designed to approach people using service facilities because they may be missed during the traditional enumeration at housing units and group quarters. These service locations and outdoor locations include the following:

- *Shelters:* Shelters with sleeping facilities for people experiencing homelessness; shelters for children who are runaways, neglected, or experiencing homelessness.
- Soup kitchens.
- *Regularly scheduled mobile food vans:* Stops where regularly scheduled mobile food vans distribute meals.
- Targeted nonsheltered outdoor locations.

For the 2020 Census, the Service-Based Enumeration operation will be conducted over the three-day period that ends on April 1, 2020, Census Day. Service providers for shelters, soup kitchens, and regularly scheduled mobile food vans will be given the flexibility for their facility to be enumerated on any one of the three days. Targeted nonsheltered outdoor locations will be enumerated April 1, 2020. Field partnership specialists with local knowledge will help to identify nonsheltered outdoor locations during the time of the census.

Domestic Violence Shelters

Domestic violence shelters are facilities for those seeking safety from domestic violence. Domestic violence shelters are enumerated using special procedures and specially trained personnel. These special procedures include inviting members of the National Coalition Against Domestic Violence state coalitions to participate in the 2020 Census Group Quarters Update Program to create a comprehensive and current address listing for domestic violence shelters. These special procedures are designed to protect the safety and security of respondents being enumerated at these locations.

Military Enumeration and Maritime Vessel Enumeration

Military Enumeration involves enumeration of people living in GQs or barracks on stateside military installations or military vessels. Military installations are fenced, secured areas used for military purposes. An important feature of the military enumeration operation is that it includes both group quarters and housing units. A military vessel is defined as a United States Navy or United States Coast Guard vessel assigned to a home port in the United States. See part Q for methods we will use to count overseas military.

L. Paper Data Capture

The Paper Data Capture operation scans and converts data from 2020 Census paper questionnaires. Core sources for the Paper Data Capture operation include housing unit self-response questionnaires mailed back by respondents and Group Quarters Individual Census Reports. The Census Bureau's in-house Integrated Computer Assisted Data Entry system is used to capture paper responses from questionnaires. Each write-in and checkbox data field is data-captured, and Optical Character Recognition and Optical Mark Recognition are performed. If Key From Image is needed for forms that cannot be processed through Optical Character Recognition or Optical Mark Recognition, staff are presented the image of the page and are able to clarify, correct, or add to what was captured. The Census Bureau maintains the data, images of the forms, and the paper forms themselves until confirmation that the data have been correctly captured, at which point the paper forms are sent to destruction while the data and images are retained. The Census Bureau maintains the images for archiving purposes until such time as the National Archiving and Records Administration takes possession of the images for permanent archiving.

M. Response Processing

The Response Processing Operation (RPO) supports the three major components of the 2020 Census: Pre-data collection activities, data collection activities, and post-data collection activities. Specifically, the operation supports the following activities:

Pre-data collection:

- Create and distribute the initial 2020 Census enumeration universe of living quarters.
- Assign the specific enumeration strategy for each living quarter based on case status and associated paradata.

Data collection:

- Create and distribute workload files required for enumeration operations.
- Track case enumeration status.
- Check for suspicious returns.

Post-data collection:

- Run post-data collection processing actions in preparation for producing the final 2020 Census results.

N. Redistricting Data Program

The purpose of the 2020 Census Redistricting Data Program (RDP) is to provide to each state the legally required redistricting data tabulations by the mandated deadline of one year from Census Day: April 1, 2021. In compliance with Public Law (P.L.) 94–171, the Census Bureau will tabulate for each state the total population counts by race and Hispanic origin. The Census Bureau will tabulate these counts for the total population and for the population age 18 and over in a prototype redistricting data file released as part of the 2018 End-to-End Census Test. The Census Bureau intends to work with stakeholders, specifically ''the officers or public bodies having initial responsibility for the legislative apportionment of each state,'' to solicit feedback on the content of the prototype redistricting data file. If those stakeholders indicate a need for tabulations of citizenship data on the 2020 Census Public Law 94–171 Redistricting Data File, the Census Bureau will make a design change to include citizenship as part of that data, if collected. That new design would then be published in the **Federal Register** after it is completed in the summer of 2019. The Census Bureau will also tabulate housing unit counts by occupancy status (occupied or vacant) and provide total population counts for group quarters by group quarters type. For the prototype and for the 2020 Census Redistricting Data Files, the Census Bureau will provide these tabulations for a variety of standard census geographic areas including state, county, place, tract, and tabulation block. If states provide their congressional, legislative, and voting district boundaries through the Redistricting Data Program, the Census Bureau will also provide the tabulations for these areas. Tabulations by congressional, legislative, and voting districts will be available for the 50 states; equivalent tabulations will be available for the District of Columbia and the Commonwealth of Puerto Rico.

This program has a separate OMB clearance number. There is more detail about this program in **Federal Register** Notice ''Redistricting Data Program,'' July 26, 2018, (Vol. 83, No. 144, pp. 35458–35460. FR Doc No. 2018–15972).

O. Data Products and Dissemination

The Data Products and Dissemination (DPD) operation performs three primary functions:

- Prepare and deliver the 2020 Census apportionment data for the President of the United States to provide to Congress by December 31, 2020.
- Tabulate 2020 Census data products for use by the states for redistricting.
- Tabulate and disseminate 2020 Census data for use by the public.

The DPD operation produces information required by Public Law to satisfy apportionment and redistricting requirements. Title 13, U.S. Code (U.S.C.) requires that the apportionment population counts be delivered to the Office of the President within nine months of the census date. Apportionment counts are based on the Census Unedited File, the Federally Affiliated Overseas Personnel and Dependents Count File, and a geographic file of state changes. For the 2020 Census, the census date is April 1, 2020, and the President will receive the counts by December 31, 2020.

The DPD operation is also responsible for the production and dissemination of many data products, including national and state summary files, tabulated informational files, and data comparison tables. This includes electronic and printed products that cover population and housing unit tabulations, geographical maps, and products specific to the Island Areas (U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

The Center for Enterprise Dissemination Services and Consumer Innovation initiative is responsible for developing enterprise dissemination requirements. DPD is conducting a thorough review of the past product design (cross-tabulations and iterations of characteristics), while also looking to ensure that users can find data after the 2020 Census quickly and easily. The Census Bureau will undertake a thorough analysis of the proposed 2020 Census data products in keeping with our sworn obligation to protect respondents' data as data stewards under Title 13. **Federal Register** Notice ''*Soliciting Feedback from Users on 2020 Census Data Products,*'' July 19, 2018 (Vol. 83, pp. 34111—34112, FR Doc No. 2018–15458) was published with a 60-day comment period. It requested feedback from users on specific tables and geographic detail for decennial census products such as Summary File 1, Summary File 2, and the Demographic Profile. The last day to provide comment on the notice was September 17, 2018. Subsequently, this notice was reopened for an additional 30-day comment period on October 9, 2018 (Vol. 83, p. 50636, FR Doc No. 2018–21837). The last day to provide comments on this notice was November 8, 2018. The final suite of 2020 Census data products will be determined in the summer of 2019.

P. Archiving

The Archiving (ARC) operation performs the following functions:

- Coordinate storage of the materials and data and provides records deemed permanent as the official data of the 2020 Census, including files containing the individual responses to the 2020 Census, to the National Archives and Records Administration (NARA).
- Provide similar files to the Census Bureau's National Processing Center in Indiana to use as source materials to conduct the Age Search Service.
- Store data to cover in-house needs.

Q. Federally Affiliated Count Overseas

The Federally Affiliated Count Overseas operation obtains counts by home state of United States military and federal civilian employees who are stationed or assigned overseas and their dependents living with them. For the 2020 Census, overseas is defined as anywhere outside the 50 states, the District of Columbia, Puerto Rico, and the Island Areas: American Samoa, Commonwealth of the Northern Mariana Islands, Guam, and the United States Virgin Islands. Counts are submitted from federal agencies and the Department of Defense (Defense Manpower Data Command) through a Census Bureau secure server and are used to allocate the federally affiliated population living overseas to their home state for the purposes of apportioning seats in the U.S. House of Representatives. If military and federal civilian employees of the U.S. government are deployed overseas while stationed or assigned within the U.S., they are counted at their U.S. residence where they live or sleep most of the time using administrative data provided by federal agencies and the Department of Defense. See Section K for more info on how we count stateside military personnel.

R. Island Areas Censuses

The purpose of the Island Areas Censuses (IAC) operation is to enumerate all residents of American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the U.S. Virgin Islands; process and tabulate the collected data; and disseminate data products to the public. All data collection activities for the IAC will rely on the use of paper questionnaires, paper maps, and paper address registers to record the physical addresses of housing units and group quarters. The IAC questionnaire will leverage the American Community

Survey questionnaire with minor wording changes in order to take into account the Island Areas local governments' concerns, where possible.

Enumerators will list the addresses using paper address registers. Once the addresses have been listed, enumerators will visit every living quarter to conduct interviews with household members and follow up as necessary. The IAC will perform a clerical review of all completed questionnaires for completeness and data consistency, a reinterview for a sample of questionnaires, and an independent address check. The response data will be processed through the Decennial Response Processing System. Data products will include counts of the population and housing units, data profiles, subject tables, ranking tables, and supplemental tables.

S. Evaluations and Experiments

The Census Bureau is not currently planning a separate package for the Evaluations and Experiments program, as has been done in past censuses. For the 2020 Census, these evaluations and experiments will be described either as Substantive Changes to this package, to the Census Bureau's Post-Enumeration Survey Independent Listing and QC OMB package, or within the Generic Clearance for Decennial Census Field Tests and Evaluations, covered under OMB approval 0607–0971.

Affected Public: Individuals or Households.

Frequency: Once every 10 years.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Section 141.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection, identified by Docket number OMB–2018–0004, may be submitted to the Federal e-Rulemaking portal: *https://www.regulations.gov* within 30 days of publication of this notice. You may also submit comments and recommendations to *2020_Census_Comments@omb.eop.gov* or fax to (202) 395–5806. All comments received are part of the public record and will be posted to *http://www.regulations.gov* for public viewing. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–02223 Filed 2–12–19; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Proposed Information Collection; Comment Request; Form ED–840P, Petition by a Firm for Certification of Eligibility To Apply for Trade Adjustment Assistance, and Adjustment Proposals; Trade Adjustment Assistance for Firms Program

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on the proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 15, 2019.

ADDRESSES: Direct all written comments and recommendations for the proposed information collection to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 1401 Constitution Avenue NW, Washington, DC 20230 (or via the internet at *PRAcomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Irette Patterson, Program Analyst, Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, 1401 Constitution Ave. NW, Washington, DC 20230 at *taac@eda.gov* or 202–482–2743.

SUPPLEMENTARY INFORMATION:

I. Abstract

EDA administers the Trade Adjustment Assistance for Firms (TAAF) Program, which is authorized under chapters 3 and 5 of title II of the Trade Act of 1974, as amended (19 U.S.C. 2341–2356) (Trade Act), through a national network of non-profit and university-affiliated Trade Adjustment Assistance Centers (TAACs), each of which serves a different geographic region. EDA certifies firms as eligible to participate in the TAAF Program and provides funding to allow eligible client-firms to receive adjustment assistance through the TAACs. The information collected on Form ED–840P and relevant supporting documentation is used to determine whether a firm is eligible to participate in the TAAF Program. In accordance with the Trade Act and EDA's regulations as set out at 13 CFR part 315, EDA must verify that the following have occurred: (1) A significant reduction in the number or proportion of the workers in the firm, a reduction in the workers' wage or work hours, or an imminent threat of such reductions; (2) sales or production of the firm have decreased absolutely, or sales or production, or both, of any article or service accounting for at least 25 percent of the firm's sales or production has decreased absolutely; and (3) an increase in imports of articles or services like or directly competitive with those produced or provided by the petitioning firm, which has contributed importantly to the decline in employment and sales or production of that firm. Additionally, to document the connection of increased imports to declining employment and sales or production, the firm must demonstrate that its customers have reduced purchases from the firm in favor of buying items or services from foreign suppliers. The use of Form ED–840P standardizes and limits the information collected as part of the certification process and eases the burden on applicants and reviewers alike.

In addition, after being certified as eligible for TAAF Program assistance following submission of Form ED–840P, firms must create an EDA-approved adjustment proposal in order to receive financial assistance under the TAAF Program. The adjustment proposal is each firm's business plan to remain viable in the current global economy. Each adjustment proposal must meet certain requirements as set out in the Trade Act and EDA's regulation at 13 CFR 315.16. This notice also includes an estimate of the amount of time a firm spends to research and compile information for adjustment proposals.

II. Method of Collection

Form ED–840P may be obtained in Portable Document Format (PDF) from EDA or the TAACs upon request.

TAACs are responsible for preparing the petition for certification on the firm's behalf. Although there is no form associated with adjustment proposals, they must meet the requirements for adjustment proposals set out in EDA's regulation at 13 CFR 315.16. Both petitions for certification on Form ED–840P and adjustment proposals may be submitted via email to *taac@eda.gov* or in hard copy to EDA at Trade Adjustment Assistance for Firms, 1401 Constitution Avenue NW, Room 71030, Washington DC 20230.

III. Data

OMB Control Number: 0610–0091.

Form Number(s): ED–840P.

Type of Review: Revision/Extension of a current information collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 300 (150 petitions for certification and 150 adjustment proposals).

Estimated Time per Response: 128.2 hours (8.2 for petitions for certification and 120 for adjustment proposals).

Estimated Total Annual Burden Hours: 19,230 (1,230 for petitions for certification and 18,000 for adjustment proposals).

Estimated Total Annual Cost to Public: $ 1,346,100 ($86,100 for petitions for certification and $1,260,000 for adjustment proposals).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. All comments submitted in response to this notice are a part of the public record and will be made available to the public, which may include posting them on the *Regulations.gov* website. Comments will generally be posted without change. Please do not include information of a confidential nature, such as sensitive personal information or proprietary information. All Personally Identifiable Information (for example, name and address) voluntarily submitted may be publicly accessible. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket. Please note that comments that include a message stating the confidentiality of the communication will be treated as public comments and will be made available to the public.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–02132 Filed 2–12–19; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–03–2019]

Foreign-Trade Zone (FTZ) 68—El Paso, Texas; Notification of Proposed Production Activity; The Woodbridge Group (Flame Laminated Textiles) El Paso, Texas

The City of El Paso, grantee of FTZ 68, submitted a notification of proposed production activity to the FTZ Board on behalf of The Woodbridge Group (Woodbridge), located in El Paso, Texas. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on February 6, 2019.

The applicant indicates that it will be submitting a separate application for FTZ designation at the Woodbridge facility under FTZ 68. The facility is used to produce laminates by bonding foam/fabric or foam/film and passing the foam over an open flame. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Woodbridge from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Woodbridge would be able to choose the duty rates during customs entry procedures that apply to: Synthetic textile fabrics laminated with polyurethane foam and woven scrim; vinyl goods laminated with polyurethane foam and knit or woven scrim backing; vinyl goods laminated with polyurethane foam; synthetic textile and cotton mix fabrics laminated with polyurethane foam; and, polyurethane foam laminated with woven scrim (duty rate ranges from 2.7% to 6.5%). Woodbridge would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Vinyl coated fabric with polyvinyl chloride; woven polyester fabric yarn dyed and coated with polyurethane; synthetic leather rolls; vinyl leather imitation; artificial leather cloth; sheets of plastics—cellular—polyvinyl chloride fabric of man-made fibers; sheets of plastics—non-cellular—polyvinyl chloride; sheets of plastics—cellular—100% plastic; rolls of cotton fabric coated with polyvinyl chlorides; fabric of man-made fibers coated with over 70% plastic; fabric of man-made fibers coated with under 70% plastic; sheets of plastics—cellular—polyvinyl chloride—over 70% plastic combined with 65/35 poly cotton fabrics; sheets of plastics—cellular—of other plastics; woven synthetic fabric rolls 100% for automotive industry; polyvinyl chloride leather; 100% polyester knit fabrics; 9803X polyester nonwoven backing; polyester nonwoven scrim; and, knitted polyester fabric 100% (circular knit) (duty rate ranges from duty-free to 14.9%). The request indicates that the following components/materials will be admitted to the zone in privileged foreign status (19 CFR 146.41), thereby precluding inverted tariff benefits on such items: Vinyl coated fabric with polyvinyl chloride; woven polyester fabric yarn dyed and coated with polyurethane; synthetic leather rolls; vinyl leather imitation; artificial leather cloth; sheets of plastics—cellular—polyvinyl chloride fabric of man-made fibers; sheets of plastics—non-cellular—polyvinyl chloride; sheets of plastics—cellular—100% plastic; rolls of cotton fabric coated with polyvinyl chlorides; fabric of man-made fibers coated with over 70% plastic; fabric of man-made fibers coated with under 70% plastic; sheets of plastics—cellular—polyvinyl chloride—over 70% plastic combined with 65/35 poly cotton fabrics; sheets of plastics—cellular—of other plastics; woven synthetic fabric rolls 100% for automotive industry; polyvinyl chloride leather; 100% polyester knit fabrics; and, knitted polyester fabric 100% (circular knit). The request also indicates that certain materials/components are subject to special duties

under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 25, 2019.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov* or (202) 482–1963.

Dated: February 7, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–02179 Filed 2–12–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–046]

1-Hydroxyethylidene-1,1-Diphoshonic Acid From the People's Republic of China: Notice of Correction to the Rescission of 2016–2017 Countervailing Duty Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Annathea Cook, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone 202.482.0250.

SUPPLEMENTARY INFORMATION:

Correction

On February 1, 2019, the Department of Commerce (Commerce) published the rescission of 2016–2018 countervailing duty (CVD) administrative review of 1-Hydroxyethylidene-1,1-Diphoshonic Acid (HEDP) from the People's Republic of China (China).[1] The *Rescission* inadvertently identified the incorrect period of review (POR) associated with the CVD administrative review on HEDP from China (*i.e.,* incorrect POR November 14, 2016, through April 30, 2018). The correct POR associated with the CVD order on HEDP from China is September 8, 2016, through December 31, 2017. This notice serves as a correction notice.

This correction is published in accordance with sections 751 and 777(i) of the Tariff Act of 1930, as amended.

Dated: February 7, 2019.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–02176 Filed 2–12–19; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* 1-Hydroxyethylidene-1,1-Diphoshonic Acid from the People's Republic of China: Rescission of 2016–2018 Countervailing Duty Administrative Review, 84 FR 1060 (February 1, 2019) (*Rescission*).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG803

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a four-day meeting to consider actions affecting the Gulf of Mexico fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will convene on Monday, April 1 through Thursday, April 4, 2019.

ADDRESSES: The meeting will take place at the Imperial Palace (IP) Casino & Resort Hotel, located at 850 Bayview Avenue, Biloxi, MS 39530; telephone: (228) 436–3000.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie Simmons, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, April 1, 2019; 8:30 a.m.–5 p.m.

The meeting will begin in a Closed Session of the Full Council to select members to the Data Collection and Coral Advisory Panels; and, vote on the 2018 Law Enforcement Officer of the Year. The Council will also review the 2015–18 Funding and Expenditures. The Committee Sessions will begin mid-morning with the Administrative/Budget Committee reviewing the 2019 Anticipated Activities and Budget, Funded Expenditures, and Supplemental Contracts. The Data Collection Committee will have a discussion on Commercial Fishing Unique Trip Identifiers; and, Southeast For-Hire Integrated Electronic Reporting (SEFHIER) Implementation Update and Outreach Meeting Summaries.

Following lunch, the Sustainable Fisheries Committee will receive a presentation on the update of Deepwater Horizon Open Ocean Restoration Planning; review Final Action: Replacement of Historical Captain Permits with Standard Federal For-Hire Permits; discussion and selection of Allocation Review Triggers; and, review Final Action: Generic Amendment: Carryover Provisions and Framework Modifications.

Tuesday, April 2, 2019; 8:30 a.m.–5:30 p.m.

The Reef Fish Committee will review of Reef Fish Landings; receive a presentation on 2019 For-Hire Red Snapper Fishing Season; review Final Action: Amendment 50—State Management Program for Recreational Red Snapper and Individual State Amendments.

After lunch, the Reef Fish Committee will reconvene to review Final Action: Red Grouper Framework Action to Modify Annual Catch Limits and Annual Catch Targets; Framework Action to Modify Greater Amberjack Commercial Trip Limits; and, Review Draft Reef Fish Amendment 52: Red Snapper Reallocation. The committee will also review Draft Amendment 36B: Modifications to Commercial Individual Fishing Quota (IFQ) Programs and receive a Statistical and Scientific Committee (SSC) Summary Report.

Wednesday, April 3, 2019; 8:30 a.m.–5:30 p.m.

The Habitat Protection and Restoration Committee will receive a presentation on the results of the Council's 5-year Essential Fish Habitat Review. The Shrimp Committee will review the updated Stock Assessments; Biological Review of the Texas Closure;

receive a summary from the Shrimp Advisory Panel meeting; and, review of Final Action-Shrimp Amendment 18: Evaluation of Shrimp Effort Threshold Reduction in the Area Monitored for Juvenile Red Snapper Bycatch. The Law Enforcement Committee will receive a summary from the Law Enforcement Technical Committee meeting.

Mid-morning, the Full Council will convene with a Call to Order, Announcements, and Introductions; followed by an Adoption of Agenda and Approval of Minutes. The Council will review Exempted Fishing Permit (EFP) applications, along with any public comments noted on the applications; and, receive a presentation on Mississippi's Law Enforcement efforts. After lunch, the Council will receive public testimony from 1:30 p.m. until 5:30 p.m. on the following items: Final Action: Amendment 50: State Management Program for Recreational Red Snapper and Individual State Amendments; Final Action: Generic Amendment: Carryover Provisions and Framework Modifications; Final Action: Red Grouper Framework Action to Modify Annual Catch Limits and Annual Catch Targets; Final Action: Shrimp Amendment 18: Evaluation of Shrimp Effort Threshold Reduction in the Area Monitored for Juvenile Red Snapper Bycatch; and, Final Action: Replacement of Historical Captain Permits with Standard Federal For-Hire Permits; and, open testimony on any other fishery issues or concerns. Anyone wishing to speak during public comment should sign in at the registration station located at the entrance to the meeting room.

Thursday, April 4, 2019; 8:30 a.m.–3 p.m.

The Council will receive management committee reports from the Shrimp, Administrative/Budget, Data Collection, Sustainable Fisheries, Habitat Protection and Restoration, Law Enforcement and, Reef Fish Management Committees; and, Announce the 2018 Law Enforcement Officer of the Year. After lunch, the Council will vote on Exempted Fishing Permit (EFP) applications, if any; and receive updates from the following supporting agencies: South Atlantic Fishery Management Council; NOAA Office of Law Enforcement (OLE), Gulf States Marine Fisheries Commission; U.S. Coast Guard; U.S. Fish and Wildlife Service; and, the Department of State.

Lastly, the Council will discuss Other Business items:

Meeting Adjourns

The meeting will be broadcast via webinar. You may register for the webinar by visiting *www.gulfcouncil.org* and clicking on the Council meeting on the calendar.

The timing and order in which agenda items are addressed may change as required to effectively address the issue, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 8, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–02168 Filed 2–12–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG801

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings, hearings, and a partially closed meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 131st Scientific and Statistical Committee (SSC) meeting, Joint Advisory Panel (AP) meeting, 176th Council meeting and its associated meetings to take actions on fishery management issues in the Western Pacific Region. A portion of the Council's Executive, Budget and Legislative Standing Committee meeting will be closed to the public.

DATES: The meetings will be held between March 12 and March 21, 2019. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The 131st SSC, Joint AP, the Council's Executive, Budget and Legislative Standing Committee and Pelagic and International Standing Committee meetings will be held at the Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, phone: (808) 522–8220. The 176th Council meeting will be held at the Laniakea YWCA, Fuller Hall, 1040 Richards Street, Honolulu, HI 96813, phone: (808) 538–7061. The Fishers Forum will be held at the Ala Moana Hotel, 410 Atkinson Dr., Honolulu, HI 96814, phone: (808) 955–4811.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; phone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The 131st SSC meeting will be held between 8:30 a.m. and 5 p.m. on March 12–14, 2019. The Joint AP Meeting will be held between 8 a.m. and 5 p.m. on March 15–16, 2019. The Executive, Budget and Legislative Standing Committee meeting will be held on March 18, 2019, from 9 a.m. to 12 noon. The portion of the Executive, Budget and Legislative Standing Committee meeting from 9:30 a.m. to 10 a.m. will be closed to the public in accordance with Section 302(i)(3)(ii) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) for a briefing on litigation by counsel. The Pelagic and International Standing Committee will be held on March 18, 2019, between 2 p.m. and 5 p.m. The 176th Council meeting will be held between 8:30 a.m. and 5 p.m. on March 19–21, 2019. On March 19, 2019, the Council will host a Fishers Forum between 6 p.m. and 9 p.m.

Agenda items noted as ''Final Action Items'' refer to actions that result in Council transmittal of a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the MSA. In addition to the agenda items listed here, the Council and its advisory bodies will hear recommendations from Council advisors. An opportunity to submit public comment will be provided throughout the agendas. The order in which agenda items are addressed may change and will be announced in advance at the Council meeting. The meetings will run as late as necessary to

complete scheduled business. Background documents will be available from, and written comments should be sent to, Kitty M. Simonds, Executive Director; Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, phone: (808) 522–8220 or fax: (808) 522–8226.

Agenda for 131st SSC Meeting

Tuesday, March 12, 2019, 8:30 a.m. to 5 p.m.

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 130th SSC Meeting Recommendations
4. Remarks from the NOAA Fisheries Director of Scientific Programs and Chief Science Advisor
5. Report from the Pacific Islands Fisheries Science Center Director
   A. Status of Council Research Priority for the FY 2020 Annual Guidance Memo
6. Program Planning and Research
   A. SSC Responsibilities in the Modern Fish Act
   B. Magnuson-Stevens Reauthorization Act (MSRA) Five Year Research Priority 2020–24
   C. NOAA Climate Science Workshop and Regional Action Plan Report
   D. Public Comment
   E. SSC Discussion and Recommendations
7. Island Fisheries
   A. Main Hawaiian Islands (MHI) Kona Crab Benchmark Stock Assessment Western Pacific Stock Assessment Review (WPSAR) Report
   B. Benchmark Stock Assessment for the MHI Kona Crab with Catch Projections for 2020–24
   C. Public Comment
   D. SSC Discussion and Recommendations
8. Protected Species
   A. Discussion Paper on Seabird Bycatch Mitigation Measures
   B. Status of the False Killer Whale Take Reduction Team (FKWTRT) Recommendations
   C. Updates on Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) Actions
   D. Public Comment
   E. SSC Discussion and Recommendations

Wednesday, March 13, 2019, 8:30 a.m. to 5 p.m.

Plenary Presentation by Ray Hilborn—Blue Ocean Marine Protected Area

9. SSC Concurrent Work Session
   A. Developing a Road Map for Effective Fishery Spatial Management
   B. Developing a Process to Comply with the Modern Fish Act
   C. Review of Draft Biological Opinion
10. Pelagic Fisheries
   A. Updates to the Pelagic Fisheries Research Program
   B. American Samoa Longline Annual Fishery Report
   C. Hawaii Longline Annual Fishery Report
   D. Hawaii Shallow-set Longline Fishery
   1. Status of the Hawaii Shallow-set Longline ESA Consultation
   2. Managing Loggerhead and Leatherback Sea Turtle Interactions in the Hawaii-based Shallow-set Longline Fishery (Action Item)
   E. US Participating Territory Longline Bigeye Specifications (Action Item)
   F. Maturity, Age, and Growth of Central North Pacific Striped Marlin
   G. International Fisheries Meetings
   1. Inter-American Tropical Tuna Commission (IATTC) Tuna Growth Workshop
   2. IATTC Abundance Indices and Tagging Workshops
   3. 15th Regular Session of the Western Central Pacific Fisheries Commission (WCPFC)
   4. 2018 Workshop on Identifying the Spatial Stock Structure of Tropical Pacific Tuna Stocks
   5. North Pacific Fisheries Commission (NPFC)
   6. South Pacific Regional Fisheries Management Organization (SPRFMO)
   H. Public Comment
   I. SSC Discussion and Recommendations

Thursday, March 14, 2019, 8:30 a.m. to 5 p.m.

11. Other Business
   A. 132nd SSC Meetings Dates
   B. Council's Five Year Program Plan
   C. SSC Three-Year Plan (2020–22)
   D. National Scientific Coordinating Subcommittee Meeting 2020
12. Summary of SSC Recommendations to the Council

Agenda for the Joint Advisory Panel Meeting

Friday, March 15, 2019, 8 a.m. to 5 p.m.

1. Welcome and Introductions
2. Review of Agenda
3. FISH 101 Training

Saturday, March 16, 2019, 8 a.m. to 5 p.m.

4. Spatial Management
   A. Biodiversity Beyond National Jurisdiction (BBNJ)
   B. Palmyra Project
5. Workshop Discussion on Fishery Management Measures
   A. What Works
   B. What Doesn't
6. Report on Progress of Advisory Panel Plans
   A. American Samoa
   i. Plan Progress
   ii. Additional Issues
   B. Commonwealth of the Northern Mariana Islands (CNMI)
   i. Plan Progress
   ii. Additional Issues
   C. Guam
   i. Plan Progress
   ii. Additional Issues
   D. Hawaii
   i. Plan Progress
   ii. Additional Issues
7. Public Comment
8. Discussion and Recommendations
9. Other Business

Agenda for the Executive, Budget and Legislative Standing Committee

Monday, March 18, 2019, 9 a.m. to 12 Noon

1. Financial Reports
2. Administrative Reports
3. CLOSED SESSION (MSA § 302(i)(3)(A)(ii)—Status of Litigation 9:30 a.m. to 10 a.m.
4. 2020–24 Program Plan and Budget
5. Council Family Changes
6. SSC role under new Modernization Act
7. NOAA website/Pacific Islands Section
8. Recusal Policy
9. Meetings and Workshops
10. Other Issues
11. Public Comment
12. Discussion and Recommendations

Agenda for the Pelagic and International Standing Committee

Monday, March 18, 2019, 2 p.m. to 5 p.m.

1. Introduction and Opening of Committee Meeting
2. Managing Loggerhead and Leatherback Sea Turtle Interactions in the Hawaii-based Shallow-set Longline Fishery (Action Item)
3. US Participating Territory Longline Bigeye Limits (Action Item)
4. Advisory Group Report and Recommendations
   A. Scientific & Statistical Committee
5. Other Issues
6. Public Comment
7. Committee Discussion and Action

Agenda for 176th Council Meeting

Tuesday, March 19, 2019, 8:30 a.m. to 5 p.m.

1. Welcome and Introductions

2. Approval of the 176th Agenda
3. Approval of the 174th and 175th Meeting Minutes
4. Executive Director's Report
5. Agency Reports
A. National Marine Fisheries Service
1. Pacific Islands Regional Office
2. Pacific Islands Fisheries Science Center
a. Status of Council Research Priority for the FY 2020 Annual Guidance Memo
B. NOAA Office of General Counsel, Pacific Islands Section
C. U.S. State Department
D. U.S. Fish and Wildlife Service
E. Enforcement
1. U.S. Coast Guard
2. NOAA Office of Law Enforcement
3. NOAA Office of General Counsel, Enforcement Section
F. Public Comment
G. Council Discussion and Action
6. Hawaii Archipelago & Pacific Remote Island Areas
A. Moku Pepa
B. Legislative Report
C. Enforcement Issues
D. Bottomfish Restricted Fishing Areas Removal Report
E. MHI Kona Crab Benchmark Stock Assessment WPSAR Report
F. Benchmark Stock Assessment for the MHI Kona Crab with Catch Projections for 2020–24
G. Hawaii Charter Fishery Cost Earning Survey (2012) Report
H. Registry Permit License Study Group Meeting Report
I. Education and Outreach Initiatives
J. Advisory Group Report and Recommendations
1. Advisory Panel
2. Scientific & Statistical Committee
K. Public Comment
L. Council Discussion and Action
7. Protected Species
A. Discussion Paper on Seabird Bycatch Mitigation Measures
B. Status of the FKWTRT Recommendations
C. Updates on ESA and MMPA Actions
D. Advisory Group Report and Recommendations
1. Advisory Panel
2. Scientific & Statistical Committee
E. Public Comment
F. Council Discussion and Action

Tuesday, March 19, 2019, 4 p.m.

Public Comment on Non-agenda Items

Tuesday, March 19, 2019, 6 p.m.–9 p.m.

Fishers Forum

Wednesday, March 20, 2019, 8:30 a.m.–5 p.m.

9. Program Planning and Research
A. Legislative Report
B. SSC Working Group Report
1. Blue Ocean Marine Protected Area Subgroup Report
2. Modern Fish Act Subgroup Report
C. MSRA Five Year Research Priority 2020–24
D. NOAA Climate Science Workshop and Regional Action Plan Reports
E. Regional, National and International Outreach & Education
F. Advisory Group Report and Recommendations
1. Advisory Panel
2. Scientific & Statistical Committee
G. Public Comment
H. Council Discussion and Action
10. Pelagic & International Fisheries
A. American Samoa Longline Annual Fisheries Report
B. Hawaii Longline Annual Fishery Report
C. Hawaii Shallow-Set Longline Fishery
1. Status of the Hawaii Shallow-set Longline ESA Consultation
2. Managing Loggerhead and Leatherback Sea Turtle Interactions in the Hawaii-based Shallow-set Longline Fishery (Final Action Item)
D. US Participating Territory Longline Bigeye Limits (Final Action Item)
E. International Fisheries
1. IATTC
a. Tuna Growth Workshop
b. Tuna Stock Assessment Workshop
2. WCPFC15
3. 2018 Workshop on Identifying the Spatial Stock Structure of Tropical Pacific Tuna Stocks
4. NPFC
5. 7th Meeting- SPRFMO
6. United Nations Intergovernmental Conference on BBNJ
F. Advisory Group Report and Recommendations
1. Advisory Panel
2. Scientific & Statistical Committee
G. Standing Committee Recommendations
H. Public Hearing
I. Council Discussion and Action
11. American Samoa Archipelago
A. Motu Lipoti
B. Fono Report
C. Enforcement Issues
D. Community Activities and Issues
E. Education and Outreach Initiatives
F. Marine Conservation Plan Projects
G. Advisory Group Report and Recommendations
1. Advisory Panel
2. Scientific & Statistical Committee
H. Public Comment
I. Council Discussion and Action

Thursday, March 21, 2019, 8:30 a.m. to 5 p.m.

12. Mariana Archipelago
A. Guam
1. Isla Informe
2. Legislative Report
3. Enforcement Issues
4. Mandatory Permit and Licensing Regulation
5. Community Activities and Issues
6. Education and Outreach Initiatives
B. CNMI
1. Arongol Falú
2. Legislative Report
3. Enforcement Issues
4. Community Activities and Issues
a. Bottomfish Fishery Development Project
b. Mandatory License and Reporting Regulation
5. Education and Outreach Initiatives
C. Marianas Shark Research Project
D. Update on Marianas Trench Marine National Monument Management Plan and Sanctuary Request
E. Advisory Group Reports and Recommendations
1. Advisory Panel
2. Scientific & Statistical Committee
F. Public Comment
G. Council Discussion and Action
13. Administrative Matters
A. Financial Reports
B. Administrative Reports
C. 2020–24 Program Plan and Budget
D. Council Family Changes
a. Advisory Panel
b. Plan Team
c. Education Committee
d. Marine Planning and Climate Change Committee
e. Fishery Data Collection and Research Committee
f. Protected Species Advisory Committee
E. Conflict of Interest and Recusal Policy
F. Meetings and Workshops
G. Standing Committee Recommendations
H. Public Comment
I. Council Discussion and Action
14. Other Business

Non-emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 176th meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other

auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: February 8, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–02169 Filed 2–12–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG757

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting; Addendum

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

ACTION: Notice of an addendum to a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold a meeting.

DATES: The meeting will be held on Thursday, February 21, 2019, from 10 a.m. to 4 p.m. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will take place over webinar with a telephone-only connection option. Details on how to connect to the webinar by computer and by telephone will be available at: *http://www.mafmc.org/ssc.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on February 6, 2019 (84 FR 2175). This notice adds agenda items to the meeting agenda.

The purpose of this meeting is to make multi-year acceptable biological catch (ABC) recommendations for summer flounder based on the results of the recently completed benchmark stock assessment. The SSC will recommend revised 2019 and new 2020–21 ABC specifications. The SSC will also review and discuss recent activities by the Northeast Trawl Advisory Panel (NTAP). In addition, the following agenda items have been added and will be addressed by the SSC: Recommend interim 2020 ABC specifications for scup, black sea bass and bluefish. The SSC may take up any other business as necessary.

A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: February 8, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–02170 Filed 2–12–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG805

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) and its advisory entities will hold public meetings.

DATES: The Pacific Council and its advisory entities will meet March 6–12, 2019. The Pacific Council meeting will begin on Thursday, March 7, 2019 at 9 a.m. Pacific Standard Time (PST), reconvening at 8 a.m. each day through Tuesday, March 12, 2019. All meetings are open to the public, except a closed session will be held from 8 a.m. to 9 a.m., Thursday, March 7 to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES:

Meeting address: The meetings of the Pacific Council and its advisory entities will be held at the Hilton Vancouver Washington Hotel, 301 W. 6th Street, Vancouver, WA; telephone: (360) 993–4500.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220. Instructions for attending the meeting via live stream broadcast are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Executive Director; telephone: (503) 820–2280 or (866) 806–7204 toll-free; or access the Pacific Council website, *http://www.pcouncil.org* for the current meeting location, proposed agenda, and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The March 6–12, 2019 meeting of the Pacific Council will be streamed live on the internet. The broadcasts begin initially at 9 a.m. PST Thursday, March 7, 2019 and continue at 8 a.m. daily through Tuesday, March 12, 2019. Broadcasts end daily at 5 p.m. PST or when business for the day is complete. Only the audio portion and presentations displayed on the screen at the Pacific Council meeting will be broadcast. The audio portion is listen-only; you will be unable to speak to the Pacific Council via the broadcast. To access the meeting online, please use the following link: *http://www.gotomeeting.com/online/webinar/join-webinar* and enter the March Webinar ID, 634–645–459, and your email address. You can attend the webinar online using a computer, tablet, or smart phone, using the GoToMeeting application. It is recommended that you use a computer headset to listen to the meeting, but you may use your telephone for the audio-only portion of the meeting. The audio portion may be attended using a telephone by dialing the toll number 1–562–247–8422 (not a toll-free number), audio access code 532–691–006, and entering the audio pin shown after joining the webinar.

The following items are on the Pacific Council agenda, but not necessarily in this order. Agenda items noted as ''Final Action'' refer to actions requiring the Council to transmit a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. Additional detail on agenda items, Council action, advisory entity meeting times, and meeting rooms are described in Agenda Item A.4, Proposed Council Meeting Agenda, and will be in the advance March 2019 briefing materials and posted on the Pacific Council website at *www.pcouncil.org* no later than Friday, February 15, 2019.

A. Call to Order

1. Opening Remarks
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Open Comment Period

1. Comments on Non-Agenda Items

C. Administrative Matters

1. Marine Planning Update
2. Legislative Matters—*cancelled*
3. Membership Appointments and Council Operating Procedures
4. Approval of Council Meeting Record
5. Future Council Meeting Agenda and Workload Planning

D. Salmon Management

1. National Marine Fisheries Service Report
2. Review of Rebuilding Plans
3. Review of 2018 Fisheries and Summary of 2019 Stock Forecasts
4. Identify Management Objectives and Preliminary Definition of 2019 Management Alternatives
5. Recommendations for 2019 Management Alternative Analysis
6. Further Direction for 2019 Management Alternatives
7. Further Direction for 2019 Management Alternatives
8. Adopt 2019 Management Alternatives for Public Review
9. Appoint Salmon Hearing Officers

E. Ecosystem Management

1. California Current Ecosystem and Integrated Ecosystem Assessment Report and Science Review Topics
2. Climate and Communities Initiative Update
3. Fishery Ecosystem Plan Five-Year Review

F. Habitat

1. Current Habitat Issues

G. Groundfish Management

1. National Marine Fisheries Service Report
2 Amendment 28—Essential Fish Habitat and Rockfish Conservation Area—Final Implementation
3. New Methodology Informing Sigma Values—Final Adoption
4. Omnibus Workload Planning Process Review and Project Prioritization
5. Inseason Adjustments—Final Action
6. Implementation of the 2019 Pacific Whiting Fishery Under the U.S./Canada Agreement

H. Pacific Halibut Management

1. Annual International Pacific Halibut Commission (IPHC) Meeting Report
2. Incidental Catch Recommendations: Options for the Salmon Troll and Final Recommendations for Fixed Gear Sablefish Fisheries

I. Enforcement—cancelled

J. Highly Migratory Species Management

1. National Marine Fisheries Service Report
2. Recommend International Management Activities
3. Drift Gillnet Performance Metrics Review

K. Coastal Pelagic Species Management

1. Comments on Court Ordered Rulemaking on Harvest Specifications for the Central Subpopulation of Northern Anchovy

Advisory Body Agendas

Advisory body agendas will include discussions of relevant issues that are on the Pacific Council agenda for this meeting, and may also include issues that may be relevant to future Council meetings. Proposed advisory body agendas for this meeting will be available on the Pacific Council website *http://www.pcouncil.org/council-operations/council-meetings/current-briefing-book/* no later than Friday, February 15, 2019.

Schedule of Ancillary Meetings

Day 1—Wednesday, March 6, 2019

Ecosystem Advisory Subpanel—8 a.m.
Ecosystem Workgroup—8 a.m.
Habitat Committee—8 a.m.
Scientific and Statistical Committee—8 a.m.
Tribal Policy Group—7 p.m.
Tribal and Washington Technical Group—Ad Hoc

Day 2—Thursday, March 7, 2019

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Ecosystem Advisory Subpanel—8 a.m.
Ecosystem Workgroup—8 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
Scientific and Statistical Committee—8 a.m.
Enforcement Consultants—3 p.m.
Tribal Policy Group—Ad Hoc
Tribal and Washington Technical Group—Ad Hoc

Day 3—Friday, March 8, 2019

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
Tribal Policy Group—Ad Hoc
Tribal and Washington Technical Group—Ad Hoc
Enforcement Consultants—Ad Hoc

Day 4—Saturday, March 9, 2019

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Highly Migratory Species Advisory Subpanel—8 a.m.
Highly Migratory Species Management Team—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
Tribal Policy Group—Ad Hoc
Tribal and Washington Technical Group—Ad Hoc
Enforcement Consultants—Ad Hoc

Day 5—Sunday, March 10, 2019

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Highly Migratory Species Advisory Subpanel—8 a.m.
Highly Migratory Species Management Team—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
Tribal Policy Group—Ad Hoc
Tribal and Washington Technical Group—Ad Hoc
Enforcement Consultants—Ad Hoc

Day 6—Monday, March 11, 2019

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Highly Migratory Species Advisory Subpanel—8 a.m.
Highly Migratory Species Management Team—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
Tribal Policy Group—Ad Hoc
Tribal and Washington Technical Group—Ad Hoc
Enforcement Consultants—Ad Hoc

Day 7—Tuesday, March 12, 2019

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.

Although non-emergency issues not contained in this agenda may come before the Pacific Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Pacific Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280, ext. 411 at least ten business days prior to the meeting date.

Dated: February 8, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–02167 Filed 2–12–19; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2109–0008]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to renew the Office of Management and Budget (OMB) approval for a new information collection titled, ''Bureau of Consumer Financial Protection Speaker Request Form.''

DATES: Written comments are encouraged and must be received on or before April 15, 2019 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2019–0008 in the subject line of the message.
- *Mail:* Comment Intake, Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Bureau of Consumer Financial Protection Speaker Request Form.

OMB Control Number: 3170–0NEW.

Type of Review: New collection, request for a new OMB control number.

Affected Public: Private sector.

Estimated Number of Respondents: 1,000.

Estimated Total Annual Burden Hours: 250.

Abstract: The Bureau of Consumer Financial Protection Speaker Request Form is used to collect information relevant to reviewing and processing an external speaking invitation.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the 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 respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: February 7, 2018.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2019–02101 Filed 2–12–19; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Withdrawal of the Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the New York New Jersey Harbor and Tributaries (NYNJHAT) Coastal Storm Risk Management Feasibility Study

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, New York District, Planning Division is notifying interested parties that it has withdrawn the Notice of Intent (NOI) to develop an EIS for the proposed NYNJHAT Coastal Storm Risk Management (CSRM) Feasibility Study. The original NOI to Prepare an EIS was published in the **Federal Register** on Wednesday, December 27, 2017.

FOR FURTHER INFORMATION CONTACT: Questions regarding the withdrawal of this NOI should be addressed to Mr. Peter Weppler, Chief, Environmental Analysis Branch, (CENAN–PL–E) U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, New York, New York 10278–0090; 918–790–8634; *peter.m.weppler@usace.army.*

SUPPLEMENTARY INFORMATION: On March 20, 2018, the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) issued an OMB/CEQ Memorandum for Heads of Federal Departments and Agencies titled ''One Federal Decision Framework for the Environmental Review and Authorization Process for Major Infrastructure Projects under Executive Order [E.O.] 13807.'' Additionally, twelve federal agencies, including Department of the Army, signed a Memorandum of Understanding (MOU) as an appendix to the OMB/CEQ Memorandum. The MOU is titled ''Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807'' and was effective on April 10, 2018. E.O. 13807 sets a goal for agencies by reducing the time for completing environmental reviews and authorization decisions to an agency average of not more than two years from publication of a NOI to prepare an EIS.

Subsequent to the publication of the NOI, the NYNJHAT CSRM Feasibility Study was granted an exemption from the requirement to complete the feasibility study within 3 years, as required in Section 1001(a) of the Water Resources Reform and Development Act of 2014. This exemption was granted on

October 31, 2018 on an interim basis, and allows for an additional 15 months to complete the Draft Integrated Feasibility Report and Tier 1 Environmental Impact Statement. Therefore, in order to align the revised study schedule with E.O. 13807, it is necessary to withdraw the existing NOI to develop and re-scope a NEPA coordination/review schedule with the appropriate Federal and state resource agencies that have statutory jurisdiction over the review process for any action being contemplated in the course of the feasibility study and development of an environmental impact statement. Public, agency and stakeholder comments and feedback will continue to be accepted during the re-scoping of the NEPA review schedule.

Study Website and Addresses: Pertinent information about the study can be found at: *http://www.nan.usace.army.mil/Missions/Civil-Works/Projects-in-New-York/New-York-New-Jersey-Harbor-Tributaries-Focus-Area-Feasibility-Study/.*

Dated: February 5, 2019.

Peter M. Weppler,

Chief, Environmental Analysis Branch, Planning Division.

[FR Doc. 2019–02152 Filed 2–12–19; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2019–HQ–0006]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Navy announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 15, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24 Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Commanding General, Marine Corps Recruiting Command (G3), Officer Programs, care of Captain David P. Foley, USMC, 3280 Russell Road, Quantico, VA 22134–5103, 703–432–9511, or contact Head, Officer Programs or Deputy, Officer Programs at 703–784–9449/50/51.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Academic Certification for Marine Corps Officer Candidate Program; NAVMC Form 10469; OMB Control Number 0703–0011.

Needs and Uses: The Marine Corps Officer Selection Officer (OSO) will submit the completed original NAVMC Form 10469 with the officer applications for the Platoon Leaders' Class and Officer Candidate Course (OCC) Programs when the candidate has not yet completed the requirements for a degree. This form is to be completed by a school official of the applicant's college or university and verified by the OSO. Use of this form is the only accurate and specific method to determine an officer-candidate applicant's academic qualifications to serve as a Marine Corps Officer.

Affected Public: Individuals or households.

Annual Burden Hours: 875.

Number of Respondents: 3,500.

Responses per Respondent: 1.

Annual Responses: 3,500.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Dated: February 7, 2019.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2019–02061 Filed 2–12–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2019–HQ–0007]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Navy announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 15, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this

proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Commanding General, Marine Corps Recruiting Command (G3), Officer Programs, care of Captain David P. Foley, USMC, 3280 Russell Road, Quantico, VA 22134–5103, 703–432–9511, or contact Head, Officer Programs or Deputy, Officer Programs at 703–784–9449/50/51.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Personal Information Questionnaire; NAVMC 100064; OMB Control Number 0703–0012.

Needs and Uses: The Officer Selection Officer (OSO) will forward a Personal Information Questionnaire (PIQ) form to individuals to be named by the applicant for completion and return as character references. The questionnaire establishes a pattern of moral character on individuals applying for the Marine Corps Officer Program.

Affected Public: Individuals or Households.

Annual Burden Hours: 4,175 hours.

Number of Respondents: 16,700.

Responses per Respondent: 1.

Annual Responses: 16,700.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

The OSO will forward a Personal Information Questionnaire (PIQ) form to individuals to be named by the applicant for completion and return as character references. The PIQ is used to provide Headquarters, U.S. Marine Corps with a standardized method in rating officer program applicants in the areas of character, leadership, ability, and suitability for service as a commissioned officer. The OSO must ensure the integrity of the PIQ process by not allowing applicants to directly handle PIQ forms. All PIQs will be dated and are valid for one year. Individuals completing the form have volunteered to complete the form prior to being sent the questionnaire.

Dated: February 7, 2019.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2019–02062 Filed 2–12–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0120]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Gainful Employment Disclosure Template

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before March 15, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0120. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Gainful Employment Disclosure Template.

OMB Control Number: 1845–0107.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments; Individuals or Households.

Total Estimated Number of Annual Responses: 72,794,823.

Total Estimated Number of Annual Burden Hours: 16,217,015.

Abstract: Under the disclosure requirements, an institution must provide current and prospective students with information about each of its programs that prepares students for gainful employment in a recognized occupation (GE programs) using a disclosure template provided by the Secretary. The Secretary must specify the information to be included on the disclosure template in a notice published in the **Federal Register**. The Department is requesting revision of the burden currently calculated for 1845–0107. This request revises the current information collection for the disclosure template to reflect the updated disclosure requirements that institutions must provide current and prospective students. The Secretary may, by notice in the **Federal Register**, change the disclosure items required. Not all items listed under 34 CFR 668.412 are included in the revised disclosure template.

Dated: February 7, 2019.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2019–02110 Filed 2–12–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Common Instructions for Applicants to Department of Education Discretionary Grant Programs

AGENCY: Office for Planning, Evaluation and Policy Development, Department of Education.

ACTION: Notice; revised common instructions.

SUMMARY: On February 12, 2018, the Department of Education (Department) published a set of common instructions for applicants seeking funds under a Department discretionary grant competition as part of a broader effort to reduce barriers for applicants. These common instructions are referenced in individual competition notices inviting applications (NIAs). In this notice, we are publishing a revised version of the common instructions that supersedes the version published on February 12, 2018.

FOR FURTHER INFORMATION CONTACT: Ronald B. Petracca, U.S. Department of Education, 400 Maryland Avenue SW, Room 6E306, Washington, DC 20202. Telephone: (202) 401–6008. Email: *Ronald.Petracca@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background: This document provides applicants with a centralized and up-to-date set of instructions for applying to the Department's discretionary grant programs. Future NIAs will reference this document in lieu of providing this series of instructions within each NIA. Rarely, exceptions will need to be made to these instructions and will be noted in an individual competition NIA.

Revised Common Instructions: The Department is making several changes to the common instructions for applicants provided in the notice published in the **Federal Register** on February 12, 2018 (83 FR 6003). First, in section four, *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management,* we are adding a sentence above the Note that clarifies that applicants who are unable to submit an application via *Grants.gov* by the application deadline, because their System for Award Management (SAM) registration is not active, will not be considered for funding.

Second, in section 5(a), under *Other Submission Requirements—Electronic Submission of Applicants* and—*Application Deadline Data Extension in Case of Technical Issues with the Grants.gov System*, we are changing, in three places, the time of the application deadline from 4:30:00 p.m., Eastern Time, to 11:59:59 p.m., Eastern Time. We are making these changes so that applicants not located in the Eastern Time will have a full business day to submit their applications before the deadline passes. We are also adding a sentence notifying applicants that assistance from Principal Office staff is available until 5:00 p.m. Eastern Time on the application deadline date.

Lastly, we are revising the instructions for submitting an application electronically, under section 5, *Other Submission Requirements,* so that applications can be submitted using Microsoft Word. We are making this change to provide greater flexibility for applicants to submit an acceptable application for review; however, we recommend that applicants submit all documents as read-only flattened PDFs.

The revised common instructions are set forth as follows:

Common Set of Instructions for Applicants: Application and Submission Information.

1. *Address to Request Application Package:* You can obtain an application package from the Department's website or *Grants.gov*.

To obtain a copy via the Department's website, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.*

2. *Content and Form of Application Submission:* Requirements concerning the content and form of an application, together with the forms you must submit, are in the application package for the program.

3. *Submission Dates and Times:* Submit applications for grants under the program electronically using *Grants.gov*. For information (including dates and times) about how to submit your application electronically, please refer to *Other Submission Requirements* in section 5 of these instructions.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section in the competition NIA. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in the competition NIA.

4. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department, and to submit your application electronically using *Grants.gov*, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (*SAM.gov*), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following website: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service (IRS). If you are an individual, you can obtain a TIN from the IRS or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the *SAM.gov* database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We recommend that you register early. If you are unable to submit an application on *Grants.gov* by the application deadline because you do not have an active SAM registration, you will not be considered for funding.

Note: Once your *SAM.gov* registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov.*

If you are currently registered with *SAM.gov*, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Note: You must update your SAM registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in *SAM.gov* or updating your existing SAM account, we have prepared a *SAM.gov* Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, in order to submit your application via *Grants.gov*, you must (1) register as an applicant using your DUNS number and (2) be designated by your organization's E-Biz Point of Contact as an Authorized Organization Representative (AOR). Details on these steps are outlined at the following *Grants.gov* web page: *https://www.grants.gov/web/grants/register.html.*

5. *Other Submission Requirements:*

a. *Electronic Submission of Applications.*

We are participating as a partner in the Government-wide *Grants.gov* site. Submit applications electronically using *Grants.gov* and do not email them unless explicitly allowed in a competition NIA.

A *Grants.gov* applicant must apply online using Workspace, a shared environment where members of a grant team may simultaneously access and edit different web forms within an application. An applicant can create an individual Workspace for each application and establish for that application a collaborative application package that allows more than one person in the applicant's organization to work concurrently on an application. The *Grants.gov* system also enables the applicant to reuse forms from previous submissions, check them in and out to complete them, and submit the application package. For access to further instructions on how to apply using *Grants.gov*, refer to: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*

You may access the electronic grant applications at *www.Grants.gov*. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.184, not 84.184D).

Please note the following:

- Applicants needing assistance with *Grants.gov* may contact the *Grants.gov* Support Center either by calling 1–800–518–4726 or by sending an email to *support@grants.gov.* The *Grants.gov* Support Center is available 24 hours a day, seven days a week, except for Federal holidays. Applicants needing assistance from Principal Office staff with their applications should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section in the competition NIA during normal business hours and no later than 5:00 p.m., Eastern Time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your internet connection. Therefore, we recommend that you leave yourself plenty of time to complete your submission.
- Applications received by *Grants.gov* are date- and time-stamped upon submission. Your application must be fully uploaded and submitted and must be date- and time-stamped by the *Grants.gov* system no later than 11:59:59 p.m., Eastern Time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date- and time-stamped by the *Grants.gov* system—after 11:59:59 p.m., Eastern Time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was late. Receipt of a date- and time-stamp does not mean that your application meets program eligibility requirements described in the application package.
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for the program to ensure that you submit your application on time. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through *Grants.gov*, please refer to the *Grants.gov* website at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*
- When you submit your application electronically, all documents must be submitted in this manner, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- When you submit your application electronically, you must upload any narrative sections and all other attachments to your application as files in either Portable Document Format (PDF) or Microsoft Word. Although applicants have the option of uploading any narrative sections and all other attachments to their application in either PDF or Microsoft Word, we recommend applicants submit all documents as read-only flattened PDFs, meaning any fillable PDF files must be saved and submitted as non-fillable PDF files and not as interactive or fillable PDF files, to better ensure applications are processed in a more timely, accurate, and efficient manner. If you choose to submit your application in Microsoft Word, you may do so using any version of Microsoft Word (*i.e.,* a document ending in a .doc or .docx extension). If you upload a file type other than PDF or Microsoft Word or if you submit a password-protected file, we will be unable to review that material. Please note that this will likely result in your application not being considered for funding. The Department will not convert material from other formats to PDF or Microsoft Word.
- After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. *Grants.gov* also will notify you automatically by email if your application met all of the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered AOR, issues with your DUNS number, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of your application.

Once your application is successfully validated by *Grants.gov*, the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

Email confirmations and receipts from *Grants.gov* do not indicate receipt by the Department, nor do they mean that your application is complete or has met all application requirements. While your application may have been successfully validated by *Grants.gov*, it also must be reviewed in accordance with the Department's application requirements as specified in the competition NIA and in these application instructions. It is your responsibility to ensure that your submitted application has met all of the Department's requirements. Additionally, we may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you experience problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk immediately, toll-free, at 1–800–518–4726. The *Grants.gov* Support Center will provide you with a Support Desk Case Number documenting your communication. You must retain your Support Desk Case Number for future reference as proof of your communication with the Support Center. Please subsequently contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section in the competition NIA and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems within the *Grants.gov* system, we will grant you an extension until 11:59:59 p.m., Eastern Time, the following business day to enable you to transmit your application electronically, provided we can verify the technical issues affected your ability to submit your application on time via your *Grants.gov* Support Desk Case Number.

Note: The extensions to which we refer in this section apply only to technical problems with the *Grants.gov* system. We will not grant you an extension if you failed to fully register in order to submit your application to *Grants.gov* (including with the required DUNS number and TIN currently registered in SAM) before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

b. *Submission of Paper Applications.*

We discourage paper applications, but if electronic submission is not possible (*e.g.,* you do not have access to the internet), you must provide a written statement that you intend to submit a paper application. Send this written statement no later than two weeks before the application deadline date (14 calendar days or, if the 14th calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday).

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. Please send this statement to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of the competition NIA.

If you submit a paper application, you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number), LBJ Basement Level 1, 400 Maryland Avenue SW, Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

Note for Mail Delivery of Paper Applications: If you mail your application to the Department—

(1) You must indicate on the envelope and in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will notify you of the Department's receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the Application Control Center at (202) 245–6288.

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at: *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

James C. Blew,

Assistant Secretary for Planning, Evaluation and Policy Development.

[FR Doc. 2019–02206 Filed 2–12–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Hydrogen and Fuel Cell Technical Advisory Committee; Meeting

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

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Hydrogen and Fuel Cell Technical Advisory Committee (HTAC). The Federal Advisory Committee Act requires notice of the meeting be announced in the **Federal Register**.

DATES: Monday, March 18, 2019; 8:00 a.m.–6:30 p.m.

ADDRESSES: National Renewable Energy Laboratory, 901 D Street SW, Suite 930, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Email: *HTAC@nrel.gov* or at the mailing address: Shawna McQueen, Designated Federal Officer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, EE–3F, Washington, DC 20585, Telephone number (202) 586–0833.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Hydrogen and Fuel Cell Technical Advisory Committee (HTAC) was established under section 807 of the Energy Policy Act of 2005 (EPACT), Public Law 109–58; 119 Stat. 849, to provide advice and recommendations to the Secretary of Energy on the program authorized by Title VIII of EPACT.

Tentative Agenda: (updates will be posted on the web at): *http://hydrogen.energy.gov/advisory_htac.html*).

- HTAC Business (including public comment period)
- DOE Leadership Updates
- Program and Budget Updates
- Updates from Federal/State Governments and Industry

- HTAC Subcommittee Updates
- Open Discussion Period

Public Participation: The meeting is open to the public. Individuals who would like to attend and/or to make oral statements during the public comment period must register no later than 5:00 p.m. on Monday, March 11, 2019, by email at: *HTAC@nrel.gov.* Entry to the meeting room will be restricted to those who have confirmed their attendance in advance. Please provide your name, organization, citizenship, and contact information. Anyone attending the meeting will be required to present government-issued identification. Those wishing to make a public comment are required to register. The public comment period will take place sometime between 8:00 a.m. and 9:00 a.m. on March, 18, 2019. Time allotted per speaker will depend on the number who wish to speak but will not exceed five minutes. Those not able to attend the meeting or have insufficient time to address the committee are invited to send a written statement to: *HTAC@nrel.gov.*

Minutes: The minutes of the meeting will be available for public review at *http://hydrogen.energy.gov/advisory_htac.html.*

Signed in Washington, DC, on February 8, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–02184 Filed 2–12–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board (SEAB). The SEAB was reestablished pursuant to the Federal Advisory Committee Act. This notice is provided in accordance with the Act.

DATES: Tuesday, March 5, 2019; 9:00 a.m.–12:00 p.m.

ADDRESSES: Department of Energy, 1000 Independence Avenue SW, Room 8E–089, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Kurt Heckman, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; email: *seab@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Board was established to provide advice and recommendations to the Secretary on the Administration's energy policies; the Department's basic and applied research and development activities; economic and national security policy; and other activities as directed by the Secretary.

Purpose of the Meeting: This meeting is the first meeting of new members under Secretary Perry.

Tentative Agenda: The meeting will start at 9:00 a.m. on March 5. The tentative meeting agenda includes: Introduction of SEAB's members, informational briefings, and an opportunity for comments from the public. The meeting will conclude at 12:00 p.m.

Public Participation: The meeting is open to the public. Individuals who would like to attend must RSVP to Kurt Heckman no later than 5:00 p.m. on Thursday, February 28, 2019, by email at: *seab@hq.doe.gov.* Please provide your name, organization, citizenship, and contact information. Anyone attending the meeting will be required to present REAL ID compliant, government-issued identification.

Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 15 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed five minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so via email, *seab@hq.doe.gov,* no later than 5 p.m. on Thursday, February 28, 2019.

Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Kurt Heckman, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or email to: *seab@hq.doe.gov.*

Minutes: The minutes of the meeting will be available on the SEAB website or by contacting Mr. Heckman. He may be reached at the above postal address or email address, or by visiting SEAB's website at *www.energy.gov/seab.*

Signed in Washington, DC, on February 8, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–02219 Filed 2–12–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–41–000]

Eagle LNG Partners Jacksonville, LLC; Notice of Reopening of Comment Period

On November 16, 2018, the Commission issued a notice setting January 7, 2019, as the end of the formal period to file comments on the Jacksonville Project draft environmental impact statement. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is reopening the comment period until February 25, 2019.

Dated: February 7, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02141 Filed 2–12–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–765–000; ER19–766–000; ER19–767–000.
Applicants: Gulf Power Company.
Description: Amendment to January 4, 2019 Gulf Power Company tariff filings.
Filed Date: 2/6/19.
Accession Number: 20190206–5150.
Comments Due: 5 p.m. ET 2/27/19.

Docket Numbers: ER19–361–000.
Applicants: Midcontinent Independent System Operator, Inc., International Transmission Company, Michigan Electric Transmission Company, ITC Midwest LLC.
Description: Report Filing: 2019–02–07_2nd Refund Report for ITC Companies re Transco Adder (EL18–140) to be effective N/A.
Filed Date: 2/7/19.
Accession Number: 20190207–5086.
Comments Due: 5 p.m. ET 2/28/19.

Docket Numbers: ER19–998–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: OPC IA Amendment Filing (to Remove Gulf) to be effective 1/1/2019.
Filed Date: 2/6/19.
Accession Number: 20190206–5098.
Comments Due: 5 p.m. ET 2/27/19.

Docket Numbers: ER19–999–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: CED Solar Development (Timberland Solar) LGIA Amendment Filing to be effective 1/1/2019.
Filed Date: 2/6/19.
Accession Number: 20190206–5100.
Comments Due: 5 p.m. ET 2/27/19.

Docket Numbers: ER19–1000–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: TVA Interchange Agreement Amendment Filing to be effective 1/1/2019.
Filed Date: 2/6/19.
Accession Number: 20190206–5129.
Comments Due: 5 p.m. ET 2/27/19.

Docket Numbers: ER19–1001–000.
Applicants: Georgia Power Company.
Description: § 205(d) Rate Filing: TVA Interchange Agreement Amendment Filing to be effective 1/1/2019.
Filed Date: 2/6/19.
Accession Number: 20190206–5135.
Comments Due: 5 p.m. ET 2/27/19.

Docket Numbers: ER19–1002–000.
Applicants: Mississippi Power Company.
Description: § 205(d) Rate Filing: TVA Interchange Agreement Amendment Filing to be effective 1/1/2019.
Filed Date: 2/6/19.
Accession Number: 20190206–5136.
Comments Due: 5 p.m. ET 2/27/19.

Docket Numbers: ER19–1003–000.
Applicants: Crystal Lake Wind Energy II, LLC.
Description: Baseline eTariff Filing: Crystal Lake Wind Energy II, LLC Application for Market-Based Rates to be effective 4/7/2019.
Filed Date: 2/6/19.
Accession Number: 20190206–5137.
Comments Due: 5 p.m. ET 2/27/19.

Docket Numbers: ER19–1004–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: JEA Interchange Contract Amendment Filing to be effective 1/1/2019.
Filed Date: 2/7/19.
Accession Number: 20190207–5001.
Comments Due: 5 p.m. ET 2/28/19.

Docket Numbers: ER19–1005–000.
Applicants: Georgia Power Company.
Description: § 205(d) Rate Filing: JEA Interchange Contract Amendment Filing to be effective 1/1/2019.
Filed Date: 2/7/19.
Accession Number: 20190207–5002.
Comments Due: 5 p.m. ET 2/28/19.

Docket Numbers: ER19–1006–000.
Applicants: Mississippi Power Company.
Description: § 205(d) Rate Filing: JEA Interchange Contract Amendment Filing to be effective 1/1/2019.
Filed Date: 2/7/19.
Accession Number: 20190207–5003.
Comments Due: 5 p.m. ET 2/28/19.

Docket Numbers: ER19–1007–000.
Applicants: FirstEnergy Solutions Corp.
Description: § 205(d) Rate Filing: Amendment to Reactive Service Rate Schedule FERC No. 1 and Request for Waiver to be effective 2/5/2019.
Filed Date: 2/7/19.
Accession Number: 20190207–5087.
Comments Due: 5 p.m. ET 2/28/19.

Docket Numbers: ER19–1008–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: GIA & Distrib Serv Agmt Strata Saticoy, LLC Saticoy Energy Storage to be effective 2/8/2019.
Filed Date: 2/7/19.
Accession Number: 20190207–5088.
Comments Due: 5 p.m. ET 2/28/19.

Docket Numbers: ER19–1009–000.
Applicants: Revere Power, LLC.
Description: Baseline eTariff Filing: MBR Application to be effective 12/31/9998.
Filed Date: 2/7/19.
Accession Number: 20190207–5089.
Comments Due: 5 p.m. ET 2/28/19.

Docket Numbers: ER19–1010–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–02–07_SA 3235 ITC Midwest-Duane Arnold Solar GIA (J504) to be effective 1/24/2019.
Filed Date: 2/7/19.
Accession Number: 20190207–5099.
Comments Due: 5 p.m. ET 2/28/19.

Docket Numbers: ER19–1011–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of ICSA/SA No. 3789; Queue No. T16 to be effective 12/21/2018.
Filed Date: 2/7/19.
Accession Number: 20190207–5176.
Comments Due: 5 p.m. ET 2/28/19.

Docket Numbers: ER19–1012–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to the OATT and RAA re Price Responsive Demand Modifications to be effective 4/9/2019.
Filed Date: 2/7/19.
Accession Number: 20190207–5177.
Comments Due: 5 p.m. ET 2/28/19.

Docket Numbers: ER19–1013–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2019–02–07 Specify Minimum Requirements for Interconnection Requests Amendment to be effective 4/1/2019.
Filed Date: 2/7/19.
Accession Number: 20190207–5178.
Comments Due: 5 p.m. ET 2/28/19.

Docket Numbers: ER19–1014–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: § 205(d) Rate Filing: 2019–02–07_SA 3244 Ameren Illinois-Marathon Petroleum CPA (Heath Substation) to be effective 1/8/2019.
Filed Date: 2/7/19.
Accession Number: 20190207–5179.
Comments Due: 5 p.m. ET 2/28/19.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES19–18–000.
Applicants: Northern Maine Independent System Administrator, Inc.
Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of the Northern Maine Independent System Administrator, Inc.
Filed Date: 2/6/19.
Accession Number: 20190206–5139.
Comments Due: 5 p.m. ET 2/27/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 7, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–02149 Filed 2–12–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP18–512–000; CP18–513–000]

Corpus Christi Liquefaction Stage III, LLC; Corpus Christi Liquefaction, LLC; and Cheniere Corpus Christi Pipeline, L.P.; Notice of Revised Schedule for Environmental Review of the Stage 3 Project

This notice identifies the Federal Energy Regulatory Commission staff's revised schedule for the completion of the environmental assessment (EA) for the Corpus Christi Liquefaction Stage III, LLC, Corpus Christi Liquefaction, LLC, and Cheniere Corpus Christi Pipeline, L.P. (collectively, Cheniere) Stage 3 Project. The first notice of schedule, issued on August 31, 2018, identified February 8, 2019 as the EA issuance date. The previous notice states, however, that the forecasted schedule was based upon Cheniere providing complete and timely responses to any data requests. In its partial data request responses filed in December 2018 and January 2019, Cheniere states that it does not plan to file the outstanding information until February 7 and 22, 2019, respectively. As a result, staff has revised the schedule for issuance of the EA. The revised schedule for the EA is based upon Cheniere meeting its commitment to provide complete responses to outstanding data requests on the dates it has identified.

Schedule for Environmental Review

Issuance of EA: March 29, 2019
90-day Federal Authorization Decision *Deadline:* June 27, 2019

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP18–512 and CP18–513), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Dated: February 7, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02144 Filed 2–12–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP18–102–000; CP18–103–000]

Cheyenne Connector, LLC, Rockies Express Pipeline LLC; Notice of Reopening of Comment Period

On December 18, 2018, the Commission issued a Notice of Availability (December 18 Notice) setting January 17, 2019, as the end of the formal period to file comments on the environmental assessment issued for the Cheyenne Connector Pipeline and Cheyenne Hub Enhancement Projects. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, and due to a printing error with the December 18 Notice, the Commission is reopening the comment period until March 5, 2019. A complete copy of the December 18 Notice is attached, which contains instructions on how to submit comments.

Dated: February 7, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02143 Filed 2–12–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–521–000]

Gulf LNG Liquefaction Company, LLC, Gulf LNG Energy, LLC, Gulf LNG Pipeline, LLC; Notice of Reopening of Comment Period

On November 15, 2018, the Commission issued a notice setting January 7, 2019, as the end of the formal period to file comments on the Gulf LNG Liquefaction Project draft environmental impact statement. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is reopening the comment period until February 25, 2019.

Dated: February 7, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02142 Filed 2–12–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–480–000]

Annova LNG Common Infrastructure, LLC, Annova LNG Brownsville A, LLC, Annova LNG Brownsville B, LLC, Annova LNG Brownsville C, LLC; Notice of Reopening of Comment Period

On December 14, 2018, the Commission issued a notice setting February 4, 2019, as the end of the formal period to file comments on the Annova LNG Brownsville Project draft environmental impact statement. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is reopening the comment period until March 13, 2019.

Dated: February 7, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02140 Filed 2–12–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–481–001]

LMBE Project Company LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of LMBE Project Company LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 27, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 7, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–02150 Filed 2–12–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2361–055; 2362–043]

Allete, Inc.; Notice of Intent To File License Application, Filing of Pre-Application Document (Pad), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for a Subsequent Licence for the Prairie River Hydroelectric Project and a New License for the Grand Rapids Hydroelectric Project, and Commencing Pre-filing Process.

b. *Project Nos.:* 2361–055 and 2362–043.

c. *Dated Filed:* December 13, 2018.

d. *Submitted By:* Allete, Inc.

e. *Name of Projects:* Prairie River and Grand Rapids Hydroelectric Projects.

f. *Location:* The Prairie River Project is located on the Prairie River near the township of Arbo in Itasca County, Minnesota. The Grand Rapids Project is located on the Mississippi River near the City of Grand Rapids in Itasca County, Minnesota. Neither project occupies federal lands.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations

h. *Potential Applicant Contact:* Nora Rosemore, Hydro Operations Superintendent, Minnesota Power; *NRosemore@mnpower.com* or (218) 725–2101.

i. *FERC Contact:* Laura Washington at (202) 502–6072 or email at *laura.washington@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in paragraph o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402, and (b) the State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Allete, Inc. as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Allete, Inc. filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket numbers, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Commission's staff Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can

submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov.* In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket numbers P–2361–055 and P–2362–043.

All filings with the Commission must bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by April 12, 2019.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, the meetings listed below will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the projects at the times and places noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Evening Scoping Meeting for Both Projects

Date and Time: Wednesday, March 6, 2019 at 6:00 p.m.

Location: Timberlake Lodge, 144 SE 17th Street, Grand Rapids, MN 55744.

Phone: (218) 326–2600.

Daytime Scoping Meeting for Both Projects

Date and Time: Thursday, March 7, 2019 at 9:00 a.m.

Location: Timberlake Lodge, 144 SE 17th Street, Grand Rapids, MN 55744.

Phone: (218) 326–2600.

SD1, which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Environmental Site Review

The potential applicant and Commission staff will conduct an Environmental Site Review of the projects on Wednesday, March 6, 2019, starting at 10:00 a.m. All participants should meet in the parking lot at Prairie River Hydro, 30301 County Highway 61, Grand Rapids, MN. If you plan to attend the environmental site review, please contact Nora Rosemore, at (218) 725–2101 or *NRosemore@mnpower.com,* by March 1, 2019. Participants must be 16 years of age or older and wear closed-toe shoes. Please indicate how many participants will be attending with you.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in paragraph n of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public records of the projects.

Dated: February 7, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02145 Filed 2–12–19; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (OMB No. 3064–0161)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collection described below (3064–0161). On November 27, 2018, the FDIC requested comment for 60 days on a proposal to renew the information collection described below. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of this collection, and again invites comment on this renewal.

DATES: Comments must be submitted on or before March 15, 2019.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Jennifer Jones (202–898–6768), Counsel, MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jennifer Jones, Counsel, 202–898–6768, *jennjones@fdic.gov,* MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On November 27, 2018, the FDIC requested comment for 60 days on a proposal to renew the information collection described below. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of this collection, and again invites comment on this renewal.

Proposal to renew the following currently approved collection of information:

1. *Title:* Furnisher Information Accuracy and Integrity (FACTA 312).

OMB Number: 3064–0161.

Form Number: None.

Affected Public: State nonmember banks.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response	Frequency of response	Total annual estimated burden (hours)
Procedures to Enhance the Accuracy and Integrity of Information furnished to Consumer Reporting Agencies Under Section 312 of the Fair and Accurate Credit Transaction Act.	Reporting	Mandatory	3,533	1	40 hours	Annually	141,320
Distribution of Notices in Response to Direct Disputes.	Third-Party Disclosure.	Mandatory	3,533	1	14 minutes	On Occasion	16,487
Total Hourly Burden							157,807

General Description of Collection: Sec. 312 of the Fair and Accurate Credit Transaction Act of 2003 (FACT Act) requires the FDIC to: Issue guidelines for furnishers regarding the accuracy and integrity of the information about consumers furnished to consumer reporting agencies; prescribe regulations requiring furnishers to establish reasonable policies/procedures to implement the guidelines; and issue regulations identifying the circumstances where a furnisher must reinvestigate a dispute about the accuracy of information in a consumer report based on a direct request from a consumer.

There is no change in the method or substance of the collection. The overall reduction in burden hours is the result of economic fluctuation. In particular, the number of respondents has decreased while the hours per response and frequency of responses have remained the same.

Request for Comment: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, 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 respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, on February 8, 2019.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2019–02173 Filed 2–12–19; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (OMB No. 3064–0093)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collection described below (control Number 3064–0095; 3064–0145). On November 23, 2018, the FDIC requested comment for 60 days on a proposal to renew this information collection. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of this collection, and again invites comment on the renewal.

DATES: Comments must be submitted on or before March 15, 2019.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Counsel, MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On November 23, 2018, the FDIC requested comment for 60 days on a proposal to renew the information collections described below.[1] No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of this information collection, and again invites comment on the renewal.

Proposal to renew the following currently approved collection of information:

1. *Title:* Notices Required of Government Securities Dealers or Brokers.

OMB Number: 3064–0093.

[1] 83 FR 59382 (November 23, 2018).

Form Number: G–FIN; G–FINW; G–FIN4 & G–FIN5.

Affected Public: Insured state nonmember banks acting as government securities brokers and dealers.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response	Estimated annual burden (hours)
Notice by Financial Institutions of Government Securities Broker or Government Securities Dealer Activities (G–FIN).	Reporting	Mandatory	1	On Occasion	1 hour	1
Notice By Financial Institutions of Termination of Activities as a Government Securities Broker of Government Securities Dealer (G–FINW).	Reporting	Mandatory	1	On Occasion	15 minutes	.25
Disclosure Form for Person Associated with a Financial Institution Securities Broker or Dealer (G–FIN–4).	Reporting	Mandatory	1	On Occasion	2 hours	2
Uniform Termination Notice for Persons Associated With a Financial Institution Government Securities Broker of Dealer (G–FIN–5).	Reporting	Mandatory	5	On Occasion	2 hours	10
Total Estimated Annual Burden						13.25

General Description of Collection: The Government Securities Act of 1986 requires all financial institutions acting as government securities brokers and dealers to notify their Federal regulatory agencies of their broker-dealer activities, unless exempted from the notice requirements by Treasury Department regulation.

The Form G–FIN and Form G–FINW are used by insured State nonmember banks that are government securities brokers or dealers to notify the FDIC of their status or that they have ceased to function as a government securities broker or dealer.

The Form G–FIN–4 is used by associated persons of insured State nonmember banks that are government securities brokers or dealers to provide certain information to the bank and to the FDIC concerning employment, residence, and statutory disqualification.

The Form G–FIN–5 is used by insured State nonmember banks that are government securities brokers or dealers to notify the FDIC that an associated person is no longer associated with the government securities broker or dealer function of the bank.

There is no change in the method or substance of the collection. The overall reduction in burden hours (from 17 hours to 13.25 hours) is the result of economic fluctuation. In particular, the number of respondents has decreased from 17 to 8 while the hours per response and frequency of responses have remained the same.

Request for Comment: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, 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 respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, on February 8, 2019.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2019–02180 Filed 2–12–19; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (OMB No. 3064–0095)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collection described below (control Number 3064–0095; 3064–0145). On December 10, 2018, the FDIC requested comment for 60 days on a proposal to renew this information collection. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of this collection, and again invites comment on the renewal.

DATES: Comments must be submitted on or before March 15, 2019.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Counsel, MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On December 10, 2018, the FDIC requested comment for 60 days on a proposal to renew the information collections described below.[1] No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of this information collection, and again invites comment on the renewal.

Proposal to renew the following currently approved collection of information:

1. *Title:* Procedures for Monitoring Bank Protection Act Compliance.

OMB Number: 3064–0095.

Form Number: None.

Affected Public: Insured state nonmember banks.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (hours)	Estimated annual burden (hours)
Bank Protection Act Compliance Program.	Recordkeeping ...	Mandatory	3,533	Annually	.5	1,766.5
Estimated Total Annual Burden	.....	.....	.....	.....	.....	1,766.5

General Description of Collection: The collection requires insured state nonmember banks to comply with the Bank Protection Act and to review bank security programs The Bank Protection Act of 1968 (12 U.S.C. 1881–1884) requires each Federal supervisory agency to promulgate rules establishing minimum standards for security devices and procedures to discourage financial crime and to assist in the identification of persons who commit such crimes. To avoid the necessity of constantly updating a technology-based regulation, the FDIC takes a flexible approach to implementing this statute. It requires each insured nonmember bank to designate a security officer who will administer a written security program. The security program must: (1) Establish procedures for opening and closing for business and for safekeeping valuables; (2) establish procedures that will assist in identifying persons committing crimes against the bank; (3) provide for initial and periodic training of employees in their responsibilities under the security program; and (4) provide for selecting, testing, operating and maintaining security devices as prescribed in the regulation. In addition, the FDIC requires the security officer to report at least annually to the bank's board of directors on the effectiveness of the security program.

There is no change in the method or substance of the collection. The FDIC estimates that the number of respondents will decrease due to economic fluctuations from 3,629 to 3,533. The annual burden for this information collection is estimated to be 1,766.5 hours. This represents a decrease of 48.5 hours from the current burden estimate of 1,815 hours.

Request for Comment: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, 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 respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, on February 8, 2019.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2019–02177 Filed 2–12–19; 8:45 am]

BILLING CODE 6714–01–P

[1] 83 FR 63507 (December 10, 2018).

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA03

Extension of Comment Period for the Request for Information on the FDIC's Deposit Insurance Application Process

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for information; extension of comment period.

SUMMARY: The FDIC is extending the public comment period for its request for information on the FDIC's deposit insurance application process until March 31, 2019.

DATES: The comment period for the notice published on December 12, 2018 (83 FR 63868), regarding the request for information on the FDIC's deposit insurance application process, is extended from February 11, 2019, to March 31, 2019.

ADDRESSES: You may submit comments, identified by RIN 3064–ZA03, by any of the methods identified in the notice.[1] Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: *RMS Contacts:* Donald Hamm, Special Advisor, (202) 898–3528, *DHamm@FDIC.gov.*

Legal Contacts: Annmarie Boyd, Counsel, (202) 898–3714, *ABoyd@FDIC.gov;* Catherine Topping, Counsel, (202) 898–3975, *CTopping@FDIC.gov;* Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On December 12, 2018, the FDIC published in the **Federal Register** a request for information seeking comments from interested parties on all aspects of the deposit insurance application process. The request is part of the FDIC's efforts to enhance transparency, efficiency, and accountability regarding the application process.

The FDIC seeks comments from interested parties on all aspects of the deposit insurance application process, including guidance and other issuances, the steps in the application process, and communications with applicants, other

[1] *See* 83 FR 63868 (December 12, 2018).

interested parties, and the general public. In addition to any general comments, the FDIC invites comments in response to the specific topics and questions presented in the request for information.

The extension of the comment period will allow interested parties additional time to prepare comments and provide meaningful feedback on the request for information. Accordingly, the comment period for the proposal is extended from February 11, 2019, to March 31, 2019.

Dated at Washington, DC, on February 7, 2019.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2019–02100 Filed 2–12–19; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice and request for comments.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on the ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' for approval under the Paperwork Reduction Act (PRA). This collection was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery. This notice announces our intent to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection.

DATES: Written comments are due by April 15, 2019.

ADDRESSES: Send comments to: Jeannette Walters-Marquez, Federal Mediation and Conciliation Service, 250 E Street SW, Washington, DC 20427, telephone and fax (202) 606–5488, or send via email to *jwmarquez@fmcs.gov.* Comments may also be sent by electronic mail message over the internet via the Federal eRulemaking Portal. See Federal eRulemaking Portal website (*http://www.regulations.gov*) for instructions on providing comments via the Federal Rulemaking Portal.

All comments will be available for inspection at 250 E Street SW, Washington, DC 20427, Room 7113 (Reading Room) from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jeannette Walters-Marquez, 202–606–5488, *jwmarquez@fmcs.gov.*

SUPPLEMENTARY INFORMATION: Comments submitted in response to this notice may be made available to the public through posting on a government website. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered is not used for the purpose of substantially informing influential policy decisions; and
- Information gathered yields qualitative information; the collections are not designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Action: New collection of information.

Type of Review: New collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Below we provide projected average annual estimates:

Estimated Number of Annual Respondents: 7,000.

Expected Annual Number of Activities: 1.

Number of Respondents per Activity: 1.

Annual Responses: 7,000.

Frequency of Response: Once per request.

Average Minutes per Response: 10.

Average Expected Annual Burden hours: 1,667.

Dated: February 6, 2019.

Jeannette Walters-Marquez,

Attorney Advisor, Federal Mediation and Conciliation Service.

[FR Doc. 2019–01938 Filed 2–12–19; 8:45 am]

BILLING CODE 6732–01–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 (''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 27, 2019.

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

1. *Carroll D. Esry, Sarasota, Florida, The Nancy Marie Esry Irrevocable Trust, Independence, Missouri, The William C. Esry Family Trust and William C. Esry, Independence, Missouri, individually and as trustee, The David Reich Esry Family Trust and David R. Esry, Lee's Summit, Missouri, individually, as custodian, and as trustee, Marcie Esry Johnson, Sarasota, Florida, The Carolyn Marcile Weir Irrevocable Trust, Independence, Missouri, Weir Farm LLC, Independence, Missouri, Robert K. Weir, Independence, Missouri, William N. Weir, Blue Springs, Missouri, Susan Weir Carter, Bay Village, Ohio, and Geoffrey D. Carter, Bay Village, Ohio;* to become members of the Reich Family Group and thereby retain shares of Blue Ridge Bancshares and its subsidiary, Blue Ridge Bank and Trust Company, both of Independence, Missouri.

Board of Governors of the Federal Reserve System, February 8, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–02175 Filed 2–12–19; 8:45 am]

BILLING CODE 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 March 11, 2019.

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

1. *Greenwoods Financial Group, Inc., Lake Mills, Wisconsin;* to acquire voting shares of Fox River Financial Corporation and thereby indirectly acquire Fox River State Bank, both of Burlington, Wisconsin.

2. *Waterman Acquisition Group, LLC, Wilmette, Illinois;* to become a bank holding company by acquiring voting shares of Waterman State Bank, Waterman, Illinois.

Board of Governors of the Federal Reserve System, February 8, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–02174 Filed 2–12–19; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2019–01; Docket No. 2019–0002; Sequence No. 1]

Notice of Availability for the Final Environmental Impact Statement for the Otay Mesa Port of Entry, San Diego, California

AGENCY: Public Buildings Service (PBS), General Services Administration (GSA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Final Environmental Impact Statement (FEIS), which examines the potential impacts of a proposal by the General Services Administration (GSA) to modernize and expand the existing Otay Mesa Land Port of Entry (LPOE) located at the United States (U.S.)-Mexico border in the City of San Diego community of Otay Mesa, in San Diego County, California. The FEIS describes the reason the project is being proposed, the alternatives being considered, the potential impacts of each of the alternatives on the existing environment, and avoidance, minimization, and/or mitigation measures.

As the lead agency in this undertaking, GSA is acting on behalf of its major tenant at this facility, the Department of Homeland Security's (DHS) Customs and Border Protection (CBP).

DATES: The comment period for the FEIS ends March 11th, 2019. After this date, GSA will prepare the Record of Decision

(ROD). A public meeting for the FEIS will be held on March 7th, 2019.

ADDRESSES: Further information, including an electronic copy of the FEIS, may be found online on the following website: *https://www.gsa.gov/about-us/regions/welcome-to-the-pacific-rim-region-9/land-ports-of-entry/otay-mesa-land-port-of-entry/otay-mesa-environmental-review.* Questions or comments concerning the FEIS should be directed to: Osmahn Kadri, NEPA Project Manager, 50 United Nations Plaza, 3345 Mailbox #9, San Francisco, CA 94102, or via email to *osmahn.kadri@gsa.gov.*

SUPPLEMENTARY INFORMATION: The Otay Mesa LPOE is located approximately 17 miles southeast of downtown San Diego, just north of the U.S. border and the Baja California Peninsula of Mexico. When it was constructed in 1983, its primary purpose was to divert growing commercial truck traffic from the increasingly busy San Ysidro LPOE to the west at the southern terminus of Interstate 5. The LPOE handles commercial and privately-owned vehicle and pedestrian traffic. Since the LPOE opened, vehicle and pedestrian traffic and the population and general development in the area have grown. It is now one of the ten busiest land ports in the country and is the busiest commercial port on the California-Mexico border, handling the second highest volume of trucks, and third highest dollar volume of trade among all U.S.-Mexico LPOEs. Ever-increasing traffic loads and new security initiatives require increased capacity and new inspection technology to be installed and implemented at the existing facilities.

Background

The Project's purpose is to improve the efficiency, effectiveness, security and safety at the existing Otay Mesa LPOE. The Project's need, or the need to which the GSA is responding, is to increase the LPOE's capacity due to increased demand, and to address public and employee safety and border security concerns.

The FEIS considers two ''action'' alternatives and one ''no action'' alternative. The Preferred Alternative would include the development of an approximately 10-acre GSA-owned plot of land to the immediate east of the existing commercial import lot. The new lot would be used to construct commercial inspection buildings and additional commercial import lanes. Improvements to existing pedestrian lanes and personal vehicle inspection lanes; relocation of personnel currently housed in the Pedestrian, Commercial Import and Commercial Export buildings; renovation of existing facilities throughout the Otay Mesa LPOE; and demolition of facilities that would no longer be needed would also occur. New construction would include commercial import and exit booths, six additional pedestrian lanes in the Pedestrian Building, a Commercial Annex Building (CAB), a return-to-Mexico lane for commercial traffic, a pedestrian ramp and parking areas for the new commercial lot. Building renovations would include the installation of energy conservation measures and water conservation measures across the Otay Mesa LPOE, the correction of deficiencies throughout existing facilities (*e.g.,* updating security systems, updating HVAC systems, improving lighting and repaving old asphalt surfaces), and refurbishing the interiors of the Pedestrian, Commercial Import and Commercial Export buildings including repainting and replacing flooring.

The Reduced Build Alternative would include many of the same activities as under the Preferred Alternative; however, the overall activity level would be lower. Notably, no new construction would occur on the 10-acre GSA-owned plot of land, and the CAB would not be constructed; instead, the plot of land would be paved and used as additional space for the commercial vehicle inspection booths which would be reconfigured to increase traffic flow. Renovation of existing facilities would still occur, but activities would be limited to updating security and HVAC systems and repainting interiors.

The No Action Alternative assumes that modernization and expansion of the existing LPOE would not occur and that a new facility would not be constructed adjacent to the existing LPOE. The LPOE would continue to operate under current conditions.

Public Meeting

A public meeting for the FEIS will be held on Thursday, March 7th from 4 to 6 p.m. at: Holiday Inn Express and Suites San Diego, 2296 Niels Bohr Court, San Diego, CA 92154, 619–710–0900.

The meeting will be conducted in an open house format, where project information will be presented and distributed. Interested parties are encouraged to attend and provide written comments on the FEIS. Comments must be received by March 11th, 2019 and emailed to *osmahn.kadri@gsa.gov* or sent to: General Services Administration, Attention: Osmahn Kadri, NEPA Project Manager, 50 United Nations Plaza, 3345 Mailbox #9, San Francisco, CA 94102.

Next Steps

After comments are received from the public and reviewing agencies, GSA may 1. Give environmental approval to the Project by signing a ROD no sooner than 30 days after the FEIS is issued. In the ROD, GSA will explain all the factors that were considered in reaching its final decision, including the environmental factors. GSA will identify the environmentally preferable alternative or alternatives and may select one of the alternatives or a combination of alternatives analyzed in the EIS. 2. Undertake additional environmental studies, or 3. Abandon the Project.

If the Project is given environmental approval and funding is appropriated, the GSA could design and construct all or part of the Project.

FOR FURTHER INFORMATION CONTACT: Osmahn A. Kadri, NEPA Project Manager, General Services Administration at 415–522–3617. Please also call this number if special assistance is needed to attend and participate in the public meeting.

Dated: February 6, 2019.

Matthew Jear,

Director, Portfolio Management Division, Pacific Rim Region, Public Buildings Service.

[FR Doc. 2019–02205 Filed 2–12–19; 8:45 am]

BILLING CODE 6820–YF–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0107; Docket No. 2018–0003; Sequence No. 22]

Submission for OMB Review; Federal Acquisition Regulation Part 23 Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding FAR part 23 requirements.

DATES: Submit comments on or before March 15, 2019.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0107, Federal Acquisition Regulation Part 23 Requirements.

Instructions: Please submit comments only and cite Information Collection 9000–0107, Federal Acquisition Regulation Part 23 Requirements, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, at telephone 703–605–2868, or email *mahruba.uddowla@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection requirement, OMB Control No. 9000–0107, currently titled ''Notice of Radioactive Materials,'' is proposed to be retitled ''Federal Acquisition Regulation Part 23 Requirements'' due to consolidation with currently approved information collection requirements OMB Control No. 9000–0101, Drug-Free Workplace; 9000–0191, High Global Warming Potential Hydrofluorocarbons; 9000–0194, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation; 9000–0147, Pollution Prevention and Right-to-Know Information; 9000–0134, Environmentally Sound Products; and 9000–0180, Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

This information collection requirement pertains to information that a contractor must submit in response to a number of requirements from FAR Part 23, which are as follows:

1. Notice of Radioactive Materials. The Atomic Energy Act of 1954, (42 U.S.C. 2011), as amended, establishes requirements for protecting radioactive materials. The requirements of this Act are implemented in the FAR at clause 52.223–7, Notice of Radioactive Materials. This clause requires contractors to notify the Government prior to delivery of items containing radioactive materials.

2. Drug-Free Workplace. As mandated in Public Law 100–690, the Drug-Free Workplace Act of 1988, and as enacted in Public Law 111–350, which recodifies Title 41—Public Contracts of the United States Code: (1) Government contractor employees are required to notify their employer of any criminal drug statute conviction for a violation occurring in the workplace; and (2) Government contractors, after receiving notice of such conviction, must notify the Government contracting officer. FAR clause 52.223–6, Drug-Free Workplace, implements the Act.

3. High Global Warming Potential Hydrofluorocarbons. FAR clauses 52.223–11, Ozone-Depleting Substances, and 52.223–12, Refrigeration Equipment and Air Conditioners, address high global warming potential (GWP) hydrofluorocarbons (HFCs). For equipment and appliances that normally contain 50 or more pounds of HFCs or HFC blends, the clauses include requirements to track by type, equipment/application, contract, agency, and location, the amount in pounds of HFCs or HFC blends—

i. Contained in such equipment and appliances delivered to the Government; or

ii. Added or taken out of such equipment and appliances that will be maintained, repaired, or disposed under the contract.

The contractor is required to report the HFC information annually to a centralized Government website.

4. Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation. FAR provision 52.223–22 contains an annual representation for vendors to indicate if and where they publicly disclose greenhouse gas emissions and greenhouse gas reduction goals or targets. Public disclosure of greenhouse gas emission management is increasingly becoming standard practice in many industries, because an inventory of this information provides insight into operations, spurs innovation, and helps identify opportunities for efficiency and savings, outcomes which can translate into both environmental and financial benefits. Executive Order (E.O.) 13693, Planning for Federal Sustainability in the Next Decade, March 25, 2015, serves as the legal underpinning for this collection of information, as it prescribes the continuation of the Federal policy that agencies shall increase their efficiency and improve their environmental performance, including the reduction of greenhouse gas emissions across Federal operations and the Federal supply chain (*e.g.,* Federal contractors).

5. Pollution Prevention and Right-to-Know Information. The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001–11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101–13109), require that Federal facilities maintain reports on hazardous materials and toxic chemicals and pollution prevention efforts. In keeping with these mandates, FAR clause 52.223–5, Pollution Prevention and Right-to-Know Information, requires Federal contractors performing at a Federal facility to provide sufficient information to the Government to ensure that the facility is compliant with the PPA and EPCRA. This information pertains to the Toxic Release Inventory and PPA reports; other reports required by the EPCRA; implementation of Environmental Management Systems; and completion of Facility Compliance Audits.

6. Environmentally Sound Products. Section 6002 of the Resource Conservation and Recovery Act (RCRA), Public Law 94–580, (42 U.S.C. 6962), requires Federal agencies to develop affirmative procurement programs to ensure that items composed of recovered materials will be purchased to the maximum extent practicable. Each agency's affirmative procurement program must provide estimates of the total percentage of recovered materials used in the performance of a contract, certification of minimum recovered material content actually used, where appropriate, and reasonable verification procedures for estimates and certifications. The minimum recovered material content standards are designated by the Environmental Protection Agency (EPA). These standards are grouped into eight categories—

(i) Construction products;
(ii) Landscaping products;
(iii) Non-paper paper office supplies;
(iv) Paper and paper products;
(v) Park and recreation products;

(vi) Transportation products;
(vii) Vehicular products; and
(viii) Miscellaneous products.

FAR clause 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items, was created to assist agencies with compliance with section 6002. Clause 52.223–9 requires a contractor, on completion of the contract that is for or specifies the use of EPA-designated items containing recovered materials, to (a) estimate the percentage of the total recovered material content delivered or used in performance of the contract, including, if applicable, the percentage of post-consumer material content and (b) submit an estimate to the contracting agency.

Although section 6002 requires that agencies develop these estimates whenever an acquisition sets forth minimum percentages of recovered materials, when the price of the item exceeds $10,000, or when the aggregate amount paid for the item or functionally equivalent items in the preceding fiscal year was $10,000 or more, the clause at 52.223–9 is only used in solicitations and contracts exceeding $150,000. Acquisitions of commercially available off-the-shelf (COTS) items are excluded from this requirement.

7. Affirmative Procurement of Biobased Products Under Service and Construction Contracts. FAR clause 52.223–2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, requires prime contractors to report annually the product types and dollar values of U.S. Department of Agriculture (USDA)-designated biobased products purchased. The information reported by prime contractors enables Federal agencies to report annually to the Office of Federal Procurement Policy (OFPP) concerning actions taken to implement and measure progress in carrying out the preference for biobased products required under section 9002 of the Farm Security and Rural Investment Act of 2002, codified at 7 U.S.C. 8102.

B. Public Comment

A 60-day notice published in the **Federal Register** at 83 FR 51462 on October 11, 2018. Two comments were received; however, they did not change the estimate of the burden.

Comment 1: The commenter is concerned with potential changes to regulations concerning HFCs.

Comment 2: The commenter asked the General Services Administration to implement a rule requiring all federal facilities under their management to procure 100% of their electricity needs from carbon-neutral sources by 2035. The commenter stated this request is a public right to petition for the issuance, amendment, or repeal of a rule under the Administrative Procedures Act, codified in 5 U.S.C. 553(e).

Response: These comments are out of scope because they did not express an opinion on whether the stated number of burden hours is accurate for what they believe to be the actual number of hours an offeror/contractor expend to comply with the FAR part 23 requirements.

C. Annual Reporting Burden

1. Notice of Radioactive Materials.
Respondents: 500.
Responses per Respondent: 5.
Total Annual Responses: 2,500.
Hours per Response: 1.
Total Burden Hours: 2,500.

2. Drug-Free Workplace.
Respondents: 205.
Responses per Respondent: 1.
Total Annual Responses: 205.
Hours per Response: 0.5.
Total Burden Hours: 102.5.

3. High Global Warming Potential Hydrofluorocarbons.
Respondents: 2,337.
Responses per Respondent: 1.
Total Annual Responses: 2,337.
Hours per Response: 8.
Total Burden Hours: 18,696.

4. Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation.
Respondents: 7,740.
Responses per Respondent: 1.
Total Annual Responses: 7,740.
Hours per Response: 0.25.
Total Burden Hours: 1,935.

5. Pollution Prevention and Right-to-Know Information.
Respondents: 3,148.
Total Annual Responses: 4,713.
Hours per Response: 3.9622.
Total Burden Hours: 18,674.

6. Environmentally Sound Products.
Respondents: 585.
Responses per Respondent: 1.
Total Annual Responses: 585.
Hours per Response: 0.5.
Total Burden Hours: 292.5.

7. Affirmative Procurement of Biobased Products Under Service and Construction Contracts.
Respondents: 29,612.
Responses per Respondent: 5.
Total Annual Responses: 148,060.
Hours per Response: 5.
Total Burden Hours: 740,300.

8. Summary.
Respondents: 44,127.
Total Annual Responses: 166,140.
Total Burden Hours: 782,520.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0107, Federal Acquisition Regulation Part 23 Requirements, in all correspondence.

Dated: February 7, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–02131 Filed 2–12–19; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[Notice–MA–2019–01; Docket No. 2019–0001, Sequence No. 3]

Federal Travel Regulation: Reimbursement of Fees for Nonconventional Lodging

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice of Federal Travel Regulation (FTR) Bulletin 19–04, Reimbursement of fees for conventional and nonconventional lodging.

SUMMARY: Per the Federal Travel Regulation (FTR), agencies may reimburse employees for the use of nonconventional lodging ''when there are no conventional lodging facilities in the area (*e.g.,* in remote areas) or when conventional facilities are in short supply.'' As the use of nonconventional lodging amongst Federal travelers has grown, so have questions about the associated fees agencies may reimburse. FTR Bulletin 19–04 clarifies what fees agencies may reimburse when employees use either conventional or nonconventional lodging while on official temporary duty (TDY) travel. This Bulletin is located at *www.gsa.gov/ftr* under the ''FTR & Related Files'' tab.

DATES: *Applicable date:* February 13, 2019.

FOR FURTHER INFORMATION CONTACT: For clarification of content, please contact Jill Denning, Program Analyst, Office of Government-wide Policy, Office of Asset and Transportation Management, at 202–208–7642, or by email at *travelpolicy@gsa.gov.* Please cite Notice of FTR Bulletin 19–04.

Dated: February 7, 2019.

Jessica Salmoiraghi,

Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2019–02138 Filed 2–12–19; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0059; Docket No. 2018–0003; Sequence No. 23]

Submission for OMB Review; North Carolina Sales Tax Certification

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an existing OMB emergency clearance notice concerning North Carolina sales tax certification.

DATES: Submit comments on or before March 15, 2019.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0059, North Carolina Sales Tax Certification.

Instructions: Please submit comments only and cite Information Collection 9000–0059, North Carolina Sales Tax Certification, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Funk, Procurement Analyst, at telephone 202–357–5805, or email *kevin.funk@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Regulation (FAR) clause at 52.229–2, North Carolina State and Local Sales and Use Tax, requires contractors for construction or vessel repair to be performed in North Carolina to provide certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or use taxes paid.

The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns, to obtain each year from the Commissioner of Revenue of the State of North Carolina, a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure in North Carolina. However, to substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must secure from the contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or use taxes paid. Similar certified statements by subcontractors must be obtained by the general contractor and furnished to the Government.

B. Public Comment

A 60-day notice published in the **Federal Register** at 83 FR 51953 on October 15, 2018. No comments were received.

C. Annual Reporting Burden

The Federal Procurement Data System (FPDS) for 2017 was used to develop the estimated burden hours as shown below:

Respondents: 377.

Responses per Respondent: 1.

Total Annual Responses: 377.

Hours per Response: 1.25.

Total Burden Hours: 471.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0059, North Carolina Sales Tax Certification, in all correspondence.

Dated: February 7, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–02130 Filed 2–12–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–OH–19–001, Occupational Safety and Health National Center for Construction Safety and Health Research and Translation.

Dates: May 14, 2019 and May 15, 2019.

Time: 6:00 p.m.–7:00 p.m. EDT and 8:30 a.m.–5:00 p.m. EDT.

Place: Hilton Embassy Suites, 1900 Diagonal Road, Alexandria, Virginia 22314, (703) 684–5900.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Michael Goldcamp, Ph.D., Scientific Review Officer, Office of Extramural Programs, CDC, 1095 Willowdale Road, Morgantown, West Virginia 26505, (304) 285–5951; *mgoldcamp@cdc.gov.*

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–02165 Filed 2–12–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—Funding Opportunity Announcement (FOA), PAR 16–098, Cooperative Research Agreements to the World Trade Center Health Program (U01); Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the *Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)*—Funding Opportunity Announcement (FOA), PAR 16–098, Cooperative Research Agreements to the World Trade Center Health Program (U01); *Dates and Times:* March 27, 2019, 8:00 a.m.–5:00 p.m., EDT and March 28, 2019, 8:00 a.m.–12:00 p.m., EDT. Hampton Inn & Suites Atlanta Buckhead, 3312 Piedmont Road, Atlanta, Georgia 30305, which was published in the **Federal Register** on January 31, 2019, Volume 84, Number 21, pages 730.

The meeting is being amended to Atlanta Marriott Buckhead Hotel & Conference Center, 3405 Lenox Road NE, Atlanta, GA 30326, Telephone: (404) 261–9250. The meeting is closed to the public.

For Further Information Contact: Nina Turner, Ph.D., Scientific Review Officer, CDC/NIOSH, 1095 Willowdale Road, Mailstop L1055, Morgantown, West Virginia 26505, Telephone: (304) 285–5975, *nxt2@cdc.gov*.

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–02164 Filed 2–12–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and Determination of the Chief Operating Officer, Centers for Disease Control and Prevention, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—SIP19–004, Cancer Prevention and Control Research Network Coordinating Center and SIP19–005, Cancer Prevention and Control Research Network Collaborating Center.

Dates: April 30, 2019–May 1, 2019.

Times: 10:00 a.m.–6:30 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Jaya Raman Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop F80, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *kva5@cdc.gov.*

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–02172 Filed 2–12–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0126]

Authorization of Emergency Use of an In Vitro Diagnostic Device for Detection of Ebola virus; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of an Emergency Use Authorization (EUA) (the Authorization) for an in vitro diagnostic device for detection of Ebola virus (species *Zaire ebolavirus* and hereafter referred to as Ebola virus) in response to the Ebola virus outbreak in the Democratic Republic of the Congo. FDA issued this Authorization under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as requested by Chembio Diagnostic Systems, Inc. The Authorization contains, among other things, conditions on the emergency use of the authorized in vitro diagnostic device. The Authorization follows the September 22, 2006, determination by then-Secretary of the Department of Homeland Security (DHS), Michael Chertoff, that the Ebola virus presents a material threat against the U.S. population sufficient to affect national security. On the basis of such determination, the Secretary of Health and Human Services (HHS) declared on August 5, 2014, that circumstances exist justifying the authorization of emergency use of in vitro diagnostic devices for detection of Ebola virus, subject to the terms of any authorization issued under the FD&C Act. The Authorization, which includes an explanation of the reasons for issuance, is reprinted in this document.

DATES: The Authorization is effective as of November 9, 2018.

ADDRESSES: Submit written requests for single copies of the EUA to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the Authorization may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorization.

FOR FURTHER INFORMATION CONTACT: Michael Mair, Office of Counterterrorism and Emerging Threats,

Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 1, rm. 4340, Silver Spring, MD 20993–0002, 301–796–8510 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb-3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5), allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. With this EUA authority, FDA can help assure that medical countermeasures may be used in emergencies to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by biological, chemical, nuclear, or radiological agents when there are no adequate, approved, and available alternatives.

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of the following grounds: (1) A determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents; (2) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to U.S. military forces, including personnel operating under the authority of title 10 or title 50, United States Code, of attack with (i) a biological, chemical, radiological, or nuclear agent or agents; or (ii) an agent or agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces[1]; (3) a determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (4) the identification of a material threat by the Secretary of Homeland Security under section 319F–2 of the Public Health Service (PHS) Act (42 U.S.C. 247d-6b) sufficient to affect national security or the health and security of U.S. citizens living abroad.

Once the Secretary of HHS has declared that circumstances exist justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the FD&C Act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use when the Secretary of HHS has declared that circumstances exist justifying the authorization of emergency use. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under sections 505, 510(k), 512 or 515 of the FD&C Act (21 U.S.C. 355, 360(k), 360b and 360e) or section 351 of the PHS Act (42 U.S.C. 262), or conditionally approved under section 571 of the FD&C Act (21 U.S.C. 360ccc). FDA may issue an EUA only if, after consultation with the HHS Assistant Secretary for Preparedness and Response, the Director of the National Institutes of Health, and the Director of the Centers for Disease Control and Prevention (to the extent feasible and appropriate given the applicable circumstances), FDA[2] concludes: (1) That an agent referred to in a declaration of emergency or threat can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that: (A) The product may be effective in diagnosing, treating, or preventing (i) such disease or condition or (ii) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified in a declaration under section 564(b)(1)(D) of the FD&C Act, if applicable; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; (4) in the case of a determination described in section 564(b)(1)(B)(ii), that the request for emergency use is made by the Secretary of Defense; and (5) that such other criteria as may be prescribed by regulation are satisfied.

No other criteria for issuance have been prescribed by regulation under section 564(c)(4) of the FD&C Act. Because the statute is self-executing, regulations or guidance are not required for FDA to implement the EUA authority.

II. EUA Request for an In Vitro Diagnostic Device for Detection of the Ebola Zaire Virus

On September 22, 2006, then-Secretary of DHS, Michael Chertoff, determined that the Ebola virus presents a material threat against the U.S. population sufficient to affect national security.[3] On August 5, 2014, under section 564(b)(1) of the FD&C Act and on the basis of such determination, the Secretary of HHS declared that circumstances exist justifying the authorization of emergency use of in vitro diagnostic devices for detection of Ebola virus, subject to the terms of any authorization issued under section 564 of the FD&C Act. Notice of the declaration of the Secretary was published in the **Federal Register** on August 12, 2014 (79 FR 47141). On November 5, 2018, Chembio Diagnostic Systems, Inc. submitted a complete request for, and on November 9, 2018, FDA issued, an EUA for the DPP Ebola Antigen System, subject to the terms of the Authorization.

[1] In the case of a determination by the Secretary of Defense, the Secretary of HHS shall determine within 45 calendar days of such determination, whether to make a declaration under section 564(b)(1) of the FD&C Act, and, if appropriate, shall promptly make such a declaration.

[2] The Secretary of HHS has delegated the authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

[3] Under section 564(b)(1) of the FD&C Act, the HHS Secretary's declaration that supports the EUA issuance must be based on one of four determinations, including the identification by the DHS Secretary of a material threat under section 319F–2 of the PHS Act sufficient to affect national security or the health and security of U.S. citizens living abroad (section 564(b)(1)(D) of the FD&C Act).

III. Electronic Access

An electronic version of this document and the full text of the Authorization are available on the internet at *https://www.regulations.gov.*

IV. The Authorization

Having concluded that the criteria for issuance of the Authorization under section 564(c) of the FD&C Act are met, FDA has authorized the emergency use of an in vitro diagnostic device for detection of Ebola virus subject to the terms of the Authorization. The Authorization in its entirety (not including the authorized versions of the fact sheets and other written materials) follows and provides an explanation of the reasons for its issuance, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164–01–P

U.S. FOOD & DRUG ADMINISTRATION

November 9, 2018

Thomas D. Ippolito
Vice President, Clinical and Regulatory Affairs
Chembio Diagnostic Systems, Inc.
3661 Horseblock Road
Medford, NY 11763

Dear Mr. Ippolito:

This letter is in response to your request that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for emergency use of Chembio Diagnostic Systems, Inc.'s ("Chembio") DPP Ebola Antigen System[1] for the presumptive detection of Ebola virus (species *Zaire ebolavirus* and hereafter referred to as Ebola virus)[2] in human capillary ("fingerstick") whole blood, EDTA venous whole blood, and EDTA plasma from individuals with signs and symptoms of Ebola virus disease (EVD) in conjunction with epidemiological risk factors (including geographic locations with high prevalence of EVD), by laboratories and facilities adequately equipped, trained and capable of such testing (including treatment centers and public health clinics)[3], pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. § 360bbb-3). The DPP Ebola Antigen System is intended for circumstances when use of a rapid Ebola virus test is determined to be more appropriate than use of an Ebola virus nucleic acid test, which has been demonstrated to be more sensitive in detecting the Ebola virus. The DPP Ebola Antigen System is not intended for use for general EVD screening, such as airport screening or contact tracing of individuals without signs and symptoms of EVD.

On September 22, 2006, then-Secretary of the Department of Homeland Security (DHS), Michael Chertoff, determined, pursuant to section 319F-2 of the Public Health Service (PHS) Act (42 U.S.C. § 247d-6b), that the Ebola virus presents a material threat against the United States population sufficient to affect national security.[4] Pursuant to section 564(b)(1) of the Act

[1] For purposes of this authorization, the term "DPP Ebola Antigen System" includes, in addition to the DPP Ebola Antigen System kit, the DPP Ebola Rapid Test Control Pack (quality control reagents intended for use only with the DPP Ebola Antigen System), and the DPP Micro Reader (used to read and interpret the results of the DPP Ebola Antigen System). While the DPP Ebola Rapid Test Control Pack and DPP Micro Reader are both sold separately, under this authorization they must be used in conjunction with the DPP Ebola Antigen System.

[2] This assay is intended for the qualitative detection of antigens from Ebola virus. Limited cross reactivity studies suggest it does not cross-react with other *Ebolavirus* species.

[3] For ease of reference, this letter will refer to "laboratories and facilities adequately equipped, trained and capable of such testing (including treatment centers and public health clinics)" as "authorized laboratories and facilities."

[4] Pursuant to section 564(b)(1) of the Act (21 U.S.C. § 360bbb-3(b)(1)), the HHS Secretary's declaration that supports EUA issuance must be based on one of four determinations, including the identification by the DHS Secretary of a material threat pursuant to section 319F-2 of the PHS Act sufficient to affect national security or the

(21 U.S.C. § 360bbb-3(b)(1)), and on the basis of such determination, the Secretary of the Department of Health and Human Services (HHS) declared on August 5, 2014, that circumstances exist justifying the authorization of emergency use of *in vitro* diagnostics for detection of Ebola virus, subject to the terms of any authorization issued under section 564(a) of the Act (21 U.S.C. § 360bbb-3(a)).[5]

Having concluded that the criteria for issuance of this authorization under section 564(c) of the Act (21 U.S.C. § 360bbb-3(c)) are met, I am authorizing the emergency use of the DPP Ebola Antigen System (as described in the Scope of Authorization section of this letter (Section II)) in individuals with signs and symptoms of EVD in conjunction with epidemiological risk factors (as described in the Scope of Authorization section of this letter (section II)) for the presumptive detection of Ebola virus.

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of the DPP Ebola Antigen System for the presumptive qualitative detection of Ebola virus in the specified population meets the criteria for issuance of an authorization under section 564(c) of the Act, because I have concluded that:

1. The Ebola virus can cause EVD, a serious or life-threatening disease or condition to humans infected with this virus;

2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that the DPP Ebola Antigen System may be effective in diagnosing EVD, and that the known and potential benefits of the DPP Ebola Antigen System for diagnosing EVD, outweigh the known and potential risks of such product; and

3. There is no adequate, approved, and available alternative to the emergency use of the DPP Ebola Antigen System for diagnosing EVD.[6]

II. Scope of Authorization

I have concluded, pursuant to section 564(d)(1) of the Act, that the scope of this authorization is limited to the use of the authorized DPP Ebola Antigen System by authorized laboratories and facilities for the presumptive detection of Ebola virus in individuals with signs and symptoms of EVD in conjunction with epidemiological risk factors. The DPP Ebola Antigen System is intended for circumstances when use of a rapid Ebola virus test is determined to be more appropriate than use of an Ebola virus nucleic acid test, which has been demonstrated to be more sensitive in detecting the Ebola virus. The DPP Ebola Antigen System is not intended for

health and security of United States citizens living abroad (section 564(b)(1)(D) of the Act).

[5] U.S. Department of Health and Human Services. *Declaration Regarding Emergency Use of In Vitro Diagnostics for Detection of Ebola Virus*. 79 Fed. Reg. 47141 (August 12, 2014).

[6] No other criteria of issuance have been prescribed by regulation under section 564(c)(4) of the Act.

use for general EVD screening, such as airport screening or contact tracing of individuals without signs and symptoms of EVD.

The Authorized DPP Ebola Antigen System

The DPP Ebola Antigen System is a single-use immunochromatographic lateral flow assay for the *in vitro* presumptive qualitative detection of VP40 protein antigen specific for Ebola virus in human capillary ("fingerstick") whole blood, EDTA venous whole blood, EDTA plasma and other authorized specimen types from individuals with signs and symptoms of EVD in conjunction with epidemiological risk factors.

The DPP Ebola Antigen System employs a Dual Path Platform (DPP) technology and consists of a sample path that distributes sample onto a reagent strip containing a TEST (T) area and a CONTROL (C) area in the test-control window of the test device. The reagent strip is for the detection of Ebola virus and the test procedure is based on capturing a specific protein antigen, present in Ebola virus, from the patient specimen in the TEST (T) area that is functionalized with protein antigen specific antibodies. Following capture in the TEST (T) area, detection is achieved by the addition of a protein antigen specific antibody conjugated to gold nanoparticles. The test procedure is performed by first collecting the patient specimen and applying to the SAMPLE+BUFFER Well#1, this is immediately followed by addition of the buffer. The specimen migrates along the sample path membrane and is delivered to the TEST (T) area of the reagent strip, where Ebola virus specific antibodies are immobilized. Ebola virus, if present in the sample, binds to the immobilized capture antibodies in the TEST (T) area. Buffer is then added into the BUFFER Well #2, which hydrates the dried antibody-gold nanoparticle conjugate causing it to migrate to the TEST area. Ebola virus bound to the TEST (T) area will capture the antibody-gold nanoparticle conjugate. Any remaining unbound antibody-gold nanoparticle conjugate is captured in the CONTROL (C) area functionalized by specific antibodies. Detection is performed using the Chembio DPP Micro Reader, or other authorized instruments, that uses assay-specific algorithms to verify the presence of the CONTROL (C) area and measure color intensity in the TEST (T) area position; it interprets the results using assay-specific cut-off values, and reports a reactive, nonreactive, or invalid result along with a numerical intensity value for the TEST (T) area.

The DPP Ebola Antigen System includes one kit that is comprised of the following materials, or other authorized materials:

- The DPP Ebola Antigen System kit: contains individually pouched DPP Ebola Antigen Test Devices each with a desiccant pouch, disposable Microsafe tubes, sterile safety lancets, adhesive bandages, sterile alcohol swabs, DPP Ebola Antigen System Buffer - GREEN Cap, product insert (authorized Manufacturer Instructions for Use), Quick Reference Instructions, Fact Sheet for Healthcare Providers and Fact Sheet for Patients.

The DPP Ebola Antigen System requires the following control materials and instruments or other authorized control materials and instruments, which are not provided with the test but must be used in conjunction with the DPP Ebola Antigen System:

- The DPP Ebola Rapid Test Control Pack: contains the DPP Ebola Reactive Control, DPP Ebola Non-Reactive Control and product insert. The assay controls are used to verify and assess the assay performance and verify the user's ability to properly perform the test and to interpret the results.
- The DPP Micro Reader: contains the Chembio DPP Micro Reader with Ebola RFID sticker (includes 3 Lithium-ion, type CR2032 (3V/230 mAh), coin cell batteries), custom power cable (USB), power plug adaptor, DPP Cartridge Holder, microfiber cloth, and DPP Micro Reader user manual.

Quality control requirements should be followed in conformance with local, state, and federal regulations or accreditation requirements and the user laboratory's standard quality control procedures.

The DPP Ebola Antigen System also requires the use of additional materials and ancillary reagents commonly used in clinical laboratories and that are described in the authorized DPP Ebola Antigen System Instructions for Use.

The above described DPP Ebola Antigen System, when labeled consistently with the labeling authorized by FDA entitled "DPP Ebola Antigen System Instructions for Use," "DPP Micro Reader," "DPP Ebola Rapid Test Control Pack," and "DPP Ebola Antigen System: Quick Reference Instructions," (available at http://www.fda.gov/MedicalDevices/Safety/EmergencySituations/ucm161496.htm), is authorized to be distributed to and used by authorized laboratories and facilities under this EUA, despite the fact that it does not meet certain requirements otherwise required by federal law. This labeling may be revised by Chembio in consultation with, and with concurrence of, the Division of Microbiology Devices (DMD)/Office of In Vitro Diagnostics and Radiological Health (OIR)/Center for Devices and Radiological Health (CDRH).

The above described DPP Ebola Antigen System is authorized to be accompanied by the following information pertaining to the emergency use, which is authorized to be made available to healthcare providers and patients:

- Fact Sheet for Healthcare Providers: DPP Ebola Antigen System
- Fact Sheet for Patients: DPP Ebola Antigen System

As described in Section IV below, Chembio is also authorized to make available additional information relating to the emergency use of the authorized DPP Ebola Antigen System that is consistent with, and does not exceed, the terms of this letter of authorization.

I have concluded, pursuant to section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of the authorized DPP Ebola Antigen System in the specified population, when used for presumptive qualitative detection of VP40 antigen protein from Ebola virus and used consistently with the Scope of Authorization of this letter (Section II), outweigh the known and potential risks of such a product.

I have concluded, pursuant to section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that the authorized DPP Ebola Antigen System may be effective in the diagnosis of EVD, when used consistently with the Scope of Authorization of this letter (Section II), pursuant to section 564(c)(2)(A) of the Act.

FDA has reviewed the scientific information available to FDA, including the information supporting the conclusions described in Section I above, and concludes that the authorized DPP Ebola Antigen System, when used to diagnose EVD in the specified population (as described in the Scope of Authorization of this letter (Section II)), meets the criteria set forth in section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of the authorized DPP Ebola Antigen System under this EUA must be consistent with, and may not exceed, the terms of this letter, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section IV). Subject to the terms of this EUA and under the circumstances set forth in the Secretary of DHS's determination described above and the Secretary of HHS's corresponding declaration under section 564(b)(1), the DPP Ebola Antigen System described above is authorized to diagnose EVD in individuals with signs and symptoms of EVD in conjunction with epidemiological risk factors.

This EUA will cease to be effective when the HHS declaration that circumstances exist to justify the EUA is terminated under section 564(b)(2) of the Act or when the EUA is revoked under section 564(g) of the Act.

III. Waiver of Certain Requirements

I am waiving the following requirements for the DPP Ebola Antigen System during the duration of this EUA:

- Current good manufacturing practice requirements, including the quality system requirements under 21 CFR Part 820 with respect to the design, manufacture, packaging, labeling, storage, and distribution of the DPP Ebola Antigen System.

IV. Conditions of Authorization

Pursuant to section 564 of the Act, I am establishing the following conditions on this authorization:

Chembio and Its Authorized Distributor(s)

A. This device must comply with the following labeling requirements under FDA regulations: the intended use statement (21 CFR 809.10(a)(2), (b)(2)); adequate directions for use (21 U.S.C. 352(f)), (21 CFR 809.10(b)(5), (7), and (8)); any appropriate limitations on the use of the device including information required under 21 CFR 809.10(a)(4); and any available information regarding performance of the device, including requirements under 21 CFR 809.10(b)(12).

B. Chembio and its authorized distributor(s) will distribute the authorized DPP Ebola

Antigen System with the authorized labeling only to authorized laboratories and facilities adequately equipped, trained and capable of such testing. Chembio may request changes to the authorized labeling. Such requests will be made by Chembio in consultation with, and require concurrence of, DMD/OIR/CDRH.

C. Chembio and its authorized distributor(s) will provide to authorized laboratories and facilities the authorized DPP Ebola Antigen System Fact Sheet for Healthcare Providers and the authorized DPP Ebola Antigen System Fact Sheet for Patients.

D. Chembio and its authorized distributor(s) will make available on their websites the authorized DPP Ebola Antigen System Fact Sheet for Healthcare Providers and the authorized DPP Ebola Antigen System Fact Sheet for Patients.

E. Chembio and its authorized distributor(s) will inform authorized laboratories and facilities and relevant public health authority(ies) of this EUA, including the terms and conditions herein.

F. Chembio and its authorized distributor(s) will ensure that authorized laboratories and facilities using the authorized DPP Ebola Antigen System have a process in place for reporting test results to healthcare providers and relevant public health authorities, as appropriate.

G. Through a process of inventory control, Chembio and its authorized distributor(s) will maintain records of device usage.

H. Chembio and its authorized distributor(s) will collect information on the performance of the assay. Chembio will report to FDA any suspected occurrence of false positive and false negative results and significant deviations from the established performance characteristics of the assay of which Chembio becomes aware.

I. Chembio and its authorized distributor(s) are authorized to make available additional information relating to the emergency use of the authorized DPP Ebola Antigen System that is consistent with, and does not exceed, the terms of this letter of authorization.

J. Chembio and its authorized distributor(s) will make available the DPP Ebola Rapid Test Control Pack or other authorized control materials for purchase at the same time as the DPP Ebola Antigen System.

Chembio

K. Chembio will notify FDA of any authorized distributor(s) of the DPP Ebola Antigen System, including the name, address, and phone number of any authorized distributor(s).

L. Chembio will provide its authorized distributor(s) with a copy of this EUA and

communicate to its authorized distributor(s) any subsequent amendments that might be made to this EUA and its authorized accompanying materials (e.g., Fact Sheets).

M. Chembio may request changes to the authorized DPP Ebola Antigen System Fact Sheet for Healthcare Providers and the authorized DPP Ebola Antigen System Fact Sheet for Patients. Such requests will be made by Chembio in consultation with, and require concurrence of, DMD/OIR/CDRH.

N. Chembio may request the addition of other instruments for use with the authorized DPP Ebola Antigen System. Such requests will be made by Chembio in consultation with, and require concurrence of, DMD/OIR/CDRH.

O. Chembio may request the addition of other ancillary reagents for use with the authorized DPP Ebola Antigen System. Such requests will be made by Chembio in consultation with, and require concurrence of, DMD/OIR/CDRH.

P. Chembio may request the addition of other specimen types for use with the authorized DPP Ebola Antigen System. Such requests will be made by Chembio in consultation with, and require concurrence of, DMD/OIR/CDRH.

Q. Chembio may request the addition of other control materials for use with the authorized DPP Ebola Antigen System. Such requests will be made by Chembio in consultation with, and require concurrence of, DMD/OIR/CDRH.

R. Chembio may request substitution for or changes to the authorized materials used in the detection process of Ebola virus in the specimen. Such requests will be made by Chembio in consultation with, and require concurrence of, DMD/OIR/CDRH.

S. Chembio will track adverse events and report to FDA under 21 CFR Part 803.

T. Chembio will assess traceability[7] of the DPP Ebola Antigen System with any FDA-recommended reference material(s). After submission to FDA and DMD/OIR/CDRH's review of and concurrence with the data, Chembio will update its labeling to reflect the additional testing. Such labeling updates will be made in consultation with, and require concurrence of, DMD/OIR/CDRH.

U. Chembio will finalize the additional agreed upon (November 7, 2018) cross-reactivity and interference analytical studies within 3 months of the date of EUA issuance. After submission to FDA and DMD/OIR/CDRH's review of and concurrence with the data, Chembio will update its labeling to reflect the testing. Such labeling updates will be made in consultation with, and require concurrence of, DMD/OIR/CDRH.

V. Chembio will track the performance of the DPP Ebola Antigen System and report to DMD/OIR/CDRH on a semi-annual basis.

[7] Traceability refers to tracing analytical sensitivity/reactivity back to a FDA-recommended reference material.

Authorized Laboratories and Facilities

W. Authorized laboratories and facilities will include with reports of the results of the DPP Ebola Antigen System the authorized Fact Sheet for Healthcare Providers and the authorized Fact Sheet for Patients. Under exigent circumstances, other appropriate methods for disseminating these Fact Sheets may be used, which may include mass media.

X. Authorized laboratories and facilities will perform the DPP Ebola Antigen System as outlined in the DPP Ebola Antigen System Instructions for Use. Deviations from the authorized procedures, including the authorized instruments, authorized clinical specimen types, authorized control materials, authorized other ancillary reagents and authorized materials required to perform the DPP Ebola Antigen System are not permitted.

Y. Authorized laboratories and facilities must read the results of the DPP Ebola Antigen System on the DPP Micro Reader or on other authorized instruments. Authorized laboratories and facilities must not attempt to interpret the results of the DPP Ebola Antigen System visually.

Z. Authorized laboratories and facilities will have a process in place for reporting test results to healthcare providers and relevant public health authorities, as appropriate.[8]

AA. Authorized laboratories and facilities will collect information on the performance of the DPP Ebola Antigen System and report to DMD/OIR/CDRH (*via* email CDRH-EUA-Reporting@fda.hhs.gov) and Chembio any suspected occurrence of false negative and false positive results and significant deviations from the established performance characteristics of which they become aware.

BB. All personnel using the assay must be appropriately trained in performing and interpreting immunochromatographic techniques, use appropriate laboratory and personal protective equipment when handling this kit, and use the test in accordance with the authorized labeling. All personnel using the assay must also be trained in and be familiar with the interpretation of results of the DPP Ebola Antigen System.

Chembio, Its Authorized Distributor(s), and Authorized Laboratories and Facilities

CC. Chembio, its authorized distributor(s), and authorized laboratories and facilities will ensure that any records associated with this EUA are maintained until notified by FDA. Such records will be made available to FDA for inspection upon request.

Conditions Related to Advertising and Promotion

DD. All advertising and promotional descriptive printed matter relating to the use of the authorized DPP Ebola Antigen System shall be consistent with the authorized Fact

[8] According to CDC, EVD is a nationally notifiable condition (see https://www.cdc.gov/vhf/ebola/index.html).

Page 9 – Mr. Ippolito, Chembio Diagnostic Systems, Inc.

Sheets and authorized labeling, as well as the terms set forth in this EUA and the applicable requirements set forth in the Act and FDA regulations.

EE. All advertising and promotional descriptive printed matter relating to the use of the authorized DPP Ebola Antigen System shall clearly and conspicuously state that:

- This test has not been FDA cleared or approved;
- This test has been authorized by FDA under an EUA for use by authorized laboratories and facilities adequately equipped, trained and capable of testing for EVD (including treatment centers and public health clinics);
- This test has been authorized only for the detection of Ebola virus, species *Zaire ebolavirus*, and any other *Ebolavirus* species if so authorized; and
- This test is authorized only for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostics for detection of Ebola virus under section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner.

No advertising or promotional descriptive printed matter relating to the use of the authorized DPP Ebola Antigen System may represent or suggest that this test is safe or effective for the diagnosis of EVD.

The emergency use of the authorized DPP Ebola Antigen System as described in this letter of authorization must comply with the conditions and all other terms of this authorization.

V. Duration of Authorization

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostics for detection of Ebola virus is terminated under section 564(b)(2) of the Act or the EUA is revoked under section 564(g) of the Act.

Sincerely,

Rachel E. Sherman, M.D., M.P.H.
Principal Deputy Commissioner

Enclosures

Dated: February 7, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–02134 Filed 2–12–19; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–0361]

Takeda Pharmaceuticals U.S.A., Inc.; Withdrawal of Approval of a New Drug Application for OMONTYS (peginesatide) Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of new drug application (NDA) 202799 for OMONTYS (peginesatide) Injection, held by Takeda Pharmaceuticals U.S.A., Inc. (Takeda USA). Takeda Development Center America, Inc., on behalf of Takeda USA, requested withdrawal of approval of this application under relevant FDA regulations and, in so doing, has waived its opportunity for a hearing.

DATES: Approval is withdrawn as of February 13, 2019.

FOR FURTHER INFORMATION CONTACT: Kristiana Brugger, Office of Regulatory Policy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6262, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION: NDA 202799 for OMONTYS (peginesatide) Injection, 1 milligram (mg)/0.5 milliliter (mL), 2 mg/0.5 mL, 3 mg/0.5 mL, 4 mg/0.5 mL, 5 mg/0.5 mL, 6 mg/0.5 mL, 10 mg/mL, and 20 mg/2 mL, was received on May 8, 2011, under section 505(b) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(b)). FDA approved NDA 202799 on March 27, 2012, for treatment of anemia due to chronic kidney disease in adult patients on dialysis.

On February 23, 2013, Affymax, Inc. and Takeda voluntarily recalled all lots of OMONTYS and suspended its marketing as a result of postmarketing reports of serious hypersensitivity reactions, including anaphylaxis, which can be life-threatening or fatal.

Takeda subsequently requested that FDA withdraw approval of NDA 202799 under 21 CFR 314.150(d) (§ 314.150(d)) and waived its opportunity for a hearing. Accordingly, under § 314.150(d), approval of NDA 202799, and all amendments and supplements thereto, is withdrawn. Distribution of OMONTYS (peginesatide) Injection, 1 mg/0.5 mL, 2 mg/0.5 mL, 3 mg/0.5 mL, 4 mg/0.5 mL, 5 mg/0.5 mL, 6 mg/0.5 mL, 10 mg/mL, and 20 mg/2 mL, without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the FD&C Act (21 U.S.C. 355(a) and 331(d)).

Dated: February 8, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–02146 Filed 2–12–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–P–3597]

Determination That LOTRIMIN (Clotrimazole) Topical Solution, 1%, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that LOTRIMIN (clotrimazole) topical solution, 1%, was not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Stacy Kane, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993–0002, 301–796–8363.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

LOTRIMIN (clotrimazole) topical solution, 1%, is the subject of NDA 017613, held by Schering-Plough Healthcare Products Inc., and initially approved on February 3, 1975. LOTRIMIN is indicated for the topical treatment of candidiasis due to *Candida albicans* and tinea versicolor due to *Malassezia furfur.*

LOTRIMIN (clotrimazole) topical solution, 1%, is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book. In a letter dated August 31, 2005, Schering Corporation requested withdrawal of NDA 017613 for LOTRIMIN (clotrimazole). In the **Federal Register** of November 7, 2007 (72 FR 62858), FDA announced that it was withdrawing approval of NDA 017613, effective December 7, 2007.

Arent Fox LLP submitted a citizen petition dated September 21, 2018 (Docket No. FDA–2018–P–3597), under 21 CFR 10.30, requesting that the Agency determine whether LOTRIMIN (clotrimazole) topical solution, 1%, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that LOTRIMIN (clotrimazole) topical solution, 1%, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that LOTRIMIN (clotrimazole) topical solution, 1%, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of LOTRIMIN (clotrimazole) topical solution, 1%, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list LOTRIMIN (clotrimazole) topical solution, 1%, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. In addition, FDA will continue to approve ANDAs for this drug product as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If the Agency determines that labeling for this drug product should be revised to meet

current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: February 8, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–02139 Filed 2–12–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the National Advisory Committee on Rural Health and Human Services

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Secretary's National Advisory Committee on Rural Health and Human Services (NACRHHS) has scheduled a public meeting. Information about NACRHHS and the agenda for this meeting can be found on the NACRHHS website at *https://www.hrsa.gov/advisory-committees/rural-health/index.html.*

DATES:

April 3, 2019, 8:30 a.m.–5:15 p.m. Pacific Time (PT).

April 4, 2019, 8:30 a.m.–5:15 p.m. PT.

April 5, 2019, 8:30 a.m.–11:15 a.m. PT.

ADDRESSES: The meeting will be held in person. On April 3, the meeting will be held at The Residence Inn, Sacramento Downtown, 1121 15th Street, Sacramento, California 95814.

On the morning of April 4, NACRHHS will break into subcommittees. One subcommittee will travel to Northern Valley Indian Health Clinic, 207 N Butte St., Willows, California 95988. The other subcommittee will travel to Sierra Nevada Memorial Hospital, 155 Glasson Way, Grass Valley, California 95945. In the afternoon at approximately 4:00 p.m. PT, NACRHHS will reconvene at The Residence Inn, Sacramento Downtown, 1121 15th Street, Sacramento, California 95814.

On April 5, the meeting will be held at The Residence Inn, Sacramento Downtown, 1121 15th Street, Sacramento, California 95814.

FOR FURTHER INFORMATION CONTACT: Steven Hirsch, Administrative Coordinator at the Federal Office of Rural Health Policy, HRSA, 5600 Fishers Lane, 17W59D, Rockville, Maryland 20857; 301–443–7322; or *shirsch@hrsa.gov.*

SUPPLEMENTARY INFORMATION: NACRHHS provides advice and recommendations to the Secretary of HHS on policy, program development, and other matters of significance concerning both rural health and rural human services.

During the April 2019 meeting, NACRHHS will discuss the issues of Cancer Prevention and Control in Rural America along with Supportive Services and Caregiving for the Rural Elderly. Agenda items are subject to change as priorities dictate. Refer to the NACRHHS website for any updated information concerning the meeting.

Members of the public will have the opportunity to provide comments. Public participants may submit written statements in advance of the scheduled meeting. Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to submit a written statement or make oral comments to NACRHHS should be sent to Steven Hirsch, using the contact information above at least 3 business days prior to the meeting.

Individuals who plan to attend and need special assistance or another reasonable accommodation should notify Steven Hirsch at the address and phone number listed above at least 10 business days prior to the meeting.

John R. Womack,

Acting Deputy Director, Division of the Executive Secretariat.

[FR Doc. 2019–02207 Filed 2–12–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Heritable Disorders in Newborns and Children

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Advisory Committee on Heritable Disorders in Newborns and Children (ACHDNC) has scheduled a public meeting. Information about the ACHDNC and the agenda for this meeting can be found on the ACHDNC website at *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html.*

DATES: March 22, 2019, 10:00 a.m.–3:00 p.m. ET.

ADDRESSES: This meeting will be held via webinar. While this meeting is open to the public, advance registration is required. Please visit the ACHDNC website for information on registration: *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html.* The deadline for online registration is 5:00 p.m. ET on March 20, 2019. Instructions on how to access the meeting via webinar will be provided upon registration.

FOR FURTHER INFORMATION CONTACT: Alaina Harris, Maternal and Child Health Bureau (MCHB), HRSA, 5600 Fishers Lane, Room 18W66, Rockville, Maryland 20857; 301–443–0721; or *AHarris@hrsa.gov.*

SUPPLEMENTARY INFORMATION: ACHDNC provides advice and recommendations to the Secretary of HHS (Secretary) on the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. ACHDNC's recommendations regarding inclusion of additional conditions for screening, following adoption by the Secretary, are evidence-informed preventive health services provided for in the comprehensive guidelines supported by HRSA through the Recommended Uniform Screening Panel (RUSP) pursuant to section 2713 of the Public Health Service Act (42 U.S.C. 300gg–13). Under this provision, non-grandfathered group health plans and health insurance issuers offering group or individual health insurance are required to provide insurance coverage without cost-sharing (a co-payment, co-insurance, or deductible) for preventive services for plan years (*i.e.,* policy years) beginning on or after the date that is one year from the Secretary's adoption of the condition for screening.

During the March 2019 meeting, ACHDNC will hear from experts in the fields of public health, medicine, heritable disorders, rare disorders, and newborn screening. Tentative agenda topics include: (1) The condition nomination and evidence review process, (2) rare disease registries, and (3) implementation of conditions on the RUSP. Agenda items are subject to change as priorities dictate and the final meeting agenda will be available on ACHDNC's website: *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html.* Information about ACHDNC, a roster of members, as well as past meeting summaries are also available on the ACHDNC website.

Members of the public will have the opportunity to provide comments, which are part of the official committee record. To submit written comments or

request time for an oral comment during the meeting, please register online by 12:00 p.m. ET on March 18, 2019. Visit the ACHDNC website for information on registration at *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html.* Oral comments will be honored in the order they are requested and may be limited as time allows. Individuals associated with groups or who plan to provide comments on similar topics may be asked to combine their comments and present them through a single representative. No audiovisual presentations are permitted. Written comments should identify the individual's name, address, email, telephone number, professional or organization affiliation, background or area of expertise (*i.e.,* parent, family member, researcher, clinician, public health, etc.), and the topic/subject matter.

John R. Womack,

Acting Deputy Director, Division of the Executive Secretariat.

[FR Doc. 2019–02208 Filed 2–12–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NIMH Clinical Trials: Effectiveness of Treatment, Preventive, and Services Interventions.

Date: April 1, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street NW, Washington, DC 20001.

Contact Person: Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892, 301–451–2356, *gavinevanskm@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Computational Approaches for Validating Dimensional Constructs of Relevance to Psychopathology (R01).

Date: April 2, 2019.

Time: 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 0852, (Virtual Meeting).

Contact Person: Rebecca Steiner Garcia, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9608, Bethesda, MD 20892, 301–443–4525, *steinerr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: February 7, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02121 Filed 2–12–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, March 1, 2019, 11:00 a.m. to March 1, 2019, 2:00 p.m., National Cancer Institute Shady Grove Campus, Rockville, MD 20850 which was published in the **Federal Register** on February 5, 2019, 84 FR 1768.

This meeting notice is amended to change the meeting time on March 1, 2019 to 10:00 a.m. to 1:00 p.m. The meeting is closed to the public.

Dated: February 7, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02128 Filed 2–12–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date: March 27, 2019.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ross D Shonat, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6196, MSC 7804, Bethesda, MD 20892, 301–435–2786, *ross.shonat@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 7, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02123 Filed 2–12–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of an Interagency Autism Coordinating Committee (IACC or Committee) meeting.

The purpose of the IACC meeting is to discuss business, agency updates, and issues related to autism spectrum disorder (ASD) research and services activities. The meeting will be open to the public and will be accessible by webcast and conference call. Close captioning is provided; for other disabilities accommodations see below.

Name of Committee: Interagency Autism Coordinating Committee.

Type of meeting: Open Meeting.

Date: Wednesday, April 17, 2019.

Time: 9:00 a.m. to 5:00 p.m.* Eastern Time

* Approximate end time.

Agenda: To discuss business, updates, and issues related to ASD research and services activities.

Place: Neuroscience Center, 6001 Executive Blvd., Conference Room C and D, Rockville, MD 20892.

Webcast Live: https://videocast.nih.gov/summary.asp?live=31473.

Conference Call Access: Dial: 800–369–3337 Access code: 9975399.

Cost: The meeting is free and open to the public.

Registration: A registration web link will be posted on the IACC website (*www.iacc.hhs.gov*) prior to the meeting. Pre-registration is recommended to expedite check-in. Seating in the meeting room is limited to room capacity and on a first come, first served basis.Onsite registration will also be available.

Deadlines: Notification of intent to present oral comments: Thursday, April 4, 2019 by 5:00 p.m. ET. Submission of written/electronic statement for oral comments: Tuesday, April 9, 2019 by 5:00 p.m. ET. Submission of written comments: Tuesday, April 9, 2019 by 5:00 p.m. ET. Webcast Live Feedback Public comments: No preregistration required. For instructions, see *https://iacc.hhs.gov/meetings/iacc-meetings/live-feedback.shtml.* For IACC Public Comment guidelines please see: *https://iacc.hhs.gov/meetings/public-comments/guidelines/.*

Access: White Flint Metro Station (Red Line).

Contact Person: Ms. Angelice Mitrakas, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6182A, Bethesda, MD 20892–9669, Phone: 301–435–9269, Email: *IACCPublicInquiries@mail.nih.gov.*

Public Comments: Any member of the public interested in presenting oral comments to the IACC must notify the Contact Person listed on this notice by 5:00 p.m. ET on Thursday, April 4, 2019 with their request to present oral comments at the meeting, and a written/electronic copy of the oral presentation/statement must be submitted by 5:00 p.m. ET on Tuesday, April 9, 2019. A limited number of slots for oral comment are available, and in order to ensure that as many different individuals are able to present throughout the year as possible, any given individual only will be permitted to present oral comments once per calendar year (2019). Only one representative of an organization will be allowed to present oral comments in any given meeting; other representatives of the same group may provide written comments. If the oral comment session is full, individuals who could not be accommodated are welcome to provide written comments instead. Comments to be read or presented in the meeting will be assigned a 3–5 minute time slot depending on the number of comments, but a longer version may be submitted in writing for the record. Commenters going beyond their allotted time in the meeting may be asked to conclude immediately in order to allow other comments and presentations to proceed on schedule.

Any interested person may submit written public comments to the IACC prior to the meeting by emailing the comments to *IACCPublicInquiries@mail.nih.gov* or by submitting comments at the web link: *https://iacc.hhs.gov/meetings/public-comments/submit/index.jsp* by 5:00 p.m. ET on Tuesday, April 9, 2019. The comments should include the name, address, telephone number, and when applicable, the business or professional affiliation of the interested person. NIMH anticipates written public comments received by 5:00 p.m. ET on Tuesday, April 9, 2019 will be presented to the Committee prior to the meeting for the Committee's consideration. Any written comments received after the 5:00 p.m. ET, April 9, 2019 deadline through April 16, 2019 will be provided to the Committee either before or after the meeting, depending on the volume of comments received and the time required to process them in accordance with privacy regulations and other applicable Federal policies. All written public comments and oral public comment statements received by the deadlines for both oral and written public comments will be provided to the IACC for their consideration and will become part of the public record. Attachments of copyrighted publications are not permitted, but web links or citations for any copyrighted works cited may be provided.

Individuals may also submit public comments to the IACC via a Live Feedback Form accessible from the webcast page on the day of the meeting from 9:00 a.m. ET to 11:00 a.m. ET. No pre-registration required. The link will be accessible on the NIH Videocast website at *https://videocast.nih.gov/summary.asp?live=31473* and instructions are available on the IACC website: *https://iacc.hhs.gov/meetings/iacc-meetings/live-feedback.shtml.* This format is best suited for brief questions and comments for the committee. Submissions will be provided to the IACC and will become a part of the public record.

In the 2016–2017 IACC Strategic Plan, the IACC listed the ''Spirit of Collaboration'' as one of its core values, stating that, ''We will treat others with respect, listen with open minds to the diverse views of people on the autism spectrum and their families, thoughtfully consider community input, and foster discussions where participants can comfortably where participants can comfortably offer opposing opinions.'' In keeping with this core value, the IACC and the NIMH Office of Autism Research Coordination (OARC) ask that members of the public who provide public comments or participate in meetings of the IACC also seek to treat others with respect and consideration in their communications and actions, even when discussing issues of genuine concern or disagreement.

Remote Access: The meeting will be open to the public through a conference call phone number and webcast live on the internet. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the webcast or conference call, please send an email to *IACCPublicInquiries@mail.nih.gov* or call 240–668–0302.

Disability Accommodations: All IACC Full Meetings provide Closed Captioning through the NIH videocast website. Remote CART is provided through a web application and will be available at all meetings; the application can be used on a laptop computer or mobile device. For details please inquire with the Contact Person listed on the notice.

Individuals whose full participation in the meeting will require special accommodations (*e.g.,* sign language, or interpreting services, etc.) must submit a request to the Contact Person listed on the notice at least seven (7) business

days prior to the meeting. Such requests should include a detailed description of the accommodation needed and a way for the IACC to contact the requester if more information is needed to fill the request. Special requests should be made as early as possible; last minute requests may be made but may not be possible to accommodate.

Security: Visitors will be asked to sign in and show one form of identification (for example, a government-issued photo ID, driver's license, or passport) at the meeting registration desk during the check-in process. Pre-registration is recommended. Seating will be limited to the room capacity and seats will be on a first come, first served basis, with expedited check-in for those who are pre-registered.

Meeting schedule subject to change.

Information about the IACC is available on the website: *http://www.iacc.hhs.gov.*

Dated: February 7, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02125 Filed 2–12–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.) notice is hereby given of a meeting of the Board of Scientific Counselors Chairs Meeting, National Institutes of Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Board of Scientific Counselors, National Institutes of Health.

Date: May 17, 2019.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: The meeting will include a discussion of policies and procedures that apply to the regular review of NIH intramural scientists and their work.

Place: National Institutes of Health, 1 Center Drive, Building 1, 3rd Floor, Wilson Hall, Bethesda, MD 20892.

Conference Line Access: Dial: 1–888–233–9215 Participant Passcode: 58358.

Contact Person: Margaret McBurney, Program Specialist, Office of the Deputy Director for Intramural Research, Office of the Director, National Institutes of Health, 1 Center Drive, Room 160, Bethesda, MD 20892, *mmburney@od.nih.gov*, Phone: (301) 496–1921, Fax: (301) 402–4273.

Information is also available on the Office of Intramural Research home page: *http://sourcebook.od.nih.gov/.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: February 7, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02129 Filed 2–12–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–MH–19–412: Reducing Intersectional Stigma to Improve the HIV/AIDS Prevention Continuum.

Date: March 27, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shalanda A. Bynum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, Bethesda, MD 20892, 301–755–4355, *bynumsa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and Related Research.

Date: March 28, 2019.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Karen Nieves Lugo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, *karen.nieveslugo@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and Related Research.

Date: March 29, 2019.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Karen Nieves Lugo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, *karen.nieveslugo@nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group; International and Cooperative Projects—1 Study Section.

Date: April 2–3, 2019.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR16–366: Research in Biomedicine and Agriculture.

Date: April 2, 2019.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Raul Rojas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6185, Bethesda, MD 20892, (301) 451–6319, *rojasr@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

Date: April 3, 2019.

Time: 12:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Chee Lim, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, Bethesda, MD 20892, 301–435–1850, *limc4@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immunology AREA Review.

Date: April 3, 2019.
Time: 12:30 p.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Liying Guo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016F, Bethesda, MD 20892, 301–435–0908, *lguo@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Cancer Health Disparities.
Date: April 4–5, 2019.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Ola Mae Zack Howard, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, 301–451–4467, *howardz@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurodegeneration.
Date: April 4, 2019.
Time: 10:30 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Carole L. Jelsema, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR: Extracellular Vesicles and Substance Use Disorders.
Date: April 4, 2019.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Peter B. Guthrie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *hriep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurodegeneration and Brain Injury.
Date: April 4, 2019.
Time: 1:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7850, Bethesda, MD 20892, 301–435–1203, *laurent.taupenot@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Mammalian Models for Translational Research.
Date: April 5, 2019.
Time: 1:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jeffrey Smiley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–594–7945, *smileyja@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Immunopathology, Immunotherapy and Cancer Biomarkers.
Date: April 10, 2019.
Time: 11:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892,(Telephone Conference Call).
Contact Person: Zhang-Zhi Hu, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892, (301) 437–8135, *huzhuang@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular, Cellular and Biophysical Neuroscience.
Date: April 10, 2019.
Time: 1:30 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Christine A Piggee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7850, Bethesda, MD 20892, 301–435–0657, *christine.piggee@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA: CA–049 Fusion Oncoproteins in Pediatric Cancer.
Date: April 11–12, 2019.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites by Hilton Alexandria Old Town, 1900 Diagonal Rd, Alexandria, VA 22314.
Contact Person: Charles Morrow, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–451–4467, *morrowcs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Sex Differences and Sleep.
Date: April 11, 2019.
Time: 2:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Jasenka Borzan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892–7814, 301–435–1787, *borzanj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Prevention.
Date: April 11, 2019.
Time: 12:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Syed M Quadri, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Respiratory Sciences.
Date: April 17, 2019.
Time: 12:30 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Glial Function in Neurological Disorders and Development.
Date: April 18, 2019.
Time: 10:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–CA–19–003: Pediatric Immunotherapy Discovery and Development Network (PI–DDN) U54 Review.
Date: April 19, 2019.
Time: 1:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Lawrence Ka-Yun Ng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–435–1719, *ngkl@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 7, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02124 Filed 2–12–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–16–089: Imaging and Biomarkers for Early Cancer Detection (U01).

Date: March 7, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Xiang-Ning Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, 301–435–1744, *lixiang@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: BRAIN Initiative: Targeted BRAIN Circuits Projects.

Date: March 14–15, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drug Abuse Dissertation Research.

Date: March 14, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Jingsheng Tuo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, Bethesda, MD 20892, 301–451–8754, *tuoj@nei.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Overflow: Emerging Imaging Technologies in Neuroscience.

Date: March 14, 2019.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Yvonne Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Hematology.

Date: March 14–15, 2019.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Katherine M. Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0912, *Katherine_Malinda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Electronic Nicotine Delivery Systems (ENDS): Population, Clinical and Applied Prevention Research.

Date: March 14, 2019.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Miriam Mintzer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, Bethesda, MD 20892, 301–523–0646, *mintzermz@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 7, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02122 Filed 2–12–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of an Interagency Autism Coordinating Committee (IACC or Committee) meeting.

The purpose of the IACC meeting is to discuss business, agency updates, and issues related to autism spectrum disorder (ASD) research and services activities. The meeting will be open to the public and will be accessible by webcast and conference call.

Close captioning is provided; for other disabilities accommodations see below.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Open Meeting.

Date: Wednesday, July 24, 2019.

Time: 9:00 a.m. to 5:00 p.m.* Eastern Time.
* Approximate end time.

Agenda: To discuss business, updates, and issues related to ASD research and services activities.

Place: Neuroscience Center, 6001 Executive Blvd., Conference Room C and D, Rockville, MD 20892.

Webcast Live: https://videocast.nih.gov.

Conference Call Access: Dial: 888–677–5726, Access code: 2077198.

Cost: The meeting is free and open to the public.

Registration: A registration web link will be posted on the IACC website (*www.iacc.hhs.gov*) prior to the meeting. Pre-registration is recommended to expedite check-in. Seating in the meeting room is limited to room capacity and on a first come, first served basis. Onsite registration will also be available.

Deadlines: Notification of intent to present oral comments: Friday, July 12, 2019 by 5:00 p.m. ET.

Submission of written/electronic statement for oral comments: Tuesday, July 16, 2019 by 5:00 p.m. ET.

Submission of written comments: Tuesday, July 16, 2019 by 5:00 p.m. ET.

Webcast Live Feedback Public comments: No preregistration required.

For instructions, see *https://iacc.hhs.gov/meetings/iacc-meetings/live-feedback.shtml.*

For IACC Public Comment guidelines please see: https://iacc.hhs.gov/meetings/public-comments/guidelines/.

Access: White Flint Metro Station (Red Line).

Contact Person: Ms. Angelice Mitrakas, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6182A, Bethesda, MD 20892–9669, Phone: 301–435–9269, Email: *IACCPublicInquiries@mail.nih.gov.*

Public Comments: Any member of the public interested in presenting oral comments to the IACC must notify the Contact Person listed on this notice by 5:00 p.m. ET on Friday, July 12, 2019 with their request to present oral comments at the meeting, and a written/electronic copy of the oral presentation/statement must be submitted by 5:00 p.m. ET on Tuesday, July 16, 2019.

A limited number of slots for oral comment are available, and in order to ensure that as many different individuals are able to present throughout the year as possible, any given individual only will be permitted to present oral comments once per calendar year (2019). Only one representative of an organization will be allowed to present oral comments in any given meeting; other representatives of the same group may provide written comments. If the oral comment session is full, individuals who could not be accommodated are welcome to provide written comments instead. Comments to be read or presented in the meeting will be assigned a 3–5 minute time slot depending on the number of comments, but a longer version may be submitted in writing for the record. Commenters going beyond their allotted time in the meeting may be asked to conclude immediately in order to allow other comments and presentations to proceed on schedule.

Any interested person may submit written public comments to the IACC prior to the meeting by emailing the comments to *IACCPublicInquiries@mail.nih.gov* or by submitting comments at the web link: *https://iacc.hhs.gov/meetings/public-comments/submit/index.jsp* by 5:00 p.m. ET on Tuesday, July 16, 2019. The comments should include the name, address, telephone number, and when applicable, the business or professional affiliation of the interested person. NIMH anticipates written public comments received by 5:00 p.m. ET on Tuesday, July 16, 2019 will be presented to the Committee prior to the meeting for the Committee's consideration. Any written comments received after the 5:00 p.m. ET, Tuesday, July 16, 2019 deadline through Tuesday, July 23, 2019 will be provided to the Committee either before or after the meeting, depending on the volume of comments received and the time required to process them in accordance with privacy regulations and other applicable Federal policies. All written public comments and oral public comment statements received by the deadlines for both oral and written public comments will be provided to the IACC for their consideration and will become part of the public record. Attachments of copyrighted publications are not permitted, but web links or citations for any copyrighted works cited may be provided.

Individuals may also submit public comments to the IACC via a Live Feedback Form accessible from the webcast page on the day of the meeting from 9:00 a.m. ET to 11:00 a.m. ET. No pre-registration required. The link will be accessible on the NIH Videocast website at *https://videocast.nih.gov* and instructions are available on the IACC website: *https://iacc.hhs.gov/meetings/iacc-meetings/live-feedback.shtml.* This format is best suited for brief questions and comments for the committee. Submissions will be provided to the IACC and will become a part of the public record.

In the 2016–2017 IACC Strategic Plan, the IACC listed the ''Spirit of Collaboration'' as one of its core values, stating that, ''We will treat others with respect, listen with open minds to the diverse views of people on the autism spectrum and their families, thoughtfully consider community input, and foster discussions where participants can comfortably where participants can comfortably offer opposing opinions.'' In keeping with this core value, the IACC and the NIMH Office of Autism Research Coordination (OARC) ask that members of the public who provide public comments or participate in meetings of the IACC also seek to treat others with respect and consideration in their communications and actions, even when discussing issues of genuine concern or disagreement.

Remote Access: The meeting will be open to the public through a conference call phone number and webcast live on the internet. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the webcast or conference call, please send an email to *IACCPublicInquiries@mail.nih.gov* or call 240–668–0302.

Disability Accommodations: All IACC Full Meetings provide Closed Captioning through the NIH videocast website. Remote CART is provided through a web application and will be available at all meetings; the application can be used on a laptop computer or mobile device. For details please inquire with the Contact Person listed on the notice.

Individuals whose full participation in the meeting will require special accommodations (*e.g.,* sign language, or interpreting services, etc.) must submit a request to the Contact Person listed on the notice at least seven (7) business days prior to the meeting. Such requests should include a detailed description of the accommodation needed and a way for the IACC to contact the requester if more information is needed to fill the request. Special requests should be made as early as possible; last minute requests may be made but may not be possible to accommodate.

Security: Visitors will be asked to sign in and show one form of identification (for example, a government-issued photo ID, driver's license, or passport) at the meeting registration desk during the check-in process. Pre-registration is recommended. Seating will be limited to the room capacity and seats will be on a first come, first served basis, with expedited check-in for those who are pre-registered.

Meeting schedule subject to change.

Information about the IACC is available on the website: *http://www.iacc.hhs.gov.*

Dated: February 7, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02127 Filed 2–12–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; PREVENT:

cGMP Production of Vaccines and Biologicals.

Date: March 27, 2019.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W260, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W260, Bethesda, MD 20892–9750, 240–276–5856, *nadeem.khan@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; R13 Conference Grant Review.

Date: March 27, 2019.

Time: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W554, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Christopher L. Hatch, Ph.D., Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W554, Bethesda, MD 20892–9750, 240–276–6454, *ch29v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 7, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02126 Filed 2–12–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2018–N077; FXES11140100000–189–FF01E00000]

Request for Renewal of the Incidental Take Permit and Habitat Conservation Plan for Incidental Take of Hawaiian Stilts; Cyanotech Aquaculture Facility, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Cyanotech (applicant) for a renewal of an incidental take permit (ITP) under the Endangered Species Act. The applicant is requesting renewal of their ITP and their 2002 habitat conservation plan (HCP) for Hawaiian stilt at the Cyanotech aquaculture facility at Keahole Point, Hawaii. If renewed, the ITP would authorize the take of the Hawaiian stilt that may occur incidental to the operation and maintenance of the aquaculture facility. The ITP application includes a HCP renewal document describing the actions and measures the applicant will implement to avoid, minimize, mitigate, and monitor incidental take of the species. We are making the HCP renewal and the NEPA environmental action statement for categorical exclusion, available for public review and comment.

DATES: To ensure consideration, please send your written comments by March 15, 2019.

ADDRESSES: To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the Cyanotech HCP and the proposed renewal of the ITP:

- *Internet:* Documents may be viewed on the internet at *http://www.fws.gov/pacificislands/.*
- *Email: pifwo_admin@fws.gov.* Include ''Cyanotech HCP'' in the subject line of the message.
- *U.S. Mail:* Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, HI 96850.
- *Fax:* 808–792–9581, Attn: Field Supervisor. Include ''Cyanotech HCP'' in the subject line of the message.
- *In-Person Drop-off, Viewing, or Pickup:* Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Pacific Islands Fish and Wildlife Office (address above). Written comments can be dropped off during regular business hours on or before the closing date of the public comment period (see **DATES**).

FOR FURTHER INFORMATION CONTACT: Jodi Charrier, Endangered Species Biologist, by mail at the address in **ADDRESSES**; by telephone at 808–792–9400; or by email at *pifwo_admin@fws.gov.* If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: The Service has received an ITP application from Cyanotech in accordance with the requirements of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). The applicant is requesting renewal of an ITP to authorize incidental take of the endangered Hawaiian stilt (*Himantopus mexicanus knudseni*), hereafter referred to as the covered species or Hawaiian stilt. If renewed, the ITP would authorize take of the covered species that may occur incidental to the operation and maintenance of the Cyanotech aquaculture facility for an additional 19 years, until 2035. The ITP application includes a HCP renewal document describing the actions and measures the applicant will implement to avoid, minimize, mitigate, and monitor incidental take of the covered species. We are making the ITP application, including the NEPA environmental action statement for a categorical exclusion available for public review and comment.

Background

Section 9 of the ESA prohibits the take of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Under the ESA, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term ''harm,'' as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that authorize take of federally listed species, provided the take is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively. Section 10(a)(1)(B) of the ESA contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

(1) The taking will be incidental;

(2) The applicant will prepare a conservation plan that, to the maximum extent practicable, identifies the steps the applicant will take to minimize and mitigate the impact of such taking;

(3) The applicant will ensure that adequate funding for the plan will be provided;

(4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(5) The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the plan.

Proposed Action

The Service proposes to issue the requested ITP based on the applicant's commitment to implement the renewed 2002 HCP for Hawaiian stilt at the Cyanotech aquaculture facility, Keahole Point, Hawaii. On March 18, 2002, the Service approved Cyanotech's HCP and issued an ITP with a duration of 3 years for take of the endangered Hawaiian stilt incidental to ongoing operations and maintenance activities of the aquaculture facility. In September 2006, the Service permitted a 10-year extension of the ITP, which expired in March 2016. The 2006 ITP authorizes take of the covered species so long as the total number of stilts fledged at off-site locations is greater than the number of stilts incidentally taken over the ten-year permit term. In October 2015, Cyanotech submitted an application for renewal of the ITP and the HCP for an additional 19 years, until 2035. This request is being considered pursuant to section 10(a)(1)(B) of the ESA.

Cyanotech proposes to continue normal microalgae operations, daily monitoring and maintenance at its aquaculture facility, and implementation of minimization measures described in their 2002 HCP and 2006 HCP amendment until 2035. All provisions for reporting, monitoring, adaptive management, and funding assurances from the original HCP will be maintained. Cyanotech currently has a net mitigation offset of 32 fledglings, and incidental take is not expected to exceed 1 stilt fledgling per year. Therefore, it is expected that the current offset of 32 fledglings is sufficient to compensate for take of an additional 20 Hawaiian stilt fledglings over the 19-year permit renewal term. No additional compensatory mitigation is being proposed.

National Environmental Policy Act Compliance

The proposed issuance of an ITP is a Federal action that triggers the need for compliance with NEPA (42 U.S.C. 4321 *et seq*). Pursuant to NEPA, we prepared an Environmental Action Statement (EAS) to analyze the environmental impacts of the proposed Federal action of issuing the requested ITP and implementation of the conservation program under the HCP.

Based on the EAS, we have preliminarily determined that the proposed renewal of the ITP and HCP would have minor or negligible effects on the species covered in the HCP. Therefore, we determined that the proposed HCP permit renewal qualifies for a categorical exclusion under NEPA, as provided by the Department of the Interior NEPA regulations (43 CFR part 46).

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information in your comments, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety. Comments and materials we receive, as well as supporting documentation, will be available for public inspection by appointment, during normal business hours, at our Pacific Islands Field Office (see **ADDRESSES**).

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA and its implementing regulations (40 CFR 1506.6).

Katherine B. Hollar,

Acting Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2019–02163 Filed 2–12–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2018–N144; FXES11130800000–178–FF08E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before March 15, 2019.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* TEXXXXXX).

- *Email: permitsr8es@fws.gov.*
- *U.S. Mail:* Daniel Marquez, Endangered Species Program Manager, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, via phone at 760–431–9440, via email at *permitsr8es@fws.gov,* or via the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered or threatened under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations at 50 CFR 17.22 for

endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Activity	Type of take	Permit action
TE–817400	East Bay Regional Park District, Oakland, California.	• Salt marsh harvest mouse (*Reithrodontomys raviventris*). • California least tern (*Sternula antillarum browni* (*Sterna a. browni*)), • California clapper rail ((*Rallus longirostris obsoletus*), • Conservancy fairy shrimp (*Branchinecta conservatio*), • Longhorn fairy shrimp (*Branchinecta longiantenna*), • San Diego fairy shrimp (*Branchinecta sandiegonensis*), • Riverside fairy shrimp (*Streptocephalus woottoni*), • Vernal pool tadpole shrimp (*Lepidurus packardi*).	CA	Survey, mark, track, nest monitor, collect vouchers.	Capture, handle, insert PIT tags, collect vouchers, monitor nests.	Renew and Amend.
TE–102310	Mitchell Dallas, Morro Bay, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*), • Longhorn fairy shrimp (*Branchinecta longiantenna*), • San Diego fairy shrimp (*Branchinecta sandiegonensis*), • Riverside fairy shrimp (*Streptocephalus woottoni*), • Vernal pool tadpole shrimp (*Lepidurus packardi*).	CA	Survey, collect soil, identify branchiopod eggs.	Capture, handle, release, collect vouchers, and collect soil.	Renew.
TE–14749C	Lorena Bernal, San Diego, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*), • Longhorn fairy shrimp (*Branchinecta longiantenna*), • San Diego fairy shrimp (*Branchinecta sandiegonensis*), • Riverside fairy shrimp (*Streptocephalus woottoni*), • Vernal pool tadpole shrimp (*Lepidurus packardi*).	CA	Survey	Capture, handle, release, and collect vouchers.	New.
TE–237061	Daniel Chase, San Francisco, California.	• Tidewater goby (*Eucyclogobius newberryi*).	CA	Survey and collect vouchers.	Capture, handle, release, and collect vouchers.	Renew.
TE–012973	Ecorp Consulting, Rocklin, California.	• San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*).	CA	Survey	Capture, handle, and release.	Amend.
TE–08086D	Santa Clara Valley Water District, San Jose, California.	• California clapper rail (*Rallus longirostris obsoletus*).	CA	Survey	Survey	New.

Application No.	Applicant, city, state	Species	Location	Activity	Type of take	Permit action
TE–41182B	Karen Pope, Arcata, California.	• Sierra Nevada yellow-legged frog (*Rana sierrae*).	CA	Survey and research studies.	Capture, handle, take skin swabs, insert PIT tags, collect vouchers, salvage, and test for disease.	Renew and Amend.
TE–094893	Santa Barbara Botanic Garden, Santa Barbara, California.	• Hoffmann's rock-cress (*Arabis hoffmannii*). • Santa Rosa Island manzanita (*Arctostaphylos confertiflora*) • Marsh Sandwort (*Arenaria paludicola*) • Clara Hunt's milk-vetch (*Astragalus claranus*) • Ventura Marsh milk-vetch (*Astragalus pycnostachyus* var. *lanosissimus*) • Braunton's milk-vetch (*Astragalus brauntonii*) • Coastal dunes milk-vetch (*Astragalus tener* var. *titi*) • Nevin's barberry (*Berberis nevinii*) • Island Barberry (*Berberis pinnata* ssp. *insularis*) • Tiburon paintbrush (*Castilleja affinis* ssp. *neglecta*) • Soft-leaved paint-brush (*Castilleja mollis*) • California jewelflower (*Caulanthus californicus*) • Coyote ceanothus (*Ceanothus ferrisiae*) • Catalina Island mountain-mahogany (*Cercocarpus traskiae*) • Chorro Creek bog thistle (*Cirsium fontinale* var. *obispoense*) • La Graciosa thistle (*Cirsium loncholepis*) • Presidio clarkia (*Clarkia franciscana*) • Vine Hill clarkia (*Clarkia imbricata*) • Pismo clarkia (*Clarkia speciosa* ssp. *immaculata*) • Soft bird's-beak (*Cordylanthus mollis* ssp. *mollis*) • Salt marsh bird's-beak (*Cordylanthus maritimus* ssp. *maritimus*) • Gaviota Tarplant (*Deinandra increscens* ssp. *villosa*) • San Clemente Island larkspur (*Delphinium variegatum* ssp. *kinkiense*) • Vandenberg monkeyflower (*Diplacus vandenbergensis*) • Santa Clara Valley dudleya (*Dudleya setchellii*)	CA	Remove/reduce to possession from lands under Federal jurisdiction.	Collect, bank seeds	Renew and Amend.

Application No.	Applicant, city, state	Species	Location	Activity	Type of take	Permit action
		• Santa Barbara Island liveforever (*Dudleya traskiae*) • Kern mallow (*Eremalche kernensis*) • Indian Knob mountainbalm (*Eriodictyon altissimum*) • Lompoc yerba santa (*Eriodictyon capitatum*) • Loch Lomond coyote thistle (*Eryngium constancei*) • San Diego button-celery (*Eryngium aristulatum* var. *parishii*) • Menzies' wallflower (*Erysimum menziesii*) • Island bedstraw (*Galium buxifolium*) • Monterey gilia (*Gilia tenuiflora* ssp. *arenaria*) • Hoffmann's slender-flowered gilia (*Gilia tenuiflora* ssp. *hoffmannii*) • Contra Costa goldfields (*Lasthenia conjugens*) • Burke's goldfields (*Lasthenia burkei*) • Beach layia (*Layia carnosa*) • San Joaquin wooly-threads (*Monolopia* (=*Lembertia*) *congdonii*) • Sebastopol meadowfoam (*Limnanthes vinculans*) • San Clemente Island woodland-star (*Lithophragma maximum*) • Nipomo Mesa lupine (*Lupinus nipomensis*) • San Clemente Island bush-mallow (*Malacothamnus clementinus*) • Santa Cruz Island bush-mallow (*Malacothamnus fasciculatus* var. *nesioticus*) • Island malacothrix (*Malacothrix squalida*) • Santa Cruz Island malacothrix (*Malacothrix indecora*) • Bakersfield cactus (*Opuntia treleasei*) • California Orcutt grass (*Orcuttia californica*) • Lyon's pentachaeta (*Pentachaeta lyonii*) • Island phacelia (*Phacelia insularis* ssp. *insularis*) • Yadon's piperia (*Piperia yadonii*) • Calistoga allocarya (*Plagiobothrys strictus*)				

Application No.	Applicant, city, state	Species	Location	Activity	Type of take	Permit action
		• San Diego mesa-mint (*Pogogyne abramsii*) • Otay mesa-mint (*Pogogyne nudiuscula*) • Gambel's watercress (*Rorippa gambellii*) • Santa Cruz Island rockcress (*Sibara filifolia*) • Keck's Checker-mallow (*Sidalcea keckii*) • California seablite (*Suaeda californica*) • Santa Cruz Island fringepod (*Thysanocarpus conchuliferus*).				
TE–797999	Merkel & Associates, Inc., San Diego, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*), • Longhorn fairy shrimp (*Branchinecta longiantenna*), • San Diego fairy shrimp (*Branchinecta sandiegonensis*), • Riverside fairy shrimp (*Streptocephalus woottoni*), • Vernal pool tadpole shrimp (*Lepidurus packardi*), • Southwestern willow flycatcher (*Empidonax traillii extimus*), • Quino checkerspot butterfly (*Euphydryas editha quino*) • Light-footed clapper rail (light-footed Ridgway's r.) (*Rallus longirostris levipes*) (*R. obsoletus l.*) • Unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) • Tidewater goby (*Eucyclogobius newberryi*).	CA	Survey	Survey, Capture, handle, release, and collect vouchers.	Renew.
TE–11825D	Autumn Skimin, Georgetown, California.	• Conservancy fairy shrimp (*&*), • Longhorn fairy shrimp (*Branchinecta longiantenna*), • San Diego fairy shrimp (*Branchinecta sandiegonensis*), • Riverside fairy shrimp (*Streptocephalus woottoni*), • Vernal pool tadpole shrimp (*Lepidurus packardi*).	CA	Survey	Capture, handle, release, and collect vouchers.	New.
TE–11840D	Josh Weinik, Long Beach, California.	• El Segundo blue butterfly (*Euphilotes battoides allyni*), • Palos Verdes blue butterfly (*Glaucopsyche lygdamus palosverdesensis*).	CA	Survey	Survey	New.
TE–821967	Paul Galvin, Irvine, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*), • Longhorn fairy shrimp (*Branchinecta longiantenna*), • San Diego fairy shrimp (*Branchinecta sandiegonensis*),	CA, NV	Survey and nest monitor.	Survey, nest monitor, Capture, handle, release, and collect vouchers.	Renew.

Application No.	Applicant, city, state	Species	Location	Activity	Type of take	Permit action
TE–05665B	Lisa Achter, Grass Valley, California.	• Riverside fairy shrimp (*Streptocephalus woottoni*), • Vernal pool tadpole shrimp (*Lepidurus packardi*), • Southwestern willow flycatcher (*Empidonax traillii extimus*), • Least Bell's vireo (*Vireo belli pusillus*). • California tiger salamander (Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*).	CA	Survey	Capture, handle, and release.	Amend.
TE–12771D	Lynn Sweet	• Triple-ribbed milk-vetch (*Astragalus tricarinatus*).	CA	Remove/reduce to possession from lands under Federal jurisdiction.	Collect tissue and whole plants.	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Angela Picco,

Acting Chief of Ecological Services, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2019–02103 Filed 2–12–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2018–N134; FXES11140400000–178–FF04EF2000]

Endangered and Threatened Wildlife and Plants; Availability of Two Habitat Conservation Plans for Sand Skink and Blue-Tailed Mole Skink, Osceola and Polk Counties, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments and information.

SUMMARY: We, the Fish and Wildlife Service (Service), have received two applications for incidental take permits (ITP) under the Endangered Species Act. Florida Bramingham, Inc. (Permit TE94080C–0) and Palmetto Lake Wales-Hwy 60, LLC (Permit 94085C–0) (applicants) are requesting individual ITPs for take of sand skink and blue-tailed mole skink. We request public comments on these permit applications, each of which includes a habitat conservation plan (HCP), and our preliminary determinations that these HCPs qualify as low effect under the National Environmental Policy Act (NEPA). To make these determinations, we used our environmental action statements and low-effect screening forms, which are also available for review.

DATES: We must receive your written comments on or before March 15, 2019.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents by any of the following methods. Be sure to specify clearly the ITP applications for which you want documents.

- *Telephone:* Alfredo Begazo, at 772–469–4234.
- *Email: alfredo_begazo@fws.gov.*
- *U.S. mail:* Alfredo Begazo, South Florida Ecological Services Office; Attn: ''Florida Bramingham, Inc. Permit-TE 94080C–0'' and/or ''Palmetto Lake Wales-Hwy 60, LLC Permit-TE 94085C–0,'' U.S. Fish and Wildlife Service; 1339 20th Street; Vero Beach, FL 32960–3559.
- *In-person review:* The documents are available for public inspection by appointment during normal business hours at the above address. Please call to make an appointment.

FOR FURTHER INFORMATION CONTACT: Mr. Alfredo Begazo, Fish and Wildlife Biologist, South Florida Ecological Services Office (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), have received two applications for incidental take permits (ITPs) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). Florida Bramingham, Inc. is requesting a 30-year ITP, and Palmetto Lake Wales-Hwy 60, LLC is requesting a 5-year ITP for the take of the federally listed sand skink (*Neoseps reynoldsi*) and threatened blue-tailed mole skink (*Eumeces egregious*) (skinks). We request public comment on these permit applications, habitat conservation plans (HCPs), and on our preliminary determinations that these HCPs qualify as categorical exclusions under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make these determinations, we used our environmental action statement and low-effect screening forms, which are also available for review.

Public Comments

Submitting Comments

If you wish to comment on any of the documents, you may do so via any one of the following methods. Be sure to specify clearly the ITP applications on which you are commenting.

- *Email, U.S. mail, or In-person drop-off:* See **ADDRESSES**.
- *Fax:* Alfredo Begazo, 772–562–4288.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Applicants' Proposed Projects

Each applicant requests a permit under section 10(a)(1)(B) of the Endangered Species Act. If we issue either permit, the applicant anticipates taking sand skink and blue-tailed mole skink incidental to land preparation and construction. The amount of habitat loss for each proposed project is as follows:

- Florida Bramingham, Inc. (TE94080C–0) anticipates destroying 13.1 acres of species feeding, breeding, and sheltering habitat incidental to land preparation and construction in Section 14, Township 25 South, and Range 27 East, in Osceola County, Florida.
- Palmetto Lake Wales-Hwy 60, LLC (TE94085C–0) anticipates destroying 1.13 acres of species feeding, breeding, and sheltering habitat incidental to land preparation and construction in Sections 7 and 8, Township 30 South, and Range 29 East, in Polk County, Florida.

Each applicant proposes to mitigate for impacts to the species by purchasing credits from a Service-approved conservation bank as follows:

- Florida Bramingham, Inc. proposes to purchase the equivalent of 26.2 acres of credits.
- Palmetto Lake Wales-Hwy 60, LLC proposes to purchase the equivalent of 2.26 acres of credits.

Our Preliminary Determination

The Service has made a preliminary determination that each applicant's project, including the minimization and mitigation measures, will individually and cumulatively have a minor or negligible effect on the species covered in its HCP. Therefore, issuance of either of the ITPs would be a ''low-effect'' action and qualify as a categorical exclusion under the NEPA, as provided by 43 CFR 46.205 and 46.210. A low-effect HCP is one involving: (1) Minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and, (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result over time in cumulative effects to environmental values or resources that would be considered significant.

Next Steps

We will evaluate each HCP and the comments we receive to determine whether the ITP application meets the requirements of section 10(a)(1)(B) of the ESA. We will also conduct an intra-Service consultation on each application to evaluate take of the skinks in accordance with section 7 of the ESA. We will use the results of these consultations, in combination with the above findings, in our analysis of whether or not to issue each ITP. If the requirements are met, we will issue ITP number TE94080C–0 to Florida Bramingham, Inc. and TE94085C–0 to Palmetto Lake Wales-Hwy 60, LLC.

Authority

We provide this notice under Section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Roxanna Hinzman,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. 2019–02192 Filed 2–12–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2018–N143; FXES11140400000–178–FF04EF2000]

Renewal of Incidental Take Permit for Sand Skink and Blue-Tailed Mole Skink, Osceola County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments and information.

SUMMARY: We, the Fish and Wildlife Service, announce receipt of an application for the renewal of an existing incidental take permit (ITP). The applicants are requesting a 5-year renewal of their existing 2-year ITP under the Endangered Species Act. The existing ITP expired on June 6, 2018. If granted, the renewed ITP would extend authorization for take of the federally threatened sand skink and blue-tailed mole skink (skinks) incidental to the construction of a single-family residential development located in Osceola County, Florida. The co-applicants are JKAF Investments, LLC, and Kathryn Kendrick Davidow Trust. We request public comments on the permit application, the habitat conservation plan (HCP), and our preliminary determination that this HCP qualifies as low effect under the National Environmental Policy Act (NEPA). To make this determination, we used our environmental action statement and low-effect screening form, which is also available for review.

DATES: We must receive your written comments on or before March 15, 2019.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents by any of the following methods:

- *Telephone:* Alfredo Begazo, 772–469–4234 (telephone).
- *Email: alfredo_begazo@fws.gov.*
- *U.S. mail:* Alfredo Begazo, South Florida Ecological Services Office; Attn: JKAF Investments, LLC, and Kathryn Kendrick Davidow Trust Permit TE 8166B–1, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559.
- *In-person review:* The documents are available for public inspection by appointment during normal business hours at the above address. Please call to make an appointment.
- *Fax:* Alfredo Begazo, 772–562–4288.

Submitting Comments: If you wish to comment on any of the documents, you may do so by submitting your comment in writing to the email address, U.S. mail address (mail or hand-carrying), or fax number above. Please also see *Public Availability of Comments in* **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mr. Alfredo Begazo, Fish and Wildlife Biologist, South Florida Ecological Services Office (see **ADDRESSES**), 772–469–4234 (telephone).

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application for the renewal of an existing ITP under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The co-applicants are JKAF Investments, LLC, and Kathryn Kendrick Davidow Trust, and they seek a 5-year renewal of an ITP that expired on June 29, 2018. Renewal would give

them the authority to take the federally listed sand skink (*Neoseps reynoldsi*) and threatened blue-tailed mole skink (*Eumeces egregious*) (hereafter, skinks) in Osceola County, Florida. We request public comment on this permit renewal application and habitat conservation plan (HCP), and on our preliminary determination that this HCP qualifies as categorical exclusion under the National Environmental Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, which are also available for review.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Applicants' Proposed Project

JKAF Investments, LLC, and Kathryn Kendrick Davidow Trust request a renewal of an expired permit under section 10(a)(1)(B) of the Endangered Species Act. If we issue the permit, the applicants anticipated taking sand skink and blue-tailed mole skink incidental to land preparation and construction on 0.5 acres of occupied skinks habitat for the residential development in Section 30, Township 25 South, and Range 27 East, in Osceola County, Florida. The applicants proposes to mitigate for the take resulting from this project by purchasing and protecting 1 acre of skink-occupied habitat at a Service-approved mitigation bank prior to any clearing activities.

Our Preliminary Determination

The Service has made a preliminary determination that the applicants' project, including the mitigation measures, will individually and cumulatively have a minor or negligible effect on the species covered in its HCP. Therefore, we have determined that the renewal of the expired ITP for this project would be ''low effect'' and qualify for categorical exclusions under the NEPA, as provided by 43 CFR 46.205 and 46.210. A low-effect HCP is one involving: (1) Minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonable foreseeable similarly situated projects, would not result over time in cumulative effects to environmental values or resources that would be considered significant.

Next Step

We will evaluate the HCP and the comments we receive to determine whether the ITP application meets the requirements of section 10(a)(1)(B) of the ESA. We will also conduct an intra-Service consultation on the application to evaluate take of the skinks in accordance with section 7 of the ESA. We will use the results of the consultation, in combination with the above findings, in our analysis of whether or not to issue the ITP. If the requirements are met, we will issue ITP number TE8166B–1 to JKAF Investments, LLC, and Kathryn Kendrick Davidow Trust.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Roxanna Hinzman,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. 2019–02191 Filed 2–12–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/ A0A501010.999900 253G; OMB Control Number 1076–0143]

Agency Information Collection Activities; Tribal Self-Governance Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before April 15, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Ms. Sharee M. Freeman, Director, Office of Self-Governance, 1849 C Street NW, MS–2071, Washington, DC 20240; telephone: (202) 219–0240. Please reference OMB Control Number 1076–0143 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Sharee M. Freeman by email at *Sharee.Freeman@bia.gov,* or by telephone at (202) 219–0240.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Self-Governance program is authorized by the Tribal Self-Governance Act of 1994, Public Law 103–413 (the Act), as amended. Indian Tribes interested in entering into Self-Governance must submit certain information as required by the Act. In addition, those Tribes and Tribal consortia that have entered into Self-Governance funding agreements will be requested to submit certain information as described in 25 CFR 1000. This information will be used to justify a budget request submission on their behalf and to comport with section 405

of the Act that calls for the Secretary to submit an annual report to the Congress.

Title of Collection: Tribal Self-Governance Program.

OMB Control Number: 1076–0143.

Form Number: Annual Self-Governance Report Form.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Indian Tribes and Tribal consortia participating in or wishing to enter into Tribal Self-Governance.

Total Estimated Number of Annual Respondents: 75.

Total Estimated Number of Annual Responses: 84.

Estimated Completion Time per Response: Completion times vary from 30 minutes to 400 hours, with an average of approximately 43 hours.

Total Estimated Number of Annual Burden Hours: 4,443 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion or annually.

Total Estimated Annual Nonhour Burden Cost: $10,500.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2019–02178 Filed 2–12–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF INTERIOR

Bureau of Indian Affairs

[190A2100DD/A0A501010.999900 253G]

Land Acquisitions; Arapaho Tribe of the Wind River Reservation, Wyoming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Principal Deputy Assistant Secretary—Indian Affairs made a final agency determination to acquire 6.3 acres, more or less, of land within the boundaries of the Wind River Reservation in trust for the Arapaho Tribe of the Wind River Reservation, Wyoming, for gaming and other purposes on December 21, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Bureau of Indian Affairs, MS–3657 MIB, 1849 C Street NW, Washington, DC 20240, telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1, and is published to comply with the requirements of 25 CFR 151.12(c)(2)(ii) that notice of the decision to acquire land in trust be promptly provided in the **Federal Register**.

On December 21, 2018, the Principal Deputy Assistant Secretary—Indian Affairs issued a decision to accept 6.3 acres, more or less, of land in trust for the Arapaho Tribe of the Wind River Reservation, Wyoming, (Tribe) under the authority of the Act of July 27, 1939, 53 Stat. 1128–1130, as amended by Public Law 103–435, 15, 108 Stat. 4573 (Nov. 2, 1994) (formerly codified at 25 U.S.C. 571–581). The Principal Deputy Assistant Secretary—Indian Affairs determined that the Tribe's request also meets the requirements of the Indian Gaming Regulatory Act's ''within reservation boundaries exception,'' 25 U.S.C. 2719(a)(1), to the general prohibition contained in 25 U.S.C. 2719(a) on gaming on lands acquired in trust after October 17, 1988.

The Principal Deputy Assistant Secretary—Indian Affairs, on behalf of the Secretary of the Interior, will immediately acquire title to the 6.3 acres, more or less, in the name of the United States of America in trust for the Tribe upon fulfillment of Departmental requirements.

The site submitted for gaming and other purposes is comprised of 6.3 acres, more or less, located in Lot 14, Section 10, Township 1 South, Range 4 East, Wind River Meridian, Fremont County, Wyoming, more particularly described as follows:

Beginning at the NW corner of Lot 14, said Section 10, thence N 89°38′ E, along the North line of said Lot 14, 488.17 feet to the Westerly right-of-way line of State Highway 789; thence S 23°14′30″ West along said right-of-way line, 1227.94 feet to the West line of said Lot 14; thence N 0°11′ W, along said West line 1125.17 feet to the point of beginning of this description. Containing 6.30 acres, more or less.

Dated: December 21, 2018.

John Tahsuda,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2019–02187 Filed 2–12–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/A0A51010.999900]

Proclaiming Certain Lands as Reservation for the Shakopee Mdewakanton Sioux Community of Minnesota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 93.34 acres, more or less, an addition to the reservation of the Shakopee Mdewakanton Sioux Community of Minnesota on December 21, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene M. Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street NW, MS–4642–MIB, Washington, DC 20240, telephone (202) 208–3615.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 5110) for the lands described below. The land was proclaimed to be part of the Shakopee Mdewakanton Sioux Community of Minnesota Reservation in Scott County, Minnesota.

Shakopee Mdewakanton Sioux Community of Minnesota Reservation, Fifth Principal Meridian, Scott County, Minnesota, Legal Descriptions Containing 93.34 Acres, More or Less

Canhdaka Parcel, 411–T–1022

YMCA Parcel 1: The South Half of the Northwest Quarter, Section 23, Township 115 North, Range 22 West, of the Fifth Principal Meridian, Scott County, Minnesota.

AND

The South 200 feet of the East 33 feet of the North Half of the Northwest Quarter of Section 23, Township 115 North, Range 22 West, of the Fifth Principal Meridian, Scott County, Minnesota.

YMCA Parcel 2: Outlot C, Titus 1st Addition, according to the recorded plat thereof, and situate in Scott County, Minnesota.

Mazario Parcel: That part of the North Half of the Northwest Quarter of Section 23, Township 115 North, Range 22 West of the 5th P.M., Scott County, Minnesota described as follows:

Beginning at the Southwest corner of said North Half of the Northwest Quarter; thence on an assumed bearing of North 01 degrees 00 minutes 36 seconds East along the West

line of said North Half of the Northwest Quarter a distance of 660.20 feet; thence North 89 degrees 47 minutes 07 seconds East a distance of 658.93 feet; thence South 01 degrees 00 minutes 36 seconds West parallel with the West line of said North Half of the Northwest Quarter a distance of 662.38 feet more or less to the South line of said North Half of the Northwest Quarter; thence westerly along said South line a distance of 658.89 feet more or less to the point of beginning.

Except that part of the North Half of the Northwest Quarter of Section 23, Township 115 North, Range 22 West of the 5th P.M., Scott County, Minnesota, which is denoted and shown as Parcel 3 and Parcel 3A on Scott County Right of Way Plat No. 59, according to the recorded plat thereof, on file in the Office of the County Recorder, Scott County, Minnesota.

Subject to an easement for drainage and utility purposes over, under and across that part of the North Half of the Northwest Quarter of Section 23, Township 115 North, Range 22 West of the 5th P.M., Scott County, Minnesota, which is denoted as Drainage and Utility Easement Parcel 3 and shown by the symbol (''D.U.E. 3'') on Scott County Right of Way Plat No. 59, according to the recorded plat thereof, on file in the Office of the County Recorder, Scott County, Minnesota.

The above described lands contain a total of 93.34 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the lands described above, nor does it affect any valid existing easements for public roads, highways, public utilities, railroads and pipelines, or any other valid easements or rights-of-way or reservations of record.

Dated: December 21, 2018.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2019–02188 Filed 2–12–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[199D1114PT DS62100000 DPTA00000; OMB Control Number 1093–0005]

Agency Information Collection Activities; Payments in Lieu of Taxes (PILT) Act, Statement of Federal Lands Payments

AGENCY: Office of the Secretary, Office of Budget Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Budget, Office of the Secretary are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before April 15, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the Office of Budget, Office of the Secretary, Attn: Dionna Kiernan, 1849 C Street NW, MS 7413 MIB, Washington, DC 20240 or by email to *dionna_kiernan@ios.doi.gov.* Please reference OMB Control Number 1093–0005 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Dionna Kiernan by email at *dionna_kiernan@ios.doi.gov,* or by telephone at 202–513–7783.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Office of Budget; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Office of Budget enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Office of Budget minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Public Law 97–258 (31 U.S.C. 6901–6907), as amended, the Payments in Lieu of Taxes (PILT) Act, was designed by Congress to help local governments recover some of the expenses they incur in providing services on public lands. These local governments receive funds under various Federal land payment programs such as the National Forest Revenue Act, the Mineral Lands Leasing Act, and the Taylor Grazing Act. PILT payments supplement the payments local governments receive under these other programs.

The PILT Act requires the Governor of each state to furnish the Department of the Interior with a listing of payments disbursed to local governments by the States on behalf of the Federal Government under 12 statutes described in Section 6903 of 31 U.S.C. The Department of the Interior uses the amounts reported by States to reduce PILT payments to units of general local governments from that which they might otherwise receive. If such listings were not furnished by the Governor of each affected State, the Department would not be able to compute the PILT payments to units of general local government within the States in question.

In fiscal year 2004, administrative authority for the PILT program was transferred from the Bureau of Land Management to the Office of the Secretary of the Department of the Interior. Applicable DOI regulations pertaining to the PILT program to be administered by the Office of the Secretary were published as a final rule in the **Federal Register** on December 7, 2004 (69 FR 70557). The Office of Budget, Office of the Secretary is now planning to extend the information collection approval authority in order to enable the Department of the Interior to continue to comply with the PILT Act.

Title of Collection: Payments in Lieu of Taxes (PILT) Act, Statement of Federal Lands Payments.

OMB Control Number: 1093–0005.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State governments.

Total Estimated Number of Annual Respondents: 49.

Total Estimated Number of Annual Responses: 49.

Estimated Completion Time per Response: 46 hours.

Total Estimated Number of Annual Burden Hours: 2,254 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Jeffrey Parrillo,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–02201 Filed 2–12–19; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[19XL LLIDB00100 LF1000000.HT0000 LXSIOVHD0000 241A 4500129955]

Notice of Availability of the Record of Decision for the Bruneau-Owyhee Sage-Grouse Habitat Project, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Bruneau-Owyhee Sage-grouse Habitat (BOSH) Project.

ADDRESSES: Copies of the Bruneau-Owyhee Sage-grouse Habitat Project ROD are available for public inspection at the BLM Boise District Office, 3948 S Development Avenue, Boise, Idaho, and at the BLM Owyhee Field Office, 20 First Avenue West, Marsing, Idaho. Interested persons may also review the ROD at *goo.gl/eNFS9K.*

FOR FURTHER INFORMATION CONTACT: Mike McGee, Resource Coordinator, telephone (208) 384–3300; address 3948 S Development Ave. Boise, ID, 83705; email *blm_id_bruneauowyheesagegrouse@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at (800) 877–8339 to contact Mr. McGee. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with Mr. McGee. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Boise District BLM, in collaboration with the Idaho Department of Fish and Game, the Natural Resources Conservation Service, the U.S. Fish and Wildlife Service, the Idaho Department of Lands, and the Idaho Governor's Office of Species Conservation, proposed the BOSH Project to treat up to 617,000 acres of early-stage western juniper encroachment in southwestern Idaho. The conversion of sagebrush-steppe communities to juniper woodlands is a major threat to greater sage-grouse in southwestern Idaho. As junipers encroach into sagebrush habitat, sagebrush-steppe vegetation eventually dies because it is unable to compete with junipers for water, nutrients, space and sunlight.

The BLM will use several treatment methods to remove early-stage western juniper, include hand-cutting, prescribed fire and mastication.

The BLM began meeting with internal groups and external collaborators to discuss and develop the project proposal in 2013. The BLM held a 30-day public scoping period from January 20 to February 20, 2015, to collect comment and feedback that would aid the BLM in project development. Comments concerned effects to wildlife habitat (especially sage-grouse and migratory birds), soils, native plant communities, sensitive plants, spread of noxious and invasive weeds, hydrology and riparian areas, fisheries, wilderness values, visual resources, Areas of Critical Environmental Concern, recreation, cultural resources and social values.

The BLM published the Draft EIS for BOSH on November 18, 2016. The BLM considered and incorporated comments into the Final EIS. Public comments resulted in clarifications, but did not significantly change alternatives considered.

In response to public comment, the BLM (1) modified focal treatment areas to reflect updated vegetation data and to remove some Areas of Critical Environmental Concern; (2) developed Alternative C1, which expanded project boundaries to increase connectivity between treatment areas and include additional habitat; (3) removed all wilderness areas from treatment boundaries, and (4) added a carbon sequestration analysis.

The BLM released the Final EIS for the BOSH Project on February 9, 2018. On February 5, 2019, Joseph R. Balash, the Department of the Interior's Assistant Secretary for Land and Minerals Management, signed a Record of Decision selecting Alternative C1 for implementation. That approval constitutes the final decision of the Department and, in accordance with the regulations at 43 CFR 4.410, is not subject to appeal under Departmental regulations found in 43 CFR part 4.

Any challenge to this decision must be brought in the Federal District Court and is subject to 42 U.S.C. 4370m–6.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

Joseph R. Balash,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 2019–02095 Filed 2–12–19; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO260000.L10600000PC0000.19X.LXSIA DVSBD00.241A]

Call for Nominations for the National Wild Horse and Burro Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for three positions on the Wild Horse and Burro Advisory Board (Board) that will become vacant on March 21, 2019. The Board provides advice concerning the management, protection, and control of wild free-roaming horses and burros on public lands administered by the Department of the Interior, through the Bureau of Land Management (BLM), and the Department of Agriculture, through the U.S. Forest Service.

DATES: Nominations must be post marked or submitted to the following addresses no later than April 1, 2019.

ADDRESSES: All mail sent via the U.S. Postal Service should be addressed as follows: Division of Wild Horses and Burros, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134 LM; Attn: Dorothea Boothe, WO–260, Washington, DC 20240.

All packages that are sent via FedEx or UPS should be addressed as follows: Wild Horse and Burro Division, U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE, Room 2134 LM, Attn: Dorothea Boothe, Washington, DC 20003.

You may also email PDF documents to Ms. Boothe at *dboothe@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Dorothea Boothe, Acting Wild Horse and Burro Program Coordinator, 202–912–7654, *dboothe@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week.

You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Members of the Board serve without compensation. However, while away from their homes or regular places of business, Board and subcommittee members engaged in Board or subcommittee business, approved by the Designated Federal Official (DFO), may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in government service under Section 5703 of Title 5 of the United States Code. Nominations for a term of 3 years are needed to represent the following categories of interest:

- Humane Advocacy
- Livestock Management
- Wildlife Management

The Board will meet one to four times annually. The DFO may call additional meetings in connection with special needs for advice. Individuals may nominate themselves or others. Any individual or organization may nominate one or more persons to serve on the Board. Nominations will not be accepted without a complete resume. The following information must accompany all nominations for the individual to be considered for a position:

1. The position(s) for which the individual wishes to be considered;
2. The individual's first, middle, and last name;
3. Business and home addresses and telephone numbers;
4. Email address;
5. Present occupation/title and employer;
6. *Education:* Colleges, degrees, and major field of study;
7. *Career Highlights:* Significant related experience, civic and professional activities, elected offices (include prior advisory committee experience or career achievements related to the interest to be represented). Attach additional pages, if necessary;
8. *Qualifications:* Education, training, and experience that qualify you to serve on the Board;
9. Experience or knowledge of wild horse and burro management;
10. Experience or knowledge of horses or burros: Equine health, training, and management;
11. Experience in working with disparate groups to achieve collaborative solutions (*e.g.,* civic organizations, planning commissions, school boards, etc.);
12. Identification of any BLM permits, leases, or licenses held by the individual or his or her employer;
13. Indication of whether the individual is a federally registered lobbyist; and
14. Explanation of interest in serving on the Board.

Provide at least one letter of reference sent from special interest groups or organizations the individual may represent. References may also include business associates, friends, co-workers, local, State, and/or Federal Government representatives, or members of Congress. Include any other information that is relevant to the individual's qualifications.

As appropriate, certain Board members may be appointed as special government employees. Special government employees serve on the Board without compensation and are subject to financial disclosure requirements in the Ethics in Government Act and 5 CFR 2634.

Nominations are to be sent to the address listed under **ADDRESSES**.

Privacy Act Statement: The authority to request this information is contained in 5 U.S.C. 301, the Federal Advisory Committee Act (FACA), and 43 CFR part 1784. The appointment officer uses this information to determine education, training, and experience related to possible service on a BLM advisory council. If you are appointed as an advisor, the information will be retained by the appointing official for as long as you serve. Otherwise, it will be destroyed 2 years after termination of your membership or returned (if requested) following announcement of the Board's appointments. Submittal of this information is voluntary. However, failure to complete any or all items will inhibit fair evaluation of your qualifications and could result in you not receiving full consideration for appointment.

Membership Selection: Individuals shall qualify to serve on the Board because of their education, training, or experience that enables them to give informed and objective advice regarding the interest they represent. They should demonstrate experience or knowledge of the area of their expertise and a commitment to collaborate in seeking solutions to resource management issues. The Board is structured to provide fair membership and balance, both geographic and interest specific, in terms of the functions to be performed and points of view to be represented. Members are selected with the objective of providing representative counsel and advice about public land and resource planning. No person is to be denied an opportunity to serve because of race, age, sex, religion, or national origin. Individuals who are federally registered lobbyists are ineligible to serve on all FACA and non-FACA boards, committees, or councils in an individual capacity. The term ''individual capacity'' refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather than being appointed to represent a particular interest.

Pursuant to Section 7 of the Wild Free-Roaming Horses and Burros Act, members of the Board cannot be employed by the State or Federal Government.

(Authority: 43 CFR 1784.4–1)

Kristin Bail,

Assistant Director, Resources and Planning.

[FR Doc. 2019–02094 Filed 2–12–19; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1074]

Certain Industrial Automation Systems and Components Thereof Including Control Systems, Controllers, Visualization Hardware, Motion and Motor Control Systems, Networking Equipment, Safety Devices, and Power Supplies; Notice of Commission Determination To Extend the Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend the target date by six weeks, from February 25, 2019, to April 8, 2019. As set forth below, the Commission also extends the deadlines for filing written submissions and reply submissions on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. 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 *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://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 October 16, 2017, based on a complaint filed by Complainant Rockwell Automation, Inc. of Milwaukee, Wisconsin. *See* 82 FR 48113–15 (Oct. 16, 2017). The complaint, as supplemented, alleges violations of section 337 based on the infringement of certain registered trademarks and copyrights and on unfair methods of competition and unfair acts in the importation or sale of certain industrial automation systems and components thereof including control systems, controllers, visualization hardware, motion and motor control systems, networking equipment, safety devices, and power supplies, the threat or effect of which is to destroy or substantially injure an industry in the United States. *See id.* The notice of investigation identifies fifteen respondents: Can Electric Limited of Guangzhou, China (''Can Electric''); Capnil (HK) Company Limited of Hong Kong (''Capnil''); Fractioni (Hongkong) Ltd. of Shanghai, China (''Fractioni''); Fujian Dahong Trade Co. of Fujian, China (''Dahong''); GreySolution Limited d/b/a Fibica of Hong Kong (''GreySolution''); Huang Wei Feng d/b/a A–O–M Industry of Shenzhen, China (''Huang''); KBS Electronics Suzhou Co, Ltd. of Shanghai, China (''KBS''); PLC–VIP Shop d/b/a VIP Tech Limited of Hong Kong (''PLC–VIP''); Radwell International, Inc. d/b/a PLC Center of Willingboro, New Jersey (''Radwell''); Shanghai EuoSource Electronic Co., Ltd of Shanghai, China (''EuoSource''); ShenZhen T-Tide Trading co., Ltd. of Shenzhen, China (''T-Tide''); SoBuy Commercial (HK) Co. Limited of Hong Kong (''SoBuy''); Suzhou Yi Micro Optical Co., Ltd., d/b/a Suzhou Yiwei Guangxue Youxiangongsi, d/b/a Easy Microoptics Co. LTD. of Jiangsu, China (''Suzhou''); Wenzhou Sparker Group Co. Ltd., d/b/a Sparker Instruments of Wenzhou, China (''Sparker''); and Yaspro Electronics (Shanghai) Co., Ltd. of Shanghai, China (''Yaspro''). *See id.* The Office of Unfair Import Investigations is also a party in this investigation. *See id.*

Nine respondents were found in default, namely, Fractioni, GreySolution, KBS, EuoSource, T-Tide, SoBuy, Suzhou, Yaspro and Can Electric (collectively, ''the Defaulted Respondents''). *See* Order No. 17 (Feb. 1, 2018), *unreviewed,* Comm'n Notice (Feb. 26, 2018); Order No. 32 (June 28, 2018), *unreviewed,* Comm'n Notice (July 24, 2018). In addition, five unserved respondents (Capnil, Dahong, Huang, PLC–VIP, and Sparker) were terminated from the investigation and one respondent (Radwell) was terminated based on the entry of a consent order. *See* Order No. 41 (July 17, 2018), *unreviewed,* Comm'n Notice (Aug. 13, 2018); Order No. 42 (July 20, 2018), *unreviewed,* Comm'n Notice (Aug. 15, 2018).

On October 23, 2018, the Administrative Law Judge issued a final initial determination (''FID'') finding a violation of section 337 by the Defaulted Respondents. On December 20, 2018, the Commission determined not to review the FID. *See* 83 FR 67346–48 (Dec. 28, 2018). The Commission also requested written submissions and reply submissions on the issues of remedy, public interest, and bonding. *See id.*

In view of the lapse in government appropriations and partial government shutdown, the Commission has determined to extend the target date by six weeks, from February 25, 2019, to April 8, 2019. Under this schedule, written submissions on remedy, the public interest, and bonding are now due on February 15, 2019, and reply submissions on those issues are now due on February 22, 2019.

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: February 7, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–02109 Filed 2–12–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0100]

Agency Information Collection Activities: Extension Requested; Comments Requested; Monitoring Information Collections

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The purpose of this notice is to allow for 60 days for public comment April 15, 2019.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lashon M. Hilliard, Department of Justice Office of Community Oriented Policing Services, 145 N Street NE, Washington, DC 20530.

Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Monitoring Information Collections.

(3) *Agency Form Number:* 1103–0100 U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: COPS Office hiring grantees that are selected for in-depth monitoring of their grant implementation and equipment grantees that report using COPS funds to implement a criminal intelligence system will be required to respond. The Monitoring Information Collections include two types of information collections: The Monitoring Request for Documentation and the 28 CFR part 23 Monitoring Kit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 150 respondents annually will complete the Monitoring Request for Documentation at 3 hours per respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 450 total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Washington, DC 20530.

Dated: February 7, 2019

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2019–02097 Filed 2–12–19; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D–11988]

Proposed Exemption Involving UBS Assets Management (Americas) Inc.; UBS Realty Investors LLC; UBS Hedge Fund Solutions LLC; UBS O'Connor LLC; and Certain Future Affiliates in UBS's Asset Management and Global Wealth Management U.S. Divisions (collectively, the Applicants or the UBS QPAMs) Located in Chicago, Illinois; Hartford, Connecticut; New York, New York; and Chicago, Illinois, Respectively

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains notice of pendency before the Department of Labor (the Department) of a proposed temporary one-year individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). If this proposed exemption is granted, certain entities with specified relationships to UBS will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14.

DATES: If there is a judgment in the French First Instance Court against UBS and/or UBS France and that judgment constitutes a conviction under Section I(g) of PTE 84–14, this exemption will be in effect for one year from the date of that judgment.

Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by February 19, 2019.

ADDRESSES: Comments should state the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. A request for a hearing can be requested by any interested person who may be adversely affected by an exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing where: (1) The request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, 200 Constitution Avenue NW, Suite 400, Washington, DC 20210. Attention: Application No. D–11988. Interested persons are also invited to submit comments and/or hearing requests to EBSA via email or FAX. Any such comments or requests should be sent either by email to: *e-OED@dol.gov,* or by FAX to (202) 693–8474 by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW, Washington, DC 20210.

Warning: All comments received will be included in the public record without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the *http://www.regulations.gov* website is an ''anonymous access'' system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Mica of the Department at (202) 693–8402. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In March 2017, UBS and UBS France were charged with offenses under French law arising out of their cross-border banking business. A trial was held in 2018, and the French court announced that it would issue a judgment on February 20, 2019. This judgment (the Potential 2019 French Judgment Against UBS/UBS France) may be adverse to UBS and/or UBS France. UBS recently requested that the Department issue an advisory opinion that an adverse judgment from

the French court would not disqualify UBS asset managers from acting as QPAMs under PTE 84–14 (described below) pursuant to the criminal disqualification set forth in Section I(g) of PTE 84–14. UBS requested that, if the Department was not prepared to issue the opinion, the Department issue a temporary exemption. The Department may not issue an Advisory Opinion before possible conviction and is proposing this temporary exemption.

Certain UBS affiliates are acting as QPAMs pursuant to an individual exemption granted on December 29, 2017, which addresses prior convictions.[1] This proposal uses the term ''Potential 2019 French Judgment Against UBS/UBS France'' to describe an adverse judgment issued by a French court regarding case Number 1105592033. The Department is proposing this exemption to protect plans and IRAs that use UBS asset managers, from the costs and expenses that may arise in that instance, as represented by the Applicant. The temporary nature of this exemption gives the Department the opportunity to determine whether a longer term exemption is necessary and/or appropriate, including whether additional conditions are warranted.

Comments received in response to this proposed one year temporary exemption will also be considered in connection with the Department's determination whether or not to grant any subsequent exemption. No relief from a violation of any other law would be provided by this exemption. Furthermore, the Department cautions that the relief in this exemption would terminate immediately if, among other things, an entity within the UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the 2013 Conviction, 2018 Conviction, and the Potential 2019 French Judgment Against UBS/UBS France) or is convicted in a foreign jurisdiction for a crime described in Section I(g) of PTE 84–14, during the Exemption Period.

While an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this proposed exemption have been specifically designed to permit Covered Plans, defined below, to terminate their relationships in an orderly and cost-effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a Covered Plan to terminate its relationship with an entity covered by the proposed exemption.

Summary of Facts and Representations [2]

1. UBS AG (UBS) is a Swiss-based global financial services company organized under the laws of Switzerland. UBS has banking divisions and subsidiaries throughout the world, with its United States headquarters located in New York, New York and Stamford, Connecticut. UBS itself does not provide investment management services to client plans that are subject to Part 4 of Title I of ERISA (ERISA plans) or section 4975 of the Code (IRAs), or otherwise exercise discretionary control over ERISA assets. All ERISA assets are managed by U.S. affiliates of UBS.

2. UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, and UBS O'Connor LLC [3] are currently the four UBS affiliates that rely on PTE 84–14. Collectively, these UBS QPAMs have total ERISA assets under management of approximately $11.5 billion as of June 30, 2018, excluding ERISA assets invested in pooled funds that are not plan asset funds.

3. UBS Securities Japan was previously convicted of a crime that violated PTE 84–14's Section I(g), the anti-criminal provision.[4] This crime was described in detail in PTE 2013–09 (September 13, 2013). UBS itself was previously convicted of a crime that violated PTE 84–14's Section I(g). That crime was described in detail in PTE 2017–07 (December 29, 2017). Those individual exemptions allowed UBS QPAMs to continue to rely on PTE 84–14, notwithstanding the convictions, as long as a number of conditions were met.

One of those conditions requires that UBS or any of its affiliates may not be further convicted of a crime described in Section I(g) of PTE 84–14.[5] In the event of such a conviction, the Applicants would no longer be able to rely on PTE 2017–07, which permits them to avail themselves of PTE 84–14. This exemption, if granted, would provide relief for the UBS QPAMs to rely on PTE 84–14, notwithstanding the 2013 Conviction, the 2018 Conviction, and the Potential 2019 French Judgment Against UBS/UBS France for a one-year period while the Department decides what, if any, additional action is appropriate.

4. *Potential 2019 French Judgment Against UBS/UBS France.* In 2013, France opened an investigation into UBS, UBS France, and certain former employees of UBS France S.A. The investigation centered on the maintenance of foreign (''cross-border'') UBS bank accounts held for private citizens. The investigating judges closed the investigation in February 2016. UBS and UBS France received the National Financial Prosecutor's recommendation (''requisitoire'') in July 2016 that charges be filed. The investigating judges issued the trial order (''Ordonnance de renvoi'') in March 2017 that set out the precise charges against UBS, UBS France, and the individual former employees. UBS was charged with (1) ''illicit solicitation,'' based on the alleged solicitation of French clients within French territory from 2004–2011 by Swiss-based UBS client advisors without authorization to conduct such business in France; and (2) money laundering, based on UBS's alleged assistance from 2004 to 2012 to French taxpayers in opening bank accounts outside of France to conceal their identities from relevant authorities for the purposes of alleged tax evasion. UBS disputes the charges.

5. The UBS QPAMs represent they are separate entities from the entities involved in alleged misconduct that may lead to the Potential 2019 French Judgment Against UBS/UBS France and none of the UBS QPAMs (including their officers, directors, agents other than UBS, and employees) knew of, had reason to know of, or participated in the alleged conduct that is the subject of the French charges. The UBS QPAMs represent that no UBS QPAMs (including their officers, directors, agents other than UBS, and employees) received direct compensation, or knowingly received indirect compensation, in connection with the alleged conduct underlying the Potential 2019 French Judgment Against UBS/UBS France. Additionally, the UBS

[1] *See* PTE 2017–07, 82 FR 61916 (December 29, 2017).

[2] The Summary of Facts and Representations is based on the Applicants' representations, unless indicated otherwise.

[3] UBS Asset Management (Americas) Inc. and UBS Realty Investors LLC are wholly owned by UBS Americas, Inc., a wholly-owned subsidiary of UBS AG. UBS Hedge Fund Solutions LLC (formerly UBS Alternative and Quantitative Investments, LLC) and UBS O'Connor LLC are wholly owned by UBS Americas Holding LLC, a wholly owned subsidiary of UBS AG.

[4] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain criminal activity therein described.

[5] The Department notes that Section I(g) was included in PTE 84–14, in part, based on the expectation that a QPAM, and those who may be in a position to influence its policies, maintain a high standard of integrity.

QPAMs represent that no UBS QPAM exercised authority over the assets of any plan in a manner that it knew or should have known would further the alleged conduct underlying the French charges or otherwise cause any UBS QPAMs, their affiliates, or related parties to directly or indirectly profit from the alleged conduct underlying the French charges.

6. The Department notes that the rules set forth in section 406 of ERISA and section 4975(c) of the Code proscribe certain ''prohibited transactions'' between plans and related parties with respect to those plans, known as ''parties in interest.'' [6] Under section 3(14) of ERISA, parties in interest with respect to a plan include, among others, the plan fiduciary, a sponsoring employer of the plan, service providers with respect to the plan, and certain of their affiliates. The prohibited transaction provisions under section 406(a) of ERISA prohibit, in relevant part, sales, leases, loans or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), as well as the use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest.[7] Under section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department has the authority to grant exemptions from such ''prohibited transactions'' in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

7. PTE 84–14 [8] exempts certain prohibited transactions between a party in interest and an ''investment fund'' (as defined in Section VI (b) of PTE 84–14) [9] in which a plan has an interest, if the investment manager satisfies the definition of ''qualified professional asset manager'' (QPAM) and satisfies additional conditions for the exemption. PTE 84–14 was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary, manager.[10] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain criminal activity therein described, such as felonies arising out of the conduct of the business of a broker, dealer, investment adviser or bank, or income tax evasion.

8. Section 408(a) of ERISA provides, in part, that the Department may not grant an exemption unless the Department finds that such exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries.

9. *In the interest of.* The Department has tentatively determined that the proposed exemption is in the interests of the participants and beneficiaries of each affected ERISA plan and IRA. It is the Department's understanding, based on representations from the UBS QPAMs, that if the requested exemption were denied, the UBS QPAMs may be unable to effectively manage plan assets subject to ERISA or the prohibited transaction provisions of the Code. The UBS QPAMs state that this would cause client ERISA plans to question the prudence of retaining the UBS QPAMs as a manager of choice and client ERISA plans who otherwise want to retain the UBS QPAMs could feel compelled to find other managers who could manage their assets without having to either forgo transactions or rely on other more complex prohibited transaction exemptions.

The UBS QPAMs have represented that if client ERISA plans were to move to new asset managers they could incur transition costs including the costs associated with identifying an asset manager (such as the costs and management time required in a Request for Proposal process, consultant fees and other due diligence expenses), brokerage and other transaction costs associated with the sale of portfolio investments to accommodate the investment policies and strategy of the new asset manager, the opportunity costs of holding cash pending investment by the new asset manager, and lost investment opportunities in connection with a change of asset managers. The UBS QPAMs claim that losing the ability to use PTE 84–14 would make it difficult, costly, and impracticable to enter into many transactions that are in the best interests of client plans, reducing plan choices, especially among large institutional financial banks.

The UBS QPAMs represent further that if the requested exemption is not granted, ERISA plan clients may be effectively prohibited from entering into certain transactions, either because no other exemption is available or the counterparty is not willing to enter into the transaction without the protections provided by PTE 84–14. The UBS QPAMS state that these transactions would include those not covered by other exemptions such as a purchase or sale from a party in interest of a security without a readily ascertainable fair market value. The UBS QPAMs claim that the loss of the ability to utilize PTE 84–14 could significantly delay or even make impossible transactions that would be beneficial for the ERISA plans because other statutory and class prohibited transaction exemptions are not broad enough to cover such routine transactions entered at the direction of the UBS QPAMs. The UBS QPAMs also represent that counterparties could seek to terminate contracts for certain outstanding transactions (including swaps) that require the UBS QPAMs to represent that they are QPAMs and/or utilize PTE 84–14 and additionally, pursuant to these contracts, swap transactions with certain counterparties could automatically and immediately be terminated without any notice or action of such counterparties, even if other prohibited transaction exemptions are available. The UBS QPAMs further claim that such a termination could result in significant losses for the client ERISA plans that would be avoided if the exemption were granted.

10. *Protective of.* The Department has tentatively determined that the exemption, as proposed, will be protective of the rights of participants and beneficiaries of affected plans. The proposal is for one year, and has essentially the same conditions as PTE 2017–07.[11] However, the Department has determined to revise certain of those conditions so that it can make its required finding that the proposed one-year exemption will be protective of the rights of participants and beneficiaries

[6] For purposes of the Summary of Facts and Representations, references to specific provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

[7] The prohibited transaction provisions also include certain fiduciary prohibited transactions under section 406(b) of ERISA. These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries.

[8] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[9] An ''investment fund'' includes single customer and pooled separate accounts maintained by an insurance company, individual trusts and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of the QPAM) is subject to the discretionary authority of the QPAM.

[10] See 75 FR 38837, 38839 (July 6, 2010).

[11] If longer term relief is warranted, the exemption may contain additional conditions.

of affected plans and IRAs and are sufficient to protect plans subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or plans subject to section 4975 of the Code (an IRA), in each case, with respect to which a UBS QPAM relies on PTE 84–14, or with respect to which a UBS QPAM (or any UBS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14) (Covered Plans).[12]

This proposed exemption, if granted, is effective for period of one year from a judgment, if any, against UBS or UBS France by the French First Instance Court in case Number 1105592033. As noted above, relief is necessary to the extent the judgment in the French First Instance Court constitutes a conviction under Section I(g) of PTE 84–14. If the Applicant submits an exemption request for longer term relief, and the Department subsequently determines that longer term relief is warranted, the effective period of this exemption will end on the earlier of one year from the date of judgment by the French First Instance Court or the effective date of the subsequent exemption. Several of the conditions are aimed at ensuring that the UBS QPAMs were not involved in the conduct that gave rise to any of the Convictions and the Potential 2019 French Judgment Against UBS/UBS France. Accordingly, the proposal generally precludes relief to the extent the UBS QPAMs and any other party engaged on behalf of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets, were aware of, participated in, approved of, furthered, benefitted, or profited from, FX misconduct, the misconduct that is the subject of the 2013 and 2018 Convictions and the Potential 2019 French Judgment Against UBS/UBS France.[13] Further, the UBS QPAMs may not employ or knowingly engage any of the individuals that participated in the conduct attributable to the Convictions or the Potential 2019 French Judgment Against UBS/UBS France.

The proposal further provides that no UBS QPAM will use its authority or influence to direct an ''investment fund'' that is subject to ERISA or the Code and managed by such UBS QPAM with respect to one of more Covered Plans, to enter into any transaction with UBS, UBS Securities Japan, or UBS France, or engage UBS, UBS Securities Japan, or UBS France to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption.

If granted, the exemption will terminate if UBS or any of its affiliates are convicted of any additional crimes described in Section I(g) of PTE 84–14, or if any of the other conditions of PTE 84–14 have not been met. Also, with very limited exceptions, UBS, UBS Securities Japan, and UBS France may not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets.

The proposal requires each UBS QPAM to update, implement and follow certain written policies and procedures (the Policies). These Policies are similar to the policies and procedures mandated by PTE 2017–07. In general terms, the Policies must require, and must be reasonably designed to ensure that, among other things: The asset management decisions of the UBS QPAMs are conducted independently of the corporate management and business activities of UBS, UBS Securities Japan, and UBS France; the UBS QPAMs fully comply with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions; the UBS QPAMs do not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans; any filings or statements made by the UBS QPAMs to regulators, on behalf of or in relation to Covered Plans, are materially accurate and complete; the UBS QPAMs do not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans; or make material misrepresentations or omit material information in its communications with Covered Plans; the UBS QPAMs comply with the terms of this exemption; and any violation of, or failure to comply with any of these items, is corrected as soon as reasonably possible upon discovery, or as soon after the UBS QPAM reasonably should have known of the noncompliance (whichever is earlier). Any such violation or compliance failure not so corrected must be reported, upon the discovery of such failure to so correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent), and the independent auditor responsible for reviewing compliance with the Policies and a fiduciary of any affected Covered Plan where such fiduciary is independent of UBS.

This proposal mandates training (Training), which is similar to the training required under PTE 2017–07. In this regard, all relevant UBS QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel must be trained during the Exemption Period. Among other things, the Training must, at a minimum, cover the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and the requirement for prompt reporting of wrongdoing. The Training must be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code.

Under this proposal, as in PTE 2017–07, each UBS QPAM must submit to an audit conducted by an independent auditor.[14] Among other things, the auditor must test a sample of each UBS QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training. The auditor's conclusions cannot be based solely on the Exemption Report created by the Compliance Officer, described below, in lieu of independent determinations and testing performed by the auditor.

The Audit Report must be certified by the General Counsel or one of the three most senior executive officers of the UBS QPAM to which the Audit Report applies. A copy of the Audit Report must be provided to the Risk Committee of UBS's Board of Directors. Among other things, UBS must submit to the Office of Exemption Determinations (OED), any engagement agreement with an auditor to perform the audit required under the terms of this exemption that

[12] For purposes of this exemption, a Covered Plan does not include an ERISA-covered plan or IRA to the extent the UBS QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

[13] For clarity, references to the UBS QPAMs include any individual employed by or engaged to work on behalf of these QPAMs during or after the period of misconduct.

[14] Audits covering time periods prior to the date of a judgment, if any, against UBS or UBS France by the French First Instance Court must be completed in accordance with the requirements of PTE 2017–07, as applicable. Accordingly, the last audit performed pursuant to PTE 2017–07 will cover the period beginning January 10, 2018 and ending on the date a judgment, if any, is issued against UBS or UBS France by the French First Instance Court. The corresponding Audit Report must be completed within six months of the date of any such judgment and submitted to the Department within 45 days of completion.

is entered subsequent to the Potential 2019 French Judgment Against UBS/UBS France, no later than two (2) months after the execution of such agreement;

This proposal requires that, as of the date of a judgment, if any, against UBS or UBS France by the French First Instance Court, and throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a UBS QPAM and a Covered Plan, the UBS QPAM must agree and warrant: (i) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; and (ii) to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions). The UBS QPAMs must further agree and warrant to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan. Each UBS QPAM must also agree and warrant to indemnify and hold harmless such Covered Plan for any actual losses resulting directly from any of the following: (a) A UBS QPAM's violation of ERISA's fiduciary duties, as applicable, and/or the prohibited transaction provisions of ERISA and the Code, as applicable; (b) a breach of contract by the UBS QPAM; or (c) any claim arising out of the failure of such UBS QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction. This condition applies only to actual losses caused by the UBS QPAM. As noted above, the Applicant has identified a wide range of potential harm and costs that may be incurred by plans and IRAs if the UBS QPAMs were no longer able to rely on PTE 84–14. The Department views actual losses arising from unwinding transactions with third parties, and from transitioning Covered Plan assets to third parties, to be ''direct'' results of violating the terms of this provision.

This exemption contains specific notice requirements. In this regard, by 60 days after the date of a judgment, if any, against UBS or UBS France by the French First Instance Court, each UBS QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) (collectively, Initial Notice) that the Convictions and the Potential 2019 French Judgment Against UBS/UBS France each separately result in a failure to meet a condition in PTE 84–14 and/or PTE 2017–07, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a UBS QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. All prospective Covered Plans that enter into a written asset or investment management agreement with a UBS QPAM on or after the date of the Initial Notice must receive a copy of the exemption, the Summary, and the Statement prior to, or contemporaneously with, the Covered Plan's receipt of a written asset management agreement from the UBS QPAM. The notice requirements shall operate in tandem to ensure that all Covered Plan clients receive either the Initial Notice or a subsequent notice. Disclosures may be delivered electronically.

The proposal requires that each UBS QPAM maintain records necessary to demonstrate that the conditions of this exemption have been met, for six (6) years following the date of any transaction for which such UBS QPAM relies upon the relief in the exemption. The proposal mandates that UBS continue to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an exemption review (the Exemption Review) for the period beginning on the date of a judgment, if any, against UBS or UBS France by the French First Instance Court [15] to determine the adequacy and effectiveness of the implementation of the Policies and Training. The Compliance Officer must be a professional with extensive relevant experience with a reporting line within UBS's Compliance and Operational Risk Control function to the Head of Compliance and Operational Rick Control, Asset Management. At a minimum, the Exemption Review must include review of the following items: (i) Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer during the previous year; (ii) any material change in the relevant business activities of the UBS QPAMs; and (iii) any change to ERISA, the Code, or regulations that may be applicable to the activities of the UBS QPAMs.

The Compliance Officer must prepare a written report (an Exemption Report) that summarizes his or her material activities during the Exemption Period and sets forth any instance of noncompliance discovered during the Exemption Period, and any related corrective action. In each Exemption Report, the Compliance Officer must certify in writing that to his or her knowledge the report is accurate and the UBS QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any instances of noncompliance.

The Exemption Report must be provided to the appropriate corporate officers of UBS and each UBS QPAM to which such report relates and to the head of compliance and the General Counsel (or their functional equivalent) of the relevant UBS QPAM. The Exemption Report must be made unconditionally available to the independent auditor. The Exemption Review, including the Compliance Officer's written Exemption Report, must be completed within three (3) months following the end of the period to which it relates.

UBS must also immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by UBS or any of its affiliates (as defined in Section VI(d) of PTE 84–14) in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA. UBS must also immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement.

The proposal mandates that, among other things, each UBS QPAM clearly and prominently informs Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the UBS QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were

[15] Pursuant to PTE 2017–07 the Compliance Officer must conduct and exemption review (annual review) for each period corresponding to the audit periods set forth in Section I(i)(1) of PTE 2017–07 and the Compliance officer's written report submitted to the Department within three (3) months of the end of the period to which it relates. Accordingly, the final exemption review pursuant to PTE 2017–07 must cover the period January 10, 2018 through the date of a judgment, if any, against UBS or UBS France by the French First Instance Court, and the corresponding Compliance Officer's written report must be submitted within three (3) months of the date of such a judgment.

changed.[16] With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan.

The proposal requires that UBS QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exception of the violations of Section I(g) of PTE 84–14 that are attributable to the Convictions and the Potential 2019 French Judgment Against UBS/UBS France. If, during the Exemption Period, an entity within the UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84–14, (other than the 2013 Conviction, 2018 Conviction, and the Potential 2019 French Judgment Against UBS/UBS France), or is convicted in a foreign jurisdiction for a crime described in Section I(g) of PTE 84–14, relief in this proposed exemption would terminate immediately.

11. *Administratively Feasible.* The Department has tentatively determined that the proposal is administratively feasible since, among other things, a qualified independent auditor will be required to perform an in-depth audit covering, among other things, each UBS QPAM's compliance with the exemption, and a corresponding written audit report will be provided to the Department and available to the public.

Notice to Interested Persons

Notice to interested persons is by publication of this notice of proposed temporary one-year exemption in the **Federal Register**. All written comments and/or requests for a hearing must be received by the Department within three days of the date of publication of this proposed exemption in the **Federal Register**.

All comments will be made available to the public. *Warning:* If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

[16] In the event Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless the Summary Policies are no longer accurate because of the changes.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Proposed Exemption

The Department is considering granting a one-year temporary exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Internal Revenue Code (or Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[17]

[17] For purposes of this proposed one year temporary exemption, references to section 406 of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of section 4975 of the Code.

Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

Section I. Covered Transactions

If the proposed one year temporary exemption is granted, certain entities with specified relationships to UBS (hereinafter, the UBS QPAMs, as defined in Sections II(e)) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption),[18] notwithstanding the 2013 Conviction of UBS Securities Japan Co., Ltd., the 2018 Conviction of UBS (collectively the Convictions, as defined in Section II(a)), and the Potential 2019 French Judgment Against UBS/UBS France (as defined in Section II(b)) during the Exemption Period, provided that the following conditions are satisfied:[19]

(a) The UBS QPAMs (including their officers, directors, agents other than UBS, UBS Securities Japan, and UBS France), and employees of such UBS QPAMs and any other party engaged on behalf of such UBS QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not know of, did not have reason to know of, or participate in: (1) The FX Misconduct; (2) the criminal conduct of UBS Securities Japan and UBS that is the subject of the Convictions; or (3) the alleged criminal conduct of UBS and UBS France that is the subject of the Potential 2019 French Judgment Against UBS/UBS France. For purposes of this exemption, ''participate in'' refers not only to active participation in the FX Misconduct, the misconduct underlying the Convictions, and the alleged misconduct underlying the Potential 2019 French Judgment Against UBS/UBS France, but also to knowing approval of that misconduct, or knowledge of such misconduct

[18] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430, (October 10, 1985), as amended at 70 FR 49305(August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as ''PTE 84–14'' or the ''QPAM Exemption.''

[19] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain criminal activity therein described.

without taking active steps to prohibit such conduct, such as reporting the conduct to supervisors, including the Board of Directors;

(b) The UBS QPAMs (including their officers, directors, agents other than UBS, UBS Securities Japan, and UBS France, and employees of such UBS QPAMs and any other parties engaged on behalf of such UBS QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the (1) the FX Misconduct; (2) the criminal conduct of UBS Securities Japan and UBS that is the subject of the Convictions; or (3) the alleged criminal conduct of UBS and UBS France that is the subject of the Potential 2019 French Judgment Against UBS/UBS France;

(c) The UBS QPAMs will not employ or knowingly engage any of the individuals that participated in: (1) The FX Misconduct; (2) the criminal conduct of UBS Securities Japan and UBS that is the subject of the Convictions; or (3) the alleged criminal conduct of UBS and UBS France that is the subject of the Potential 2019 French Judgment Against UBS/UBS France;

(d) At all times during the Exemption Period, no UBS QPAM will use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such UBS QPAM with respect to one or more Covered Plans (as defined in Section II(c)) to enter into any transaction with UBS, UBS Securities Japan, or UBS France or to engage UBS, UBS Securities Japan, or UBS France to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the UBS QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Convictions and the Potential 2019 French Judgment Against UBS/UBS France;

(f) A UBS QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the FX Misconduct, the criminal conduct that is the subject of the Convictions, or the alleged criminal conduct that is the subject of the Potential 2019 French Judgment Against UBS/UBS France; or cause the UBS QPAM or its affiliates to directly or indirectly profit from the FX Misconduct, the criminal conduct that is the subject of the Convictions, or the alleged criminal conduct that is the subject of the Potential 2019 French Judgment Against UBS/UBS France;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, UBS, UBS Securities Japan, and UBS France will not act as fiduciaries within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets; provided, however, that UBS, UBS Securities Japan, and UBS France will not be treated as violating the conditions of this exemption solely because it acted as an investment advice fiduciary within the meaning of section 3(21)(A)(ii) of ERISA or section 4975(e)(3)(B) of the Code;

(h)(1) Each UBS QPAM must continue to maintain, adjust (to the extent necessary), implement, and follow written policies and procedures (the Policies). The Policies must require, and must be reasonably designed to ensure that:

(i) The asset management decisions of the UBS QPAM are conducted independently of UBS's corporate management and business activities, including the corporate management and business activities of the Investment Bank division, UBS Securities Japan, and UBS France; this condition does not preclude a UBS QPAM from receiving publicly available research and other widely available information from a UBS affiliate;

(ii) The UBS QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, in each case as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The UBS QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the UBS QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) To the best of the UBS QPAM's knowledge at that time, the UBS QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans, or make material misrepresentations or omit material information in its communications with Covered Plans;

(vi) The UBS QPAM complies with the terms of this exemption;

(2) Any violation of, or failure to comply with an item in subparagraphs (h)(1)(ii) through (h)(1)(vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing. Such report shall be made to the head of compliance and the General Counsel (or their functional equivalent) of the relevant UBS QPAM that engaged in the violation or failure, and, the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected Covered Plan where such fiduciary is independent of UBS. Notwithstanding the foregoing, with respect to any Covered Plan sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of UBS or beneficially owned by an employee of UBS or its affiliates, such fiduciary does not need to be independent of UBS. A UBS QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(3) Each UBS QPAM will maintain, adjust (to the extent necessary) and implement a program of training during the Exemption Period, to be conducted during the Exemption Period, for all relevant UBS QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training

and proficiency with ERISA and the Code;

(i)(1) Each UBS QPAM submits to an audit conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each UBS QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The audit must cover the Exemption Period and must be completed no later than six (6) months after the end of the exemption period. For time periods ending prior to a judgment, if any, against UBS or UBS France by the French First Instance Court and covered by the audit required pursuant to PTE 2017–07,[20] the audit requirements in Section I(i) of PTE 2017–07 will remain in effect. The audit under PTE 2017–07 covering the time period from January 10, 2018 until the date of a judgment, if any, against UBS or UBS France by the French First Instance Court must be completed within six (6) months of the date of any such judgment, and the corresponding certified Audit Report must be submitted to the Department no later than 45 days following the completion of such audit; [21]

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, each UBS QPAM and, if applicable, UBS, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each UBS QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each UBS QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each UBS QPAM, a sample of such UBS QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such UBS QPAM's operational compliance with the Policies and Training;

(5) For the audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to UBS and the UBS QPAM to which the audit applies that describes the procedures performed by the auditor in connection with its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the UBS QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each UBS QPAM's Policies and Training; each UBS QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective UBS QPAM's noncompliance with the written Policies and Training described in Section I(h) above. The UBS QPAM must promptly address any noncompliance. The UBS QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective UBS QPAM. Any action taken or the plan of action to be taken by the respective UBS QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section I(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that a UBS QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a UBS QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular UBS QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Exemption Report created by the compliance officer (the Compliance Officer), as described in Section I(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the Exemption Review described in Section I(m);

(6) The auditor must notify the respective UBS QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to the Audit Report, the General Counsel, or one of the three most senior executive officers of the UBS QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that, to the best of such officer's knowledge at the time, such UBS QPAM has addressed, corrected, remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination, that, to the best of such officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(8) The Risk Committee of UBS's Board of Directors is provided a copy of the Audit Report; and a senior executive officer of UBS's Compliance and Operational Risk Control function must review the Audit Report for each UBS QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report;

(9) Each UBS QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210; or by

[20] 82 FR 61903 (December 29, 2017). PTE 2017–07 is an exemption that permits UBS QPAMs to rely on the exemptive relief provided by PTE 84–14, notwithstanding the 2013 and 2018 Convictions.

[21] Pursuant to PTE 2017–07, the initial audit period begins on January 10, 2018 and ends on March 9, 2019, and the corresponding Audit Report must be completed by September 9, 2019 and the Audit Report submitted to the Department within 45 days after completion. Accordingly, the last audit performed pursuant to PTE 2017–07 will cover the period beginning January 10, 2018 and ending on the date of judgment, if any, against UBS or UBS France by the French First Instance Court. The corresponding Audit Report must be completed within six months of any such judgment and submitted to the Department within 45 days of completion.

private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001–2109. This delivery must take place no later than 45 days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each UBS QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required under the terms of this exemption that is entered subsequent to the date of a judgment, if any, against UBS or UBS France by the French First Instance Court must be submitted to OED no later than two (2) months after the execution of such agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and utilized in connection with the audit, provided such access and inspection is otherwise permitted by law; and

(12) UBS must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and UBS;

(j) As of the date of a judgment, if any, against UBS or UBS France by the French First Instance and throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a UBS QPAM and a Covered Plan, the UBS QPAM agrees and warrants to Covered Plans:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA to the extent that section 404 is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from: A UBS QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such UBS QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions and the Potential 2019 French Judgment Against UBS/UBS France. This condition applies only to actual losses caused by the UBS QPAM's violations.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the UBS QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the UBS QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of PTE 2017–07, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and be effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors; and

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the UBS QPAM for a violation of such agreement's terms. To the extent consistent with Section 410 of ERISA, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of UBS and its affiliates, or damages arising from acts outside the control of the UBS QPAM;

(7) Within six months of the date of a judgment, if any, against UBS or UBS France by the French First Instance Court, each UBS QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For prospective Covered Plans that enter into a written asset or investment management agreement with a UBS QPAM on or after the date of such a judgment, the UBS QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the UBS QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016–17 and/or PTE 2017–07 that meets the terms of this condition. Notwithstanding the above, a UBS QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement.

(k) Within 60 days of a judgment, if any, against UBS or UBS France by the French First Instance Court, each UBS QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Convictions and the Potential 2019 French Judgment Against UBS/UBS France (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) (collectively, Initial Notice) that the Convictions and the Potential 2019 French Judgment Against UBS/UBS France, each separately result in a failure to meet a condition in PTE 84–14 and PTE 2017–07, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a UBS QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. Effective as of the date that is 60 days after the Potential 2019 French Judgment Against UBS/UBS France Date, all Covered Plan clients that enter into a written asset or investment management agreement with a UBS QPAM after that date must receive a copy of the exemption, the Summary, and the Statement prior to, or contemporaneously with, the Covered Plan's receipt of a written asset management agreement from the UBS QPAM. Disclosures may be delivered electronically;

(l) The UBS QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exception of the violations of Section I(g) of PTE 84–14 that are attributable to the Convictions and the Potential 2019 French Judgment

Against UBS/UBS France. If, during the Exemption Period, an entity within the UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84–14, (other than the 2013 Conviction, 2018 Conviction, and the Potential 2019 French Judgment Against UBS/UBS France), or is convicted in a foreign jurisdiction for a crime described in Section I(g) of PTE 84–14, relief in this proposed exemption would terminate immediately;

(m)(1) UBS continues to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct a review for the Exemption Period (the Exemption Review),[22] to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a reporting line within UBS's Compliance and Operational Risk Control (C&ORC) function to the Head of Compliance and Operational Risk Control, Asset Management. The C&ORC function is organizationally independent of UBS's business divisions—including Asset Management, the Investment Bank, and Global Wealth Management—and is led by the Global Head of C&ORC, who will report directly to UBS's Chief Risk Officer, the head of Group Compliance, Regulatory and Governance, or another appropriate member of the Group Executive Board;

(2) With respect to the Exemption Review, the following conditions must be met:

(i) The Exemption Review includes a review of the UBS QPAMs' compliance with and effectiveness of the Policies and Training and of the following: Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the C&ORC function during the previous year; the most recent Audit Report issued pursuant to this exemption or PTE 2017–07; any material change in the relevant business activities of the UBS QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the UBS QPAMs;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes his or her material activities during the Exemption Period; (B) sets forth any instance of noncompliance discovered during the Exemption Period, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of his or her knowledge at the time: (A) The report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the Exemption Period and any related correction taken to date have been identified in the Exemption Report; and (D) the UBS QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section I(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of UBS and each UBS QPAM to which such report relates, and to the head of compliance and the General Counsel (or their functional equivalent) of the relevant UBS QPAM; and the report must be made unconditionally available to the independent auditor described in Section I(i) above;

(v) The Exemption Review, including the Compliance Officer's written Exemption Report, must be completed within three (3) months following the end of the period to which it relates;

(n) UBS imposes its internal procedures, controls, and protocols on UBS Securities Japan to: (1) Reduce the likelihood of any recurrence of conduct that that is the subject of the 2013 Conviction, and (2) comply in all material respects with the Business Improvement Order, dated December 16, 2011, issued by the Japanese Financial Services Authority;

(o) UBS complies in all material respects with the audit and monitoring procedures imposed on UBS by the U.S. Commodity Futures Trading Commission Order, dated December 19, 2012;

(p) Each UBS QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met, for six (6) years following the date of any transaction for which such UBS QPAM relies upon the relief in the exemption;

(q) During the Exemption Period, UBS must: (1) Immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by UBS or any of its affiliates (as defined in Section VI(d) of PTE 84–14) in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(r) Within six months from the date of a judgment, if any, against UBS or UBS France by the French First Instance Court, each UBS QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the UBS QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.[23] With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(s) A UBS QPAM will not fail to meet the terms of this exemption, solely because a different UBS QPAM fails to satisfy a condition for relief described in

[22] Pursuant to PTE 2017–07 the Compliance Officer must conduct an exemption review (annual review) for each period corresponding to the audit periods set forth in Section I(i)(1) of PTE 2017–07 and the Compliance officer's written report submitted to the Department within three (3) months of the end of the period to which it relates. Accordingly, the final exemption review pursuant to PTE 2017–07 must cover the period January 10, 2018 through the date of a judgment, if any, against UBS or UBS France by the French First Instance Court, and the corresponding Compliance Officer's written report must be submitted within three (3) months of any such judgment.

[23] In the event the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

Sections I(c), (d), (h), (i), (j), (k), (l), (p), or (r); or if the independent auditor described in Section I(i) fails a provision of the exemption other than the requirement described in Section I(i)(11), provided that such failure did not result from any actions or inactions of UBS or its affiliates.

Section II. Definitions

(a) The term ''Convictions'' means the 2013 Conviction and the 2017 Conviction. The term ''2013 Conviction'' means the judgment of conviction against UBS Securities Japan Co. Ltd. in case number 3:12–cr–00268–RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, sections 1343 and 2 in connection with submission of YEN London Interbank Offered Rates and other benchmark interest rates. The term ''2018 Conviction'' means the judgment of conviction against UBS in case number 3:15–cr–00076–RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, Sections 1343 and 2 in connection with UBS's submission of Yen London Interbank Offered Rates and other benchmark interest rates between 2001 and 2010. For all purposes under this exemption, ''conduct'' of any person or entity that is the ''subject of the Convictions'' encompasses any conduct of UBS and/or their personnel, that is described in (i) Exhibit 3 to the Plea Agreement entered into between UBS and the Department of Justice Criminal Division, on May 20, 2015, in connection with case number 3:15–cr–00076–RNC, and (ii) Exhibits 3 and 4 to the Plea Agreement entered into between UBS Securities Japan and the Department of Justice Criminal Division, on December 19, 2012, in connection with case number 3:12–cr–00268–RNC;

(b) The term ''Potential 2019 French Judgment Against UBS/UBS France'' includes any adverse judgment against UBS or UBS France regarding case Number 1105592033. For all purposes under this exemption, ''conduct'' of any person or entity that is the ''subject of the alleged criminal conduct that may be the subject of the Potential 2019 French Judgment Against UBS/UBS France'' encompasses any conduct of UBS, its affiliates, or UBS France and/or their personnel that is described in any such judgment.

(c) The term ''Covered Plan'' means a plan subject to Part IV of Title I of ERISA (an ''ERISA-covered plan'') or a plan subject to section 4975 of the Code (an ''IRA''), in each case, with respect to which a UBS QPAM relies on PTE 84–14, or with respect to which a UBS QPAM (or any UBS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the UBS QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(d) The term ''FX Misconduct'' means the conduct engaged in by UBS personnel described in Exhibit 1 of the Plea Agreement (Factual Basis for Breach) entered into between UBS and the Department of Justice Criminal Division, on May 20, 2015 in connection with Case Number 3:15–cr–00076–RNC filed in the US District Court for the District of Connecticut.

(e) The term ''UBS QPAM'' means UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, UBS O'Connor LLC, and any future entity within the Asset Management or the Global Wealth Management Americas U.S. divisions of UBS that qualifies as a ''qualified professional asset manager'' (as defined in Section VI(a) of PTE 84–14) [24] and that relies on the relief provided by PTE 84–14, and with respect to which UBS is an ''affiliate'' (as defined in Part VI(d) of PTE 84–14). The term ''UBS QPAM'' excludes UBS securities Japan, the entity implicated in the criminal conduct that is the subject of the 2013 Conviction, UBS, the entity implicated in the criminal conduct that is the subject of the 2018 Conviction and implicated in the alleged criminal conduct that is the subject of the Potential 2019 French Judgment Against UBS/UBS France, and UBS France, the entity implicated in the alleged criminal conduct that is the subject of the Potential 2019 French Judgment Against UBS/UBS France.

(f) The term ''UBS'' means UBS AG.

(g) The term ''UBS France'' means ''UBS (France) S.A.,'' a wholly-owned subsidiary of UBS incorporated under the laws of France.

(h) The term ''UBS Securities Japan'' means UBS Securities Japan Co. Ltd, a wholly-owned subsidiary of UBS incorporated under the laws of Japan.

(i) All references to ''the date of a judgment, if any, by the French First Instance Court'' refer to any judgment against UBS or UBS France in case number 1105592033;

(j) The term ''Exemption Period'' means one year beginning on the date an adverse French judgment against UBS or UBS France regarding case Number 1105592033;

(k) The term ''Plea Agreement'' means the Plea Agreement (including Exhibits 1 and 3 attached thereto) entered into between UBS and the Department of Justice Criminal Division, on May 20, 2015 in connection with Case Number 3:15–cr–00076–RNC filed in the US District Court for the District of Connecticut.

Effective Date: If granted, the exemption discussed in this notice will be effective for one year from the date of judgment, if any, against UBS or UBS France by the French First Instance Court in case Number 1105592033.

Signed at Washington, DC, this 8th day of February, 2019.

Lyssa Hall,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2019–02218 Filed 2–11–19; 11:15 am]

BILLING CODE 4510–29–P

[24] In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Grantee Reporting Requirements for the Graduate Research Fellowship Program

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to reinstate this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by April 15, 2019 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite

W18253, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NCSES, including whether the information will have practical utility; (b) the accuracy of the NCSES's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology.

Title of Collection: Grantee Reporting Requirements for the Graduate Research Fellowship Program.

OMB Number: 3145–0223.

Expiration Date of Approval: March 31, 2019.

Type of Request: Intent to seek approval to reinstate an information collection.

Abstract

Proposed Project: The purpose of the NSF Graduate Research Fellowship Program is to help ensure the vitality and diversity of the scientific and engineering workforce of the United States. The program recognizes and supports outstanding graduate students who are pursuing research-based master's and doctoral degrees in science, technology, engineering, and mathematics (STEM) and in STEM education. The GRFP provides three years of support, to be used during a five-year fellowship period, for the graduate education of individuals who have demonstrated their potential for significant research achievements in STEM and STEM education.

The Graduate Research Fellowship Program uses several sources of information in assessing and documenting program performance and impact. These sources include reports from program evaluation, the GRFP Committee of Visitors, and data compiled from the applications. In addition, GRFP Fellows submit annual activity reports to NSF.

The GRFP Completion report is proposed as a continuing component of the annual reporting requirement for the program. This report, submitted by the GRFP Institution, certifies the completion status of Fellows at the institution (*e.g.,* in progress, completed, graduated, transferred, or withdrawn). The existing Completion Report, Grants Roster Report, and the Program Expense Report comprise the GRFP Annual Reporting requirements from the Grantee GRFP institution. Through submission of the Completion Report to NSF GRFP institutions certify the current status of all GRFP Fellows at the institution as either: In Progress, Graduated, Transferred, or Withdrawn. For Graduate Fellows with Graduated status, the graduation date is a required reporting element. Collection of this information allows the program to obtain information on the current status of Fellows, the number and/or percentage of Graduate Fellowship recipients who complete a science or engineering graduate degree, and an estimate of time to degree completion. The report must be certified and submitted by the institution's designated Coordinating Official (CO) annually.

Use of the Information: The completion report data provides NSF with accurate Fellow information regarding completion of the Fellows' graduate programs. The data is used by NSF in its assessment of the impact of its investments in the GRFP, and informs its program management.

Estimate of Burden: Overall average time will be 15 minutes per Fellow (8,250 Fellows) for a total of 2,063 hours for all institutions with Fellows. An estimate for institutions with 12 or fewer Fellows will be 1 hour, institutions with 12–48 fellows will be 4 hours, and institutions over 48 Fellows will be 10 hours.

Respondents: Academic institutions with NSF Graduate Fellows (GRFP Institutions).

Estimated Number of Responses per Report: One from each of the 271 current GRFP institutions.

Dated: February 7, 2019.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2019–02098 Filed 2–12–19; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed reinstatement submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

DATES: Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification.

FOR FURTHER INFORMATION CONTACT: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street NW, Room 10235, Washington, DC 20503, and Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission(s) may be obtained by calling 703–292–7556.

SUPPLEMENTARY INFORMATION: NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of

appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Title of Collection: Grantee Reporting Requirements for the Research Experiences for Undergraduates (REU) Program.

OMB Number: 3145–0224.

Type of Request: Intent to seek approval extend, with revisions, an information collection.

Abstract

Overview of this information collection: The Research Experiences for Undergraduates (REU) Reporting Module is a component of the NSF Project Reports System that is designed to gather information about students participating in REU Sites and Supplements projects. All NSF Principal Investigators are required to submit annual and final project reports through *Research.gov.* If NSF cannot collect information about undergraduate participants in undergraduate research experiences, NSF will have no other means to consistently document the number and diversity of participants, types of participant involvement in the research, and types of institutions represented by the participants.

NSF is committed to providing program stakeholders with formation regarding the expenditure of taxpayer funds on these types of activities, which provide authentic research experiences and related training for postsecondary students in STEM fields.

Background: All NSF Principal Investigators are required to use the project reporting functionality in *Research.gov* to report on progress, accomplishments, participants, and activities annually and at the conclusion of their project. Information from annual and final reports provides yearly updates on project inputs, activities, and outcomes for agency reporting purposes. If project participants include undergraduate students supported by the Research Experiences for Undergraduates (REU) Sites Program or by an REU Supplement, then the Principal Investigator and his or her students are required to complete the REU Reporting Module.

Respondents: Individuals (Principal Investigators and REU undergraduate student participants).

Number of Principal Investigator Respondents: 2,300.

Burden on the Public: 383 total hours.

Dated: February 7, 2019.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2019–02102 Filed 2–12–19; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0203]

Information Collection: Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.''

DATES: Submit comments by April 15, 2019. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0138. Address questions about docket IDs in *Regulations.gov* to Krupskaya Castellon; telephone: 301–287–9221; email: *Krupskaya.Castellon@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0203 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–2018–0203.
- *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 ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML18311A242 and ML18311A238.
- *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.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2018–0203 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include

identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.''
2. *OMB approval number:* 3150–0021.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* Environmental Reports are required upon submittal of an application for a combined license, construction permit, operating license, operating license renewal, early site permit, design certification, decommissioning or license termination review, or manufacturing license, or upon submittal of a petition for rulemaking.
6. *Who will be required or asked to respond:* Licensees and applicants requesting approvals for actions proposed in accordance with the provisions of 10 CFR parts 30, 32, 33, 34, 35, 36, 39, 40, 50, 52, 54, 60, 61, 70, and 72.
7. *The estimated number of annual responses:* 16.7.
8. *The estimated number of annual respondents:* 16.7.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 30,462.
10. *Abstract:* The NRC's regulations at 10 CFR part 51 specify information to be provided in environmental reports by applicants and licensees so that the NRC can make determinations necessary to adhere to the policies, regulations, and public laws of the United States, which are interpreted and administered in accordance with the provisions set forth in the National Environmental Policy Act of 1969, as amended.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 8th day of February 2019.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2019–02196 Filed 2–12–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0032]

Information Collection: Pre-Application Communication and Scheduling for Accident Tolerant Fuel Submittals

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on this proposed collection of information. The information collection is entitled, ''Pre-Application Communication and Scheduling for Accident Tolerant Fuel Submittals.''

DATES: Submit comments by April 15, 2019. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0032. Address questions about NRC dockets to Krupskaya Castellon; telephone: 301–287–9221; email: *Krupskaya.Castellon@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: TWFN—06–A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0032 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–2019–0032. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2019–0032 on this website.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML18270A019. The supporting statement is available in ADAMS under Accession No. ML18344A004.
- *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.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2019–0032 in the subject line of your comment submission, in order to ensure that the NRC is able to make your

comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* Pre-Application Communication and Scheduling for Accident Tolerant Fuel Submittals.
2. *OMB approval number:* An OMB control number has not yet been assigned to this proposed information collection.
3. *Type of submission:* New.
4. *The form number, if applicable:* Not Applicable.
5. *How often the collection is required or requested:* Annually.
6. *Who will be required or asked to respond:* All fuel vendors who anticipate submitting accident tolerant fuel (ATF) design applications. All potential applicants for the fabrication, transportation, and storage of ATF under the provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 70, ''Domestic Licensing of Special Nuclear Material,'' 10 CFR part 71, ''Packaging and Transportation of Radioactive Material,'' and 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.''
7. *The estimated number of annual responses:* 9.
8. *The estimated number of annual respondents:* 9.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 1,080.
10. *Abstract:* Accident tolerant fuel (ATF) development is a joint effort between the U.S. nuclear industry and the U.S. Department of Energy to design and pursue approval of various fuel types with enhanced accident tolerance. In preparing the U.S. Nuclear Regulatory Commission (NRC) to review these advanced fuel designs, the agency is conducting advanced planning, reviewing the existing regulatory infrastructure, and identifying needs for additional analysis capabilities. The intent of this information collection is to help inform the NRC's budget and resource planning for the eventual review of ATF-related applications. Specifically, the NRC seeks ATF scheduling information for pre-application activities, topical report submittals, and other licensing submittals from all respondents. This information will allow the NRC to better allocate its resources to support the activities leading up to and including the review of an ATF submittal. The proper allocation of resources promotes the efficient completion of the NRC's review responsibilities.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 8th day of February 2019.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2019–02199 Filed 2–12–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0037]

Human-System Interface Design Review Guidelines

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft NUREG entitled, ''Human-System Interface Design Review Guidelines'' (NUREG–0700, Revision 3). NUREG–0700 was first published in 1981 following the accident at the Three Mile Island Nuclear Power Plant. The NUREG provided the guidance to operating reactor licensees and applicants for operating licenses for conducting detailed control room design reviews and identifying and correcting design deficiencies in order to bring control rooms into compliance with human factors engineering principles. Since that time, the NRC staff has updated NUREG–0700 in 1996 and again in 2002. The current updated (Revision 3) is the first in over a decade and represents a major revision to the guidance document.

DATES: Submit comments by April 1, 2019. 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.

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

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0037. Address questions about Docket IDs in *Regulations.gov* to Krupskaya Castellon; telephone: 301–287–9221; email: *Krupskaya.Castellon@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Stephen A. Fleger, Office of Nuclear

Regulatory Research, telephone: 301–415–2409, email: *Stephen.Fleger@nrc.gov;* or DaBin Ki, Office of Nuclear Regulatory Research, telephone: 301–415–2358, email: *DaBin.Ki@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0037 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–2019–0037.
- *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 ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft NUREG on ''Human-System Interface Design Review Guidelines'' is available in ADAMS under Accession No. ML18158A333.
- *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–2019–0037 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

The NRC staff reviews the human factors engineering (HFE) aspects of nuclear power plants in accordance with the Standard Review Plan (NUREG–0800, *S*tandard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.) The Human Factors Engineering Program Review Model (NUREG–0711, Revision 3, issued November 2012) contains detailed design review procedures. As part of the review process, the interfaces between plant personnel and the plant's systems and components are evaluated for conformance with HFE guidelines. This document, Human-System Interface Design Review Guidelines (NUREG–0700, Revision 3), provides the guidelines to perform this evaluation. The review guidelines address the physical and functional characteristics of human-system interfaces (HSIs). Because these guidelines only address the HFE aspects of design and not other related considerations, such as instrumentation and control and structural design, they are referred to as HFE guidelines. In addition to the review of actual HSIs, the NRC staff can use the NUREG–0700 guidelines to evaluate a design-specific HFE guidelines document or style guide. The HFE guidelines are organized into four basic parts, which are further divided into sections. Part I contains guidelines for the basic HSI elements: Information displays, user-interface interactions and management, and analog displays and controls. These elements are used as building blocks to develop HSI systems to serve specific functions. Part II contains the guidelines for reviewing the following HSI systems: Alarm system, safety parameter display system, group-view display system, soft control system, computer-based procedure system, automation system, and communication system. Part III provides guidelines for the review of workstations and workplaces. Part IV provides guidelines for the review of HSI support (*i.e.,* maintainability of digital systems and degraded HSI and instrumentation and control conditions).

Dated at Rockville, Maryland, this 8th day of February 2019.

For the Nuclear Regulatory Commission.

Sean E. Peters,

Branch Chief, Human Factors and Reliability Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 2019–02182 Filed 2–12–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0062]

Information Collection: Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.''

DATES: Submit comments by March 15, 2019.

ADDRESSES: Submit comments directly to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150–0214), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0062 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–2018–0062. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2018–0062 on this website.
- *NRC's Agencywide Documents Access and Management System*

(ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement associated with the Part 37 information collections, burden table, and the NRC Form 755 are available in ADAMS under Accession Nos. ML19011A456, ML19036A793, and ML18295A594.

• *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.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on October 29, 2018 (83 FR 54382).

1. *The title of the information collection:* 10 CFR part 37, ''Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.''
2. *OMB approval number:* 3150–0214.
3. *Type of submission:* Revision.
4. *The form number if applicable:* Not applicable.
5. *How often the collection is required or requested:* One time for initial compliance notifications and fingerprints for the reviewing officials; and as needed for implementation notifications, event notifications, notifications of shipments of radioactive material, and fingerprinting of new employees.
6. *Who will be required or asked to respond:* Licensees that are authorized to possess and use category 1 or category 2 quantities of radioactive material.
7. *The estimated number of annual responses:* 101,479 (4,704 reporting responses + 95,375 third party disclosure responses + 1,400 recordkeepers).
8. *The estimated number of annual respondents:* 5,600.
9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 74,043 hours (1,557 reporting + 48,497 third party disclosure + 23,989 recordkeeping).
10. *Abstract:* Part 37 of title 10 of the Code of Federal Regulations (10 CFR), contains security requirements for the use of category 1 and category 2 quantities of radioactive material. Licensees are required to: (1) Develop procedures for the implementation of the security provisions; (2) develop a security plan that describes how security is being implemented; (3) implement security measures for the protection of the radioactive material; (4) conduct training on the procedures and security plan; (5) conduct background investigations for those individuals permitted unescorted access to category 1 or category 2 quantities of radioactive material; (6) coordinate with Local Law Enforcement Agencies (LLEAs) so the LLEAs would be better prepared to respond in an emergency; and (7) conduct coordination activities before shipping category 2 radioactive material, and preplanning and coordination activities before shipping category 1 radioactive material. Licensees are required to promptly report any attempted or actual theft or diversion of the radioactive material. Licensees are required to keep copies of the security plan, procedures, background investigation records, training records, and documentation associated with implementation of the security program. The NRC uses the information required by 10 CFR part 37 to fulfill its responsibilities to respond to, investigate, and correct situations that have the potential to adversely affect public health and safety or the common defense and security.

Dated at Rockville, Maryland, this 8th day of February 2019.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2019–02197 Filed 2–12–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0036]

Information Collection: NRC Form 313, ''Application for Materials License'' and NRC Forms 313A (RSO), 313A (AMP), 313A (ANP), 313A (AUD), 313A (AUT), and 313A (AUS)

AGENCY: Nuclear Regulatory Commission.

ACTION: Revision of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the revision of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, NRC Form 313, ''Application for Materials License'' and NRC Forms 313A (RSO), 313A (AMP), 313A (ANP), 313A (AUD), 313A (AUT), and 313A (AUS).''

DATES: Submit comments by April 15, 2019. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0036. Address questions about docket IDs in *Regulations.gov* to Krupskaya Castellon; telephone: 301–287–9221; email: *Krupskaya.Castellon@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER**

INFORMATION CONTACT section of this document.

• *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–2 F43, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0036 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–2019–0036.

• *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, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement is available in ADAMS under Accession No. ML18285A311.

• *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.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2019–0036 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 313, ''Application for Materials License'' and NRC Forms 313A (RSO), 313A (AMP), 313A (ANP), 313A (AUD), 313A (AUT), and 313A (AUS).

2. *OMB approval number:* 3150–0120.

3. *Type of submission:* Revision.

4. *The form number, if applicable:* NRC Form 313, ''Application for Materials License'' and NRC Forms 313A (RSO), 313A (AMP), 313A (ANP), 313A (AUD), 313A (AUT), and 313A (AUS).

5. *How often the collection is required or requested:* There is a one-time submittal of the NRC Form 313 (which may include the NRC Form 313A series of forms) with information to receive a license. Once a specific license has been issued, there is a 15-year resubmittal of the NRC Form 313 (which may include the NRC form 313A series of forms) with information for renewal of the license. Amendment requests are submitted as needed by the licensee. There is a one-time submittal for all limited specific medical use applicants of a NRC Form 313A series form to have each new individual identified as a Radiation Safety Officer (RSO) or Associate Radiation Safety Officer (ARSO) [NRC Form 313A (RSO)], authorized medical physicist or ophthalmic physicist [NRC Form 313A (AMP)], authorized nuclear pharmacist [NRC Form 313A (ANP)], or authorized user [NRC Form 313A (AUD), NRC Form 313A (AUS), or NRC Form 313A (AUT)] or a subsequent submittal of additional information for one of these individuals to be identified with a new authorization on a limited specific medical use license.

NRC Form 313A (RSO) is also used by medical broad scope licensees when identifying a new individual as an RSO, a new individual as an ARSO, adding an additional RSO authorization, or adding an additional ARSO authorization for the individual. This submittal may occur when applying for a new license, amendment, or renewal. NRC Form 313A (ANP) is also used by commercial nuclear pharmacy licensees when requesting an individual be identified for the first time as ANP. This submittal may occur when applying for a new license, amendment, or renewal.

6. *Who will be required or asked to respond:* All applicants requesting a license, amendment or renewal of a license for byproduct or source material.

7. *The estimated number of annual responses:* The number of annual respondents: 8,904 (1,049 NRC licensees and 7,231 Agreement State licensees + 624 Third party responses).

8. *The estimated number of annual respondents:* The number of annual respondents: 8,904 (1,049 NRC licensees and 7,231 Agreement State licensees + 624 third party respondents).

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 35,634 (4,510 NRC and 31,093 Agreement State hours + 31 third party hours).

10. *Abstract:* Applicants must submit NRC Form 313, which may include the six forms in the 313A series, to obtain a specific license to possess, use, or distribute byproduct or source material. These six forms in the 313A series are: (1) NRC Form 313A (RSO), ''Radiation Safety Officer or Associate Radiation Safety Officer Training, Experience and Preceptor Attestation [10 CFR 35.57, 35.50]''; (2) NRC Form 313A (AMP), ''Authorized Medical Physicist and Ophthalmic Physicist, Training, Experience and Preceptor Attestation [10 CFR 35.51, 35.57(a)(3), and 35.433''; (3) NRC Form 313A (ANP), ''Authorized Nuclear Pharmacist Training, Experience, and Preceptor Attestation [10 CFR 35.55''; (4) NRC Form 313A

(AUD), ''Authorized User Training, Experience and Preceptor Attestation (for uses defined under 35.100, 35.200, and 35.500) [10 CFR 35.57, 35.190, 35.290, and 35.590''; (5) NRC Form 313A (AUT), ''Authorized User Training, Experience, and Preceptor Attestation (for uses defined under 35.300) [10 CFR 35.57, 35.390, 35.392, 35.394, and 35.396]''; and (6) NRC Form 313A (AUS), ''Authorized User Training, Experience and Preceptor Attestation (for uses defined under 35.400 and 35.600) [10 CFR 35.57, 35.490, 35.491, and 35.690].'' The NRC Form 313A series of forms requires preceptor attestations for certain individuals. The preceptor attestation is provided by a third party and not an applicant or licensee. The information is reviewed by the NRC to determine whether the applicant is qualified by training and experience, and has equipment, facilities, and procedures which are adequate to protect the public health and safety and minimize danger to life or property.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 8th day of February 2019.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2019–02198 Filed 2–12–19; 8:45 am]

BILLING CODE 7590–01–P

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

[Notice–PCLOB–2019–01; Docket No. PCLOB–2019–0001; Sequence No. 1]

Public Forum

AGENCY: Privacy and Civil Liberties Oversight Board.

ACTION: Notice of public forum; request for public comment.

SUMMARY: The Privacy and Civil Liberties Oversight Board will conduct a public forum entitled ''Countering Terrorism while Protecting Privacy and Civil Liberties: Where do We Stand in 2019.'' During the forum, Board Members will hear from governmental and non-governmental experts on privacy and civil liberties and on efforts to protect the nation against terrorism. Members of the public in attendance will have an opportunity to ask questions of the expert presenters.

DATES: The forum will be held on Friday, February 8, 2019, from 10:00 a.m. to 12:00 p.m. (Eastern Standard Time. Please submit comments on or before March 8, 2019.

EVENT LOCATION: Ronald Reagan Building, Hemisphere Room, 1300 Pennsylvania Ave. NW, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Jen Burita, Public Affairs/Legislative Affairs Officer, 202–331–1986.

SUPPLEMENTARY INFORMATION:

Doors open at 9:30 a.m. The forum will begin promptly at 10:00 a.m.

Participant List

The Board will hear from these experts:

- Alexander Joel—Chief, Office of Civil Liberties, Privacy and Transparency, Office of the Director of National Intelligence
- Chris Calabrese—Vice President, Policy, Center for Democracy & Technology
- Carrie Cordero—Senior Fellow and General Counsel, Center for a New American Security
- Alex Abdo—Senior Staff Attorney, Knight First Amendment Institute at Columbia University
- Jason Matheny—Commissioner on the National Security Commission on Artificial Intelligence (AI) and former Director of the Intelligence Advanced Research Projects Activity (IARPA) for the Office of the Director of National Intelligence.

Procedures for Public Observation

The event is open to the public. Pre-registration is not required. Members of the public will have an opportunity to offer comments and pose questions to the panelists.

Individuals who plan to attend and require special assistance should contact Jen Burita, Public Affairs/Legislative Affairs Officer, 202–331–1986, at least 72 hours prior to the event.

Public Comments

The Privacy and Civil Liberties Oversight Board invites written comments of interested persons regarding privacy in the counterterrorism context. You may submit comments with the docket number PCLOB–2019–01 by the following method:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Please search by 'Notice PCLOB–2019–01' and follow the on-line instructions for submitting comments.
- Written comments may be submitted at any time prior to the closing of the docket at 11:59 p.m., EST, on March 8, 2019.

All comments will be made publicly available and posted without charge. Do not include personal or confidential information.

Dated: January 31, 2019.

Eric Broxmeyer,

General Counsel, Privacy and Civil Liberties Oversight Board.

[FR Doc. 2019–02204 Filed 2–12–19; 8:45 am]

BILLING CODE 6820–B5–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33371; File No. 812–14985]

Victory Capital Management Inc., et al.

February 8, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management

investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; and (f) certain Funds (''Feeder Funds'') to create and redeem Creation Units in-kind in a master-feeder structure.

APPLICANTS: Victory Portfolios II (the ''Trust''), a Delaware statutory trust that is registered under the Act as an open-end management investment company with multiple series, Victory Capital Management Inc. (the ''Initial Adviser''), a New York corporation that is registered as an investment adviser under the Investment Advisers Act of 1940, and Foreside Fund Services LLC (the ''Initial Distributor''), a Delaware limited liability company and broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'').

FILING DATES: The application was filed on December 7, 2018, and amended on February 1, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 5, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: c/o James G. Silk, Willkie Farr & Gallagher LLP, 1875 K Street, NW, Washington, DC 20006 and Jay G. Baris, Shearman & Sterling LLP, 599 Lexington Ave., New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551–6915, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant,'' which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions (''Portfolio Instruments''). Each Fund will disclose on its website the identities and quantities of the Portfolio Instruments that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Instruments and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

[1] Applicants request that the order apply to the initial Funds, as well as to future series of the Trust and any existing or future open-end management investment companies or series thereof (each, included in the term ''Fund''), each of which will operate as an actively-managed ETF, and their respective existing or future Master Funds. Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity and any successor thereto, an ''Adviser'') and (b) comply with the terms and conditions of the application. For purposes of the requested order, a ''successor'' is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second-Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[2] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02189 Filed 2–12–19; 8:45 am]

BILLING CODE 8011–01–P

[2] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85072; File No. SR–ICEEU–2019–001]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Clearing Member Termination

February 7, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2019, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which Items have been prepared by ICE Clear Europe. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe proposes to amend certain provisions of its Clearing Rules[3] relating to termination by the Clearing House of the membership of a CDS Clearing Member.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules (the ''Rules'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe proposes to amend certain provisions of its Rules (and specifically its Continuing CDS Rule Provisions as defined therein) relating to termination by the Clearing House of the membership of a CDS Clearing Member.

The Continuing CDS Rule Provisions are certain provisions of the Rules as they were in effect prior to the adoption of rule amendments relating to recovery, wind-down and default management for the F&O Contract Category,[4] and which continued in effect with respect to the CDS Contract Category, as provided in ICE Clear Europe Circular C14/012 of 31 January 2014 and in the definition thereof in the Rules.

The Continuing CDS Rule Provisions include Rule 209 as it relates to the CDS Contract Category and/or CDS Clearing Members. Under Rule 209(b) under the Continuing CDS Rule Provisions, the Clearing House may terminate the clearing membership of a CDS Clearing Member on not less than three months' notice.[5] ICE Clear Europe proposes to change the notice period for such a termination to 30 Business Days. Such change would be made through an amendment to the definition of

[4] ICE Clear Europe adopted these rules, relating to Clearing House recovery and wind-down for the F&O and FX Contract Categories, in 2014. Exchange Act Release No. 34–71450 (SR–ICEEU–2014–013) (Jan. 31, 2014), 79 FR 7250 (Feb. 6, 2014).

[5] ICE Clear Europe may use this provision to terminate the membership of a Clearing Member for a variety of reasons. It may, for example, be used in a scenario where such termination is required in order for the Clearing House and its operations to remain in compliance with applicable laws in relevant jurisdictions.

The Clearing House has the right to terminate a CDS Clearing Member without notice in a variety of other circumstances, generally relating to the conduct or circumstances of the Clearing Member, as specified in Rule 209(a) of the Continuing CDS Rule Provisions. Those provisions would be unaffected by the proposed amendment.

''Continuing CDS Rule Provisions'' in the Rules, as set forth in Exhibit 5.

The change would make the notice period for termination of a CDS Clearing Member consistent with the notice period for termination of an F&O Clearing Member, which is also 30 Business Days under the Rules. The current difference in treatment exists for historical reasons relating the timing of the adoption of recovery, wind-down and default management related rules for the F&O product category as compared to the CDS product category. At this time, ICE Clear Europe does not believe that there is a substantive reason to have a different notice period for CDS Clearing Members. Furthermore, the current provision creates a disparity among F&O Clearing Members, as the three-month notice period also applies to F&O Clearing Members that are also CDS Clearing Members, whereas the 30 Business Day notice period applies to F&O Clearing Members that are not CDS Clearing Members.

In particular, in a scenario where ICE Clear Europe determined that it was necessary or appropriate to terminate the membership of a Clearing Member or a group or category of Clearing Members, ICE Clear Europe believes that having the shorter, 30 Business Day notice period apply to all Clearing Members, both CDS and F&O (including joint CDS and F&O Clearing Members), will avoid the additional disruption that would be caused by having different notice periods for different categories of Clearing Member.

ICE Clear Europe is proposing to adopt the amendment now in connection with the expected departure of the United Kingdom (''UK'') from the European Union (''EU''), which pursuant to the European Union (Withdrawal) Act 2018 will occur on March 29, 2019. When the UK ceases to be an EU member state, there may be regulatory limitations on ICE Clear Europe's ability to provide clearing services to persons located in the EU. As a result, it may become necessary for ICE Clear Europe to terminate the membership of a Clearing Member or a group or category of Clearing Members in advance of March 29, 2019 in order for the Clearing House to remain in compliance with applicable laws in all relevant jurisdictions. Failure to terminate EU-based Clearing Members in that scenario, in an orderly and timely way, could, among other consequences, result in legal uncertainty as to the rights and obligations of the Clearing House and its Clearing Members, and thus cause potential disruptions to clearing operations generally, including for clearing members in non-EU jurisdictions.

(b) Statutory Basis

ICE Clear Europe believes that the changes described herein are consistent with the requirements of Section 17A of the Act [6] and the regulations thereunder applicable to it. Section 17A(b)(3)(F) of the Act [7] in particular requires, among other things, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts and transactions, to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible and, in general, protect investors and the public interest. When the UK ceases to be an EU member state, there may be limitations on ICE Clear Europe's ability to provide clearing services to persons located in the EU. As a result, it may become necessary for ICE Clear Europe to terminate the membership of a Clearing Member or a group or category of Clearing Members in order to remain in compliance with applicable laws and to avoid resulting legal uncertainty and related potential disruptions to the functioning of the Clearing House, including with respect to default management, use and protection of margin and guaranty fund contributions and other matters. As a result, in ICE Clear Europe's view, the amendments will facilitate the continued prompt and accurate clearance and settlement of cleared transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[8]

Section 17A(b)(3)(F) further requires that the rules of the clearing agency not be designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency.[9] The proposed amendments eliminate an unnecessary distinction between the termination notice period for CDS Clearing Members and F&O Clearing Members. In so doing, the amendments will also better enable the Clearing House to manage any scenario in which it may determine to terminate Clearing Members (or a category of Clearing Members), in response to the UK's expected departure from the EU and the resulting potential limitations on ICE Clear Europe's ability to provide clearing services to persons located in the EU. As a result, in ICE Clear Europe's view, the amendments will facilitate the continued prompt and accurate clearance and settlement of cleared transactions and will avoid unfair discrimination among Clearing Members, within the meaning of Section 17A(b)(3)(F).[10]

The amendments are also consistent with Rule 17Ad–22(e)(1), which requires in relevant part that a covered clearing agency have policies and procedures reasonably designed to ''provide for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.'' [11] As noted above, the amendments will permit the Clearing House to terminate the membership of CDS Clearing Members, on the same basis as F&O Clearing Members, where the Clearing House determines it is necessary or appropriate to do so in order to remain in compliance with applicable laws in all relevant jurisdictions.

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The amendments will provide for a uniform notice period for termination of Clearing Members, across the F&O and CDS product categories. As such, ICE Clear Europe does not believe the amendments will in themselves materially affect the cost of, or access to, clearing. Although the market for cleared services may be adversely affected if ICE Clear Europe terminates the membership of Clearing Members or categories of Clearing Members, the amendments will, in ICE Clear Europe's view, assist with Clearing House with mitigating and managing any such adverse consequences. As a result, ICE Clear Europe does not believe the proposed rule changes impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule changes have not been

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 17 CFR 240.17Ad–22(e)(1).

solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.[12]

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2019–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2019–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2019–001 and should be submitted on or before March 6, 2019.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[13] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[14] and Rule 17Ad–22(e)(1) thereunder.[15]

(A) Consistency with Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible, and, in general, to protect investors and the public interest.[16]

As discussed above, when the UK withdraws from the EU on March 29, 2019, ICE Clear Europe believes that, in certain circumstances, there may be regulatory limitations on its ability to provide clearing services to persons located in the EU. As a result, ICE Clear Europe believes it may become necessary to terminate the membership of Clearing Members located in the EU in advance of March 29, 2019 to remain in compliance with applicable EU law. In that event, the Commission believes the proposed rule change would allow ICE Clear Europe to terminate the membership of such Clearing Members. As discussed above, Rule 209 of the Continuing CDS Rule Provisions currently provides CDS Clearing Members with three months' notice before ICE Clear Europe may terminate their membership (as opposed to 30 business days for F&O Clearing Members). If, as a result of the UK ceasing to be an EU member state on March 29, 2019, it becomes unlawful under applicable law for ICE Clear Europe to continue providing clearing services to persons located in the EU, under current Rule 209 ICE Clear Europe would not be able to terminate the membership of such Clearing Members because the deadline for providing three months' notice in advance of March 29, 2019 has already passed. By changing the notice required for termination of CDS Clearing Members from three months to thirty business days, consistent with the existing notice period for F&O Clearing Members, the Commission believes that the proposed rule change would allow ICE Clear Europe to terminate the membership of CDS Clearing Members if it determines that doing so is necessary to avoid providing clearing services to persons located in the EU without legal authorization.

The Commission further understands that, in the event that it becomes unlawful for ICE Clear Europe to provide clearing services for persons located in the EU as a result of the UK withdrawing from the EU, ICE Clear Europe could incur legal liability, and its personnel could incur personal legal liability. Potential sanctions for such legal liability could include, among other penalties, monetary penalties and fines, potentially putting at risk funds which are in the custody or control of ICE Clear Europe or for which it is responsible. Moreover, providing clearing services to persons located in the EU without legal authorization could potentially put at risk ICE Clear Europe's ability to safeguard securities and funds held on behalf of such persons by negating the legal basis for holding such securities and funds. Thus, by allowing ICE Clear Europe to terminate the membership of CDS Clearing Members located in the EU if necessary to avoid providing clearing services to such Clearing Members in contravention of applicable law after March 29, 2019, the Commission believes that the proposed rule change would help assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible.

Conversely, the Commission believes that, to help mitigate potential disruption to the CDS markets that could result from the termination of the membership of EU-based CDS Clearing Members, it would be beneficial for ICE Clear Europe to have (i) sufficient time prior to March 29, 2019 to determine

[12] ICE Clear Europe has previously conducted public consultations with respect to proposed rule changes (not ultimately adopted) that included the change in termination notice period addressed in these amendments. See ICE Clear Europe Circular C17107 (Sept. 22, 2017) and C13009 (Feb. 15, 2013), available at *https://www.theice.com/clear-europe/circulars.* No comments were received in those consultations with respect to that proposed change.

[13] 15 U.S.C. 78s(b)(2)(C).

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 17 CFR 240.17Ad–22(e)(1).

[16] 15 U.S.C. 78q–1(b)(3)(F).

whether it will be able to provide clearing services to persons located in the EU after the UK's withdrawal from the EU without violating applicable law, and (ii) Rules that provide it with sufficient flexibility to avoid prematurely terminating the membership of EU-based CDS Clearing Members in the event that it makes such a determination. Under the current Rule requiring three months' notice ICE Clear Europe cannot terminate the membership of EU-based CDS Clearing Members prior to March 29, 2019. The Commission believes that, by aligning the termination notice period for CDS Clearing Members with the thirty business days' notice period for F&O Clearing Members, the proposed rule change would allow ICE Clear Europe additional time to determine whether it will be able to provide clearing services to persons located in the EU after the UK's withdrawal from the EU without violating applicable law and, if no such determination is made, still provide ICE Clear Europe sufficient time to provide notice of termination of membership to EU-based CDS Clearing Members prior to March 29, 2019. In allowing ICE Clear Europe to avoid prematurely or unnecessarily terminating the membership of EU-based CDS Clearing Members, the Commission believes that the proposed rule change would help ICE Clear Europe avoid the potential disruptions that could result from Clearing Members in the EU no longer being able to clear at ICE Clear Europe. For example, if a Clearing Member in the EU is not able to clear CDS contracts at ICE Clear Europe and is unable to either reduce its positions or transfer them to an alternative clearing house, then the Clearing Member may need to cease entering into CDS contracts with its clients. Such a potential disruption to the clearing of CDS contracts could negatively affect the prompt and accurate clearance and settlement of such contracts, and, in general, the protection of investors and the public interest.

Section 17A(b)(3)(F) further requires that the rules of ICE Clear Europe not be designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency.[17] As discussed above, the proposed rule change would resolve a disparity in ICE Clear Europe's rules. Under the current rules, Clearing Members that only clear F&O products are provided thirty business days' notice before ICE Clear Europe may terminate their membership, while Clearing Members that clear CDS contracts (including those that also clear F&O products) are provided three months' notice. The Commission understands that, as ICE Clear Europe explains above, this disparity is the result of ICE Clear Europe adopting recovery, wind-down and default management rules with respect to the F&O product category but not yet adopting similar rules with respect to the CDS product category. Further, the Commission agrees with ICE Clear Europe that there is no substantive reason for this difference in notice periods and that allowing it to continue could result in unfair discrimination between those Clearing Members that only clear F&O products and those Clearing Members that also clear CDS contracts. The Commission finds that the proposed rule change would resolve this disparity and help avoid potential unfair discrimination between F&O Clearing Members and CDS Clearing Members.

For these reasons, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Exchange Act.[18]

(B) Consistency With Rule 17Ad–22(e)(1)

Rule 17Ad–22(e)(1) requires that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[19]

As discussed above, ICE Clear Europe believes that, in certain circumstances, it could become unlawful under applicable law to continue providing clearing services to EU-based Clearing Members after the UK's withdrawal from the EU on March 29, 2019. In that event, ICE Clear Europe may determine that it must terminate the membership of such Clearing Members prior to that date in order to remain in compliance with applicable law. However, because Rule 209 of the Continuing CDS Rule Provisions currently provides CDS Clearing Members with three months' notice before ICE Clear Europe may terminate their membership, ICE Clear Europe would not be able to terminate the membership of EU-based CDS Clearing Members by March 29, 2019 because the deadline for providing notice by that time has already passed. The Commission believes that the proposed rule change would remedy this issue by permitting ICE Clear Europe to provide thirty business days' notice rather than three months, which would be consistent with the current notice requirement for F&O Clearing Members and allow ICE Clear Europe sufficient time to determine whether it must terminate the membership of EU-based Clearing Members and, if such a determination is made, provide the required notice. At the same time, if ICE Clear Europe determines that it continues to be able to comply with applicable laws and still provide clearing services to EU-based Clearing Members after March 29, 2019, the proposed rule change would allow ICE Clear Europe to avoid prematurely terminating the membership of such Clearing Members. Thus, by permitting ICE Clear Europe to remain in compliance with applicable law and with its own Rules, and by providing ICE Clear Europe sufficient time to determine whether it must terminate the membership of EU-based CDS Clearing Members to remain in compliance with applicable law, the Commission believes that the proposed rule change would allow ICE Clear Europe to provide for a well-founded, clear, transparent, and enforceable legal basis for its clearing services as required by Rule 17Ad–22(e)(1).

For these reasons, the Commissions finds that the proposed rule change is consistent with Rule 17Ad–22(e)(1).[20]

(C) Accelerated Approval of the Proposed Rule Change

In its filing, ICE Clear Europe requests that the Commission grant accelerated approval of the proposed rule change pursuant to Section 19(b)(2)(C)(iii) of the Exchange Act.[21] Under Section 19(b)(2)(C)(iii) of the Act,[22] the Commission may grant accelerated approval of a proposed rule change if the Commission finds good cause for doing so. ICE Clear Europe believes that accelerated approval is warranted because, in the event that ICE Clear Europe determines that it must terminate the membership of EU-based Clearing Members to remain in compliance with applicable law following the UK's withdrawal from the EU on March 29, 2019, the thirty business day notice period that would be afforded by the proposed rule change is necessary to provide ICE Clear Europe with sufficient time prior to that date to provide such Clearing Members with the required notice of termination.

The Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] 17 CFR 240.17Ad–22(e)(1).

[20] 17 CFR 240.17Ad–22(e)(1).

[21] 15 U.S.C. 78s(b)(2)(C)(iii).

[22] *Id.*

the Act,[23] for approving the proposed rule change on an accelerated basis, prior to the 30th day after the date of publication of notice in the **Federal Register**, because the proposed rule change is required to permit ICE Clear Europe to terminate the membership of EU-based CDS Clearing Members prior to the UK's withdrawal from the EU on March 29, 2019 should ICE Clear Europe determine that such termination is necessary to remain in compliance with applicable law after that date. Additionally, the Commission notes that the proposed rule change would help ICE Clear Europe to avoid prematurely terminating the membership of EU-based CDS Clearing Members in the event that ICE Clear Europe determines that it can continue to provide clearing services to such members after March 29, 2019 while remaining in compliance with applicable law.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A(b)(3)(F) of the Act [24] and the Rule 17Ad–22(e)(1) [25] thereunder.

It is therefore ordered pursuant to Section 19(b)(2) of the Act [26] that the proposed rule change (SR–ICEEU–2019–001) be, and hereby is, approved on an accelerated basis.[27]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02114 Filed 2–12–19; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(2)(C)(iii).

[24] 15 U.S.C. 78q–1(b)(3)(F).

[25] 17 CFR 240.17Ad–22(e)(1).

[26] 15 U.S.C. 78s(b)(2).

[27] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85073; File No. SR–FINRA–2019–003]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to FINRA Rule 6750 (Dissemination of Transaction Information)

February 7, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2019, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6750 to provide that FINRA may publish or distribute aggregated transaction information and statistics on non-disseminated TRACE-Eligible Securities at no charge.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 6750 (Dissemination of Transaction Information) (the ''Rule'') generally provides for the dissemination of information on all transactions in TRACE-Eligible Securities [3] immediately upon receipt of the transaction report,[4] except as set forth in the Rule. Rule 6750(c) (Transaction Information Not Disseminated) specifies the circumstances under which FINRA will not disseminate information on a transaction in a TRACE-Eligible Security—*i.e.,* non-member affiliate trades; certain transfers of proprietary interests; List or Fixed Offering Price or Takedown Transactions; [5] certain Securitized Products; [6] and U.S. Treasury Securities.[7]

FINRA currently offers a number of real-time and historic TRACE data products on disseminated transactions for a fee.[8] FINRA also publishes and distributes aggregated transaction information and statistics on disseminated transactions at no charge. FINRA proposes to amend the Rule to include supplementary material to clarify that, notwithstanding Rule 6750(c), FINRA may, in its discretion, publish or distribute aggregated transaction information and statistics on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 6710 generally defines a ''TRACE-Eligible Security'' as: A debt security that is United States (''U.S.'') dollar-denominated and is: (1) Issued by a U.S. or foreign private issuer, and, if a ''restricted security'' as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A; (2) issued or guaranteed by an Agency as defined in Rule 6710(k) or a Government-Sponsored Enterprise as defined in Rule 6710(n); or (3) a U.S. Treasury Security as defined in Rule 6710(p). ''TRACE-Eligible Security'' does not include a debt security that is issued by a foreign sovereign or a Money Market Instrument as defined in Rule 6710(o).

[4] FINRA generally requires members to report transactions in any security that meets the definition of ''TRACE-Eligible Security'' to the Trade Reporting and Compliance Engine (''TRACE''), unless an exception applies. *See* Rule 6730 (Transaction Reporting).

[5] List or Fixed Offering Price or Takedown Transactions are primary market sale transactions on the first day of trading, as set forth in Rule 6710(q) or 6710(r). Such transactions exclude all Securitized Products (as defined in Rule 6710(m) except Asset-Backed Securities (as defined in Rule 6710(cc)). *See* Rules 6710(q) and 6710(r).

[6] Specifically, FINRA does not disseminate information on transactions in collateralized mortgage-backed securities (''CMBSs'') and collateralized debt obligations (''CDOs''). FINRA may disseminate information on transactions in collateralized mortgage obligations (''CMOs'') depending on the transaction size and level of trading activity in the CMO. *See* Rule 6750(b).

[7] ''U.S. Treasury Security'' means a security, other than a savings bond, issued by the U.S. Department of the Treasury to fund the operations of the federal government or to retire such outstanding securities. The term also includes separate principal and interest components of a U.S. Treasury Security that has been separated pursuant to the Separate Trading of Registered Interest and Principal of Securities (STRIPS) program operated by the U.S. Department of Treasury. *See* Rule 6710(p).

[8] *See* Rule 7730 (Trade Reporting and Compliance Engine (TRACE)).

TRACE-Eligible Securities that are not subject to dissemination, other than U.S. Treasury Securities, at no charge (unless FINRA submits a rule filing imposing a fee for such data). For example, FINRA may publish aggregated transaction information and statistics on trades in CMBSs and CDOs, including data on aggregate daily volume, aggregate daily number of trades, and average price information, and such information may be grouped within customer buy, customer sell, dealer-to-dealer, year of issuance, investment rating, or other categories. Under the proposal, FINRA would not identify individual market participants or transactions. In addition, FINRA would not publish aggregated transaction information and statistics by individual securities. The proposed rule change would not apply to U.S. Treasury Securities. FINRA believes that the proposed rule change will benefit investors and market participants by providing additional information on TRACE Eligible-Securities at no cost, while maintaining the confidentiality of individual market participants and transactions.

If the Commission approves the proposed rule change, the effective date of the proposed rule change will be the date of Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(9) of the Act,[10] which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

FINRA believes that the proposed rule change will promote greater transparency for TRACE-Eligible Securities. FINRA believes the proposal strikes an appropriate balance between providing insightful information on TRACE-Eligible Securities at no charge while preserving the confidentiality of individual market participant identities and transactions. Accordingly, FINRA believes the proposal is in the public interest and will help promote transparency.

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78*o*–3(b)(9).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Since the proposed amendment clarifies FINRA's discretion in publishing or distributing aggregated transaction information and statistics on TRACE-Eligible Securities, FINRA believes that there are no direct or indirect impacts on member firms and investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2019–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2019–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2019–003, and should be submitted on or before March 6, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02116 Filed 2–12–19; 8:45 am]

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85071; File No. SR–NYSE–2019–01]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31 Relating to the Minimum Trade Size Modifier

February 7, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 28, 2019, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31 relating to the Minimum Trade Size Modifier. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.31 relating to the Minimum Trade Size (''MTS'') Modifier. Specifically, the Exchange proposes to make the MTS Modifier available for Non-Displayed Limit Orders [4] and Non-Displayed Primary Pegged Orders.[5] The Exchange also proposes to provide additional optionality for member organizations using the MTS Modifier with Limit IOC Orders, Non-Displayed Limit Orders, and Mid-Point Liquidity (''MPL'') Orders. As proposed, member organizations could choose how such orders would trade on arrival to trade either with (i) orders that in the aggregate meet the MTS (current functionality), or (ii) individual orders that each meet the MTS (proposed functionality).

The MTS Modifier is currently available for Limit IOC Orders [6] and MPL Orders.[7] As such, the MTS Modifier is currently available only for orders that are not displayed and do not route. On arrival, both Limit IOC Orders and MPL Orders with an MTS Modifier will trade against contra-side orders in the Exchange Book that in the aggregate, meet the MTS. Once resting, MPL Orders with an MTS Modifier function similarly: If a contra-side order does not meet the MTS, the incoming order will not trade with and may trade through the resting order with the MTS Modifier. In addition, MPL Orders with an MTS Modifier will be cancelled if such orders are traded in part or reduced in size and the remaining quantity is less than the MTS.

The Exchange proposes to amend its rules to make MTS Modifier functionality available for two additional non-displayed orders that do not route, *i.e.,* Non-Displayed Limit Orders and Non-Displayed Primary Pegged Orders.[8]

The Exchange also proposes to add an option that an order with an MTS Modifier would trade on entry only with individual orders that each meet the MTS. This proposed change is based on the rules of its affiliate, NYSE American LLC (''NYSE American''), which offers the option for orders with an MTS to trade on entry only with individual orders that each meet the MTS of the incoming order.[9] Both of these proposed changes are also based on the rules of the Nasdaq Stock Market LLC (''Nasdaq'') and Investors Exchange LLC (''IEX''), which both offer minimum trade size functionality for orders that are not displayed and that do not route.[10] Nasdaq and IEX, as well as Cboe BYX Exchange, Inc. (''BYX''), Cboe BZX Exchange, Inc. (''BZX''), Cboe EDGA Exchange, Inc. (''EDGA''), and Cboe EDGX Exchange, Inc. (''EDGX'', together with BYX, BZX, and EDGA, the ''Cboe Equity Exchanges''), also all offer the option for orders with a minimum trade size to trade on entry only with individual orders that each meet the minimum trade size condition of the incoming order.[11]

Rule 7.31(i)(3) currently states that on arrival, an order to buy (sell) with an MTS Modifier will trade with sell (buy) orders in the Exchange Book that in the aggregate meet such order's MTS. As amended, Rule 7.31(i)(3)(B) would now require a member organization to specify one of the following instructions with respect to how an order with an MTS Modifier would trade on arrival (new text underlined):

[4] *See* Rule 7.31(d)(2). In sum, a Non-Displayed Limit Order is a Limit Order that is not displayed and does not route. *Id.*

[5] *See* Rule 7.31(h)(4). In sum, A Non-Displayed Primary Pegged Order is a Pegged Order to buy (sell) with a working price that is pegged to the PBB (PBO), with no offset allowed, that is not displayed and does not route. *Id.*

[6] *See* Rule 7.31(b)(2)(A). In sum, a Limit Order designated IOC is to be traded in whole or in part on the Exchange as soon as such order is received, and the quantity not so traded is cancelled. *Id.*

[7] *See* Rule 7.31(d)(3). In sum, an MPL Order is a ''Limit Order that is not displayed and does not route, with a working price at the midpoint of the PBBO.'' *Id.*

[8] The Exchange also proposes to make related changes to paragraph (F) of Rule 7.31(i)(3) and Rule 7.37 to refer to orders with an MTS Modifier generally to accommodate the additional order types that may include an MTS Modifier.

[9] *See* NYSE American Rule 7.31E(i)(3)(B). *See also* Securities Exchange Act Release No. 81672 (September 21, 2017), 82 FR 45099 (September 27, 2017) (SR–NYSEAMER–2017–17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 7.31E Relating to the Minimum Trade Size Modifier for Additional Order Types and Expanding the Minimum Trade Size Modifier for Existing Order Types). The Exchange understands that NYSE American as well as its other affiliated exchanges, NYSE Arca, Inc. (''NYSE Arca''), and NYSE National, Inc. (''NYSE National'', together with the Exchange and NYSE Arca, the ''Affiliate SROs'') intend to file similar proposed rule changes with the Commission to extend the availability of their respective MTS Modifiers to Non-Displayed Limit Orders.

[10] *See* Nasdaq Rule 4703(e) (Nasdaq's ''Minimum Quantity Order'' may not be displayed and will be rejected if it includes an instruction to route) and IEX Rule 11.190(b)(11)(A) (IEX's ''Minimum Quantity Order'' or ''MQTY'' is a non-displayed, non-routable order'').

[11] *See* Nasdaq Rule 4703(e) (Nasdaq's ''Minimum Quantity'' order attribute allows for a Nasdaq participant to specify one of two alternatives to how a Minimum Quantity Order would be processed at the time of entry, one of which is that ''the minimum quantity condition must be satisfied by execution against one or more orders, each of which must have a size that satisfies the minimum quantity condition'') and IEX Rule 11.190(b)(11)(G)(iii)(B) (On arrival, IEX's ''Minimum Execution Size with All-or-None Remaining'' qualifier for IEX's MQTY executes against each willing resting order in priority, provided that each individual execution size meets its effective minimum quantity.) *See also* BYX Rule 11.9(c)(5); BZX Rule 11.9(c)(5); EDGA Rule 11.6(h); *and* EDGX Rule 11.6(h) (The Cboe Equity Exchanges each allow a User to alternatively specify the order not execute against multiple aggregated orders simultaneously and that the minimum quantity condition be satisfied by each individual order resting on the book.)

(i) An order to buy (sell) with an MTS Modifier will trade with sell (buy) orders in the Exchange Book that in the aggregate meet such order's MTS[.]; or

(ii) An order to buy (sell) with an MTS Modifier will trade with individual sell (buy) order(s) in the Exchange Book that each meets such order's MTS as provided for in paragraph (i)(3)(F)(ii) of this Rule.

Proposed paragraph (i)(3)(B)(ii) is new and reflects the Exchange's proposal to add an alternative to how an order with an MTS Modifier would trade on arrival. An order with an MTS Modifier that is to trade upon entry only with individual orders that each meet the MTS would execute against resting orders in accordance with Rules 7.31(i)(3)(F)(i) and 7.36, Order Ranking and Display, until it reaches an order that does not satisfy the MTS, at which point it would be posted or cancelled in accordance with the terms of the order. This proposed rule text is also based on NYSE American Rule 7.31E(i)(3)(B).[12] Proposed Exchange Rule 7.31(i)(3)(B)(i) would describe the existing functionality as one of the instructions that would be available to member organizations.

As discussed above, the addition of this instruction for how orders with an MTS Modifier would trade on entry is based on the rules of NYSE American, Nasdaq, IEX, and the Cboe Equity Exchanges.[13]

For parity allocation purposes, the Exchange proposes to treat an order with an MTS Modifier that is to execute on entry only with individual orders that each meet the MTS the same as a resting order with an MTS Modifier that becomes an Aggressing Order. Rule 7.31(i)(3)(F)(ii) sets forth how a resting order to buy (sell) with an MTS that becomes an Aggressing Order trades with sell (buy) orders in a priority category that allocates orders on parity. Because in a parity allocation model, more than one contra-side resting order may participate in an allocation, the Aggressing Order to buy (sell) with an MTS Modifier does not trade with any contra-side orders if at least one sell (buy) order that would have been considered for allocation does not meet the MTS. The Exchange proposes that this allocation logic would be applicable both when an order is resting and becomes an Aggressing Order (current functionality) or when an order is designated to execute on entry only with individual orders that each meet the MTS (proposed functionality). In such scenario, if the arriving order cannot trade, it would be ranked on the Exchange Book.

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date of this proposed rule change by Trader Update. The Exchange anticipates that the implementation date will be in the first quarter of 2019.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[14] in general, and furthers the objectives of Section 6(b)(5),[15] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposal to expand the availability of the Exchange's existing MTS Modifier to two additional non-displayed, non-routable orders, *e.g.,* Non-Displayed Limit Orders and Non-Displayed Primary Pegged Orders, would remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest, because the proposed rule change is based on similar minimum trade size functionality on Nasdaq and IEX, which both similarly make minimum trade size functionality available to non-displayed, non-routable orders.[16]

The Exchange also believes that the proposal would remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest because it would provide member organizations with the option for orders with a MTS Modifier to trade on entry only with individual orders that each meets the MTS of the incoming order, thereby providing member organizations with more control in how such orders could execute. The proposed rule change is based on similar options available for users of minimum trade size functionality on the Exchange's affiliate, NYSE American, as well as Nasdaq, IEX, and the Cboe Equity Exchanges.[17] The Exchange further believes that this proposed option would remove impediments to, and perfect the mechanism of, a free and open market and a national market system because it would allow member organizations to provide an instruction that an order with an MTS Modifier would not trade with orders that are smaller in size than the MTS for such order, thereby providing member organizations with more control over when an order with an MTS Modifier may be executed.

The Exchange believes that if a member organization designates an order with an MTS Modifier, that member organization has instructed the Exchange not to trade that order with contra-side orders that are smaller in size than the MTS. Because in a parity allocation, resting orders are allocated based on their position on an allocation wheel, it would be consistent with the incoming order's instruction and current functionality for resting orders with an MTS that become an Aggressing Order not to trade at all rather than to trade with even one order in the parity allocation that that does not meet the MTS.

[12] *See supra* note 9.

[13] *See supra* notes 9 and 11.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *See supra* note 10.

[17] *See supra* notes 9 and 11.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change is designed to increase competition by making available on the Exchange functionality that is already available on Nasdaq, IEX, and the Cboe Equity Exchanges. The Exchange also believes that the proposed rule change would promote competition by providing market participants with an additional venue to which to route non-displayed, non-routable orders with an MTS Modifier.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[20]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [21] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2019–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2019–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2019–01 and should be submitted on or before March 6, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02115 Filed 2–12–19; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 10669]

30-Day Notice of Proposed Information Collection: Statement of Registration

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to March 15, 2019.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Andrea Battista, who may be reached on 202–663–3136 or at *battistaal@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Statement of Registration.
- *OMB Control Number:* 1405–0002.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Directorate of Defense Trade Controls (DDTC).

• *Form Number:* DS–2032.
• *Respondents:* Respondents are any person/s who engages in the United States in the business of manufacturing or exporting or temporarily importing defense articles.
• *Estimated Number of Respondents:* 14,800.
• *Estimated Number of Responses:* 15,540.
• *Average Time per Response:* 1 hour to complete the registration; 5 minutes to amend the form as necessary.
• *Total Estimated Burden Time:* 14,862 hours.
• *Frequency:* Annually, with amendments as necessary.
• *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:
• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Pursuant to Part 122 of the International Traffic in Arms Regulation (ITAR), and section 38 of the Arms Export Control Act, 22 U.S.C. 2778, any person who engages in the United States in the business of manufacturing or exporting or temporarily importing defense articles or furnishing defense services is required to register with the Department of State, Directorate of Defense Trade Controls (DDTC). Pursuant to Part 129 of the ITAR, any U.S. person wherever located, and any foreign person located in the United States or otherwise subject to the jurisdiction of the United States, who engages in the business of brokering activities, is required to register with DDTC. DDTC uses the information provided by registrants to meet the mandates described in Part 122 and Part 129 of the ITAR. As appropriate, such information may be shared with other U.S. Government entities. This information is currently used in the review and action on registration requests and to ensure compliance with defense trade laws and regulations.

Methodology

Statement of Registration submissions are made via a completed DS–2032 which may be accessed from DDTC's website and submitted electronically.

Response to Public Comment

DDTC received a single response removal of home address and Social Security Number (SSN) for members of the applicant's board of directors, senior officers, partners and owners from the information collection. DDTC has reevaluated the need to collect home address and SSN for these individuals and determined the home address and SSN fields will be removed from the information collection (Block 6 of the DS–2032). The same commenting party recommended updating or removing payment information from the information collection. DDTC notes that the payment information was previously removed from the information collection under a previous OMB review and approval.

Anthony M. Dearth,
Chief of Staff, Directorate of Defense Trade Controls, U.S. Department of State.

[FR Doc. 2019–02096 Filed 2–12–19; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 10674]

Culturally Significant Object Imported for Exhibition—Determinations: "Charlotte Posenenske: Work in Progress" Exhibition

AGENCY: State Department.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object to be included in the exhibition ''Charlotte Posenenske: Work in Progress,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Dia Art Foundation, Beacon, New York, from on or about March 8, 2019, until on or about September 9, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,
Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–02236 Filed 2–12–19; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36256]

Central Railroad Company of Indianapolis—Change in Operators Exemption—Kokomo Rail, LLC

Central Railroad Company of Indianapolis (CERA), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to assume operations over approximately 12.59 miles of track owned by Kokomo Rail, LLC (Kokomo Rail), extending from milepost 147.07 in Amboy, Ind., to milepost 134.48 in Marion, Ind. (the Line).

According to CERA, the Line previously was leased to, and operated by, US RAIL Corporation (US Rail) until its lease expired on November 25, 2018. *See U.S. Rail Corp.—Lease & Operation Exemption—Winamac S. Ry.,* FD 35205 (STB served Dec. 31, 2008), *corrected,* FD 35205 (STB served Jan. 15, 2009). CERA states that, since then, Kokomo Rail has been providing service on an interim basis.[1] CERA states that it will provide its own common carrier service over the Line pursuant to a lease to be executed shortly, and that it will begin operations on receipt of all regulatory approvals or exemptions. CERA states

[1] CERA states that, because Kokomo Rail currently does not have railroad employees or equipment, Kokomo Rail has retained CERA to provide the interim common carrier service in the name and on behalf of Kokomo Rail.

that US Rail does not object to the proposed change in operators and will no longer operate over the Line.

CERA states that there are no existing interchange commitments with any connecting carriers and that none will be required as part of this transaction. CERA certifies that its projected annual revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier and will not exceed $5 million.

Under 49 CFR 1150.42(b), a change in operator requires that notice be given to shippers. CERA certifies that it has provided notice of the proposed change in operators to Kokomo Grain, the only known shipper on the Line.

The earliest this transaction may be consummated is February 27, 2019 (30 days after the verified notice was filed).[2]

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than February 20, 2019 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36256, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Eric M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

According to CERA, this action is excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available at *www.stb.gov.*

Decided: February 7, 2019.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2019–02155 Filed 2–12–19; 8:45 am]

BILLING CODE 4915–01–P

[2] CERA submitted the verified notice during the partial shutdown of the Federal government from December 22, 2018, through January 25, 2019. Filings submitted during the partial shutdown are considered filed on January 28, 2019. *See Filings Submitted or Due to Be Submitted During the Partial Fed. Gov't Shutdown,* EP 751 (STB served Jan. 28, 2019).

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36255]

Toledo, Peoria & Western Railway Corp.—Change in Operators Exemption—Winamac Southern Railway Company

Toledo, Peoria & Western Railway Corp. (TPW), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate approximately 46.3 miles of rail line owned by Winamac Southern Railway Company (WSRY), located in Indiana as follows: (1) The Bringhurst Line, between milepost 50.1 at Bringhurst and milepost 71.5 at Van Junction in Logansport; (2) the Kokomo Line, between milepost 74.5 at Eighteenth Street Yard in Logansport and milepost 97.9 at Kokomo; and (3) the Kokomo Belt Line, between milepost 0.0 at East Markland Avenue in Kokomo and milepost 1.5 at South Union Street in Kokomo (collectively, the Lines).

According to TPW, the Lines were previously leased to, and operated by, US Rail Corporation (US Rail) until its lease expired on November 25, 2018. *See U.S. Rail Corp.—Lease & Operation Exemption—Winamac S. Ry.,* FD 35205 (STB served Dec. 31, 2008), *corrected,* FD 35205 (STB served Jan. 15, 2009). TPW states that, since the US Rail lease expired, WSRY, as the residual carrier and owner of the Lines, has been providing common-carrier freight service on an interim basis.[1] TPW states that it will provide its own common-carrier service over the Lines pursuant to a lease to be executed shortly. According to TPW, US Rail does not object to the proposed change in operators and will no longer operate over the Lines.

TPW certifies that there are no existing interchange commitments with any of the connecting carriers and that none will be required as part of the proposed transaction. TPW states the proposed transaction will not result in the creation of a Class II or Class I rail carrier, but that its projected annual revenues as a result of this transaction would exceed $5 million. Accordingly, under 49 CFR 1150.42(e), TPW is required, at least 60 days before this exemption is to become effective, to send notice of the transaction to the national offices of the labor unions with employees on the affected lines, post a copy of the notice at the workplace of the employees on the affected lines, and certify to the Board that it has done so. On November 28, 2018, TPW certified that it had posted notice of the transaction at the workplace of US Rail employees and noted that US Rail employees are not represented by any labor union.

Under 49 CFR 1150.42(b), a change in operators requires that notice also be given to shippers. TPW certifies that it has provided notice of the proposed change in operators to the eight shippers on the Lines.

The earliest this transaction may be consummated is February 27, 2019 (30 days after the verified notice was filed).[2]

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than February 20, 2019 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36255, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on TPW's representative, Eric M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

According to TPW, this action is excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available at *www.stb.gov.*

Decided: February 7, 2019.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–02194 Filed 2–12–19; 8:45 am]

BILLING CODE 4915–01–P

[1] TPW states that, because WSRY does not currently have railroad employees or equipment, WSRY has retained TPW to perform the common carrier service in the name of and on behalf of WSRY.

[2] TPW submitted the verified notice during the partial shutdown of the Federal government from December 22, 2018, through January 25, 2019. Filings submitted during the partial shutdown are considered filed on January 28, 2019. *See Filings Submitted or Due to Be Submitted During the Partial Fed. Gov't Shutdown,* EP 751 (STB served Jan. 28, 2019).

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: January 1–31, 2019.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and § 806.22 (f) for the time period specified above:

Approvals by Rule Issued Under 18 CFR 806.22(f)

1. Chief Oil & Gas, LLC; Pad ID: HOFFMAN UNIT PAD, ABR–201901002; Overton Township, Bradford County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: January 7, 2019.
2. Cabot Oil & Gas Corporation; Pad ID: SquierR P1, ABR–201401004.R1; Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: January 24, 2019.
3. Pin Oak Energy Partners LLC; Pad ID: Wolfinger Pad A (Beechwood), ABR–201901001; Shippen Township, Cameron County and St. Marys City, Elk County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: January 28, 2019.
4. Repsol Oil & Gas USA, LLC; Pad ID: COOLEY (05 266) D, ABR–201901003; Pike Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: January 28, 2019.
5. SWN Production Company, LLC; Pad ID: NR–15–HUGHES–PAD; ABR–201401007.R1; Great Bend Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: January 29, 2019.
6. SWN Production Company, LLC; Pad ID: WY 04 DIMMIG, ABR–201401009.R1; Forkston Township, Wyoming County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: January 29, 2019.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: February 8, 2019.

Jason E. Oyler,

Acting Secretary to the Commission.

[FR Doc. 2019–02222 Filed 2–12–19; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold its regular business meeting on March 15, 2019, in Annapolis, Maryland. Details concerning the matters to be addressed at the business meeting are contained in the Supplementary Information section of this notice. Also the Commission published a document in the **Federal Register** on February 6, 2019, concerning its public hearing on February 7, 2019, in Harrisburg, Pennsylvania.

DATES: The meeting will be held on Friday, March 15, 2019, at 9 a.m.

ADDRESSES: The meeting will be held at the Crowne Plaza Annapolis, 173 Jennifer Road, Annapolis, Maryland 21401.

FOR FURTHER INFORMATION CONTACT: Ava Stoops, Administrative Specialist, 717–238–0423, ext. 1302.

SUPPLEMENTARY INFORMATION: The business meeting will include actions or presentations on the following items: (1) Informational presentation of interest to the lower Susquehanna River region; (2) FY2020 budget reconciliation; (2) consideration of an amendment to the irrevocable retiree health trust; (3) resolution adopting recommendations of the 2018 Pennsylvania performance audit; (4) ratification/approval of contracts/grants; (5) a report on delegated settlements; (6) resolution to balance renewal cycle workload; and (7) Regulatory Program projects.

Regulatory Program projects listed for Commission action were those that were the subject of public hearings conducted by the Commission on February 7, 2019, and identified in the notices for such hearings, which was published in 84 FR 2296, February 6, 2019.

The public is invited to attend the Commission's business meeting. Comments on the Regulatory Program projects were subject to deadline of February 18, 2019. Written comments pertaining to other items on the agenda at the business meeting may be mailed to the Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pennsylvania 17110–1788, or submitted electronically through *www.srbc.net/about/meetings-events/business-meeting.html.* Such comments are due to the Commission on or before February 18, 2018. Comments will not be accepted at the business meeting noticed herein.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: February 8, 2019.

Jason E. Oyler,

Acting Secretary to the Commission.

[FR Doc. 2019–02221 Filed 2–12–19; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Grandfathering (GF) Registration Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

This notice lists Grandfathering Registration for projects, described below, pursuant to 18 CFR 806, subpart E by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: January 1–31, 2019.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists GF Registration for projects, described below, pursuant to 18 CFR 806, subpart E for the time period specified above:

Grandfathering Registration Under 18 CFR 806, Subpart E

1. Range End Golf Club, GF Certificate No. GF–201901011, Carroll Township, York County, Pa.; Irrigation Pond; Issue Date: January 17, 2019.
2. Village of Newark Valley, GF Certificate No. GF–201901012, Village of Newark Valley, Tioga County, NY; Well 3; Issue Date: January 17, 2019.
3. Stewartstown Borough Authority, GF Certificate No.GF–201901013,

Stewartstown Borough, York County, Pa.; Well 4; Issue Date: January 17, 2019.

4. Pennsylvania American Water Company—Berwick District, GF Certificate No. GF–201901014, Berwick Borough, Columbia County, Pa.; Well 1, Well 2, and Well 3; Issue Date: January 18, 2019.

5. West Shore Country Club, GF Certificate No. GF–201901015, East Pennsboro Township, Cumberland County, Pa.; Conodoguinet Creek and the Irrigation Pond; Issue Date: January 18, 2019.

6. New York State Parks, Recreation and Historic Preservation—Chenango Valley State Park Golf Course, GF Certificate No. GF–201901016, Town of Fenton, Broome County, NY; consumptive use; Issue Date: January 18, 2019.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: February 8, 2019.

Jason E. Oyler,

Acting Secretary to the Commission.

[FR Doc. 2019–02220 Filed 2–12–19; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification Procedures for Products and Parts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for to renew a previously approved information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 26, 2018. Applicable federal regulations prescribe certification standards for aircraft, aircraft engines, propellers appliances and parts. The information collected is used to determine compliance and applicant eligibility. The respondents are aircraft parts designers, manufacturers, and aircraft owners.

DATES: Written comments should be submitted by March 15, 2019.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Joy Wolf at (202) 267–4524, or by email at: *joy.wolf@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0018.

Title: Certification Procedures for Products and Parts.

Form Numbers: FAA Forms 8110–12, 8130–1, 8130–6, 8130–9, 8130–12.

Type of Review: Renewal with change.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 26, 2018. (83 FR 48682). 14 CFR part 21 prescribes certification standards for aircraft, aircraft engines, propellers appliances and parts. The information collected is used to determine compliance and applicant eligibility. FAA Airworthiness inspectors, designated inspectors, engineers, and designated engineers review the required data submittals to determine that aviation products and articles and their manufacturing facilities comply with the applicable requirements, and that the products and articles have no unsafe features.

This request is to make changes to FAA Form 8130–6, APPLICATION FOR U.S. AIRWORTHINESS CERTIFICATE to include new entries for the SPECIAL AIRWORTHINESS CERTIFICATE Categories, Section II. CERTIFICATION REQUESTED, BLOCK 4. EXPERIMENTAL, UNMANNED AIRCRAFT. The new categories to be added to the form will be annotated by blocks 9D—SHOW COMPLIANCE WITH CFR and 9E—EXHIBITION.

The FAA continues to move toward the electronic collection of data for some of its information collections and electronic signatures. As such, the FAA is working to develop the ASKME Segment 2 Airworthiness Application (AWC) that would allow the electronic collection of the specific information requested in these forms. Testing for this effort is underway with scheduled field implementation targeted for early 2019.

Respondents: Approximately 16,773 aircraft parts designers, manufacturers, and aircraft owners.

Frequency: On occasion.

Estimated Average Burden per Response: .55 hours.

Estimated Total Annual Burden: 12,916.6 hours.

Issued in Washington, DC.

Joy Wolf,

Aviation Safety, Directives & Forms Management Officer (DMO/FMO), Aircraft Certification Service.

[FR Doc. 2019–02133 Filed 2–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2018–0210]

Notice of Request for Comments: V2X Communications

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Request for comment; extension of comment period.

SUMMARY: On December 26, 2018, the Department of Transportation published a Request for Comments that discussed numerous issues concerning vehicle-to-vehicle (V2V), vehicle-to-infrastructure (V2I), and vehicle-to-pedestrian (V2P) communications, collectively known as ''V2X.'' The original comment period for this request would have closed on January 25, 2019. Prior to that time, the Department announced on its website, *https://www.transportation.gov/v2x,* that it would consider all comments submitted within 30 calendar days of January 25, 2019. Today's notice makes clear that the comment period has been extended and will now close on February 25, 2019.

DATES:

Comments: The comment period has been extended and comments are now requested by February 25, 2019. See the **SUPPLEMENTARY INFORMATION** section on ''Public Participation,'' below, for more information about written comments.

Written Comments: Comments should refer to the docket number above and be

submitted by one of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Except as provided below, all comments received into the docket will be made public in their entirety. The comments will be searchable by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an associations, business, labor union, etc.). You should not include information in your comment that you do not want to be made public. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or at *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Please contact us at *automation@dot.gov* or Sujeesh Kurup (202–366–9953) for policy issues or Timothy Mullins (202–366–9038) for legal issues.

SUPPLEMENTARY INFORMATION:

Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the docket, please include the docket number of this document in your comments.

Please submit one copy (two copies if submitting by mail or hand delivery) of your comments, including the attachments, to the docket following the instructions given above under **ADDRESSES**. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.

How do I submit confidential business information?

Any submissions containing Confidential Information must be delivered to OST in the following manner:

• Submitted in a sealed envelope marked ''confidential treatment requested'';

• Accompanied by an index listing the document(s) or information that the submitter would like the Departments to withhold. The index should include information such as numbers used to identify the relevant document(s) or information, document title and description, and relevant page numbers and/or section numbers within a document; and

• Submitted with a statement explaining the submitter's grounds for objecting to disclosure of the information to the public.

OST also requests that submitters of Confidential Information include a non-confidential version (either redacted or summarized) of those confidential submissions in the public docket. In the event that the submitter cannot provide a non-confidential version of its submission, OST requests that the submitter post a notice in the docket stating that it has provided OST with Confidential Information. Should a submitter fail to docket either a non-confidential version of its submission or to post a notice that Confidential Information has been provided, we will note the receipt of the submission on the docket, with the submitter's organization or name (to the degree permitted by law) and the date of submission.

Will the Agency consider late comments?

U.S. DOT will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the agency will also consider comments received after that date.

How can I read the comments submitted by other people?

You may read the comments received at the address given above under Comments. The hours of the docket are indicated above in the same location. You may also see the comments on the internet, identified by the docket number at the heading of this notice, at *http://www.regulations.gov.*

Issued in Washington, DC on February 7, 2019, under authority delegated at 49 U.S.C. 1.25a.

Finch Fulton,

Deputy Assistant Secretary for Transportation Policy.

[FR Doc. 2019–02147 Filed 2–12–19; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8876

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8876, Excise Tax on Structured Settlement Factoring Transactions.

DATES: Written comments should be received on or before April 15, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, (202)317–6038, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Excise Tax on Structured Settlement Factoring Transactions.

OMB Number: 1545–1826.

Form Number: 8876.

Abstract: Form 8876 is used to report structured settlement transactions and pay the applicable excise tax.

Current Actions: There are no changes in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 5 hrs., 36 min.

Estimated Total Annual Burden Hours: 560.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 7, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–02120 Filed 2–12–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4970

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 4970, Tax on Accumulation Distributions of Trusts.

DATES: Written comments should be received on or April 15, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, (202) 317–6038, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tax on Accumulation Distribution of Trusts.

OMB Number: 1545–0192.

Form Number: 4970.

Abstract: Internal Revenue Code 667 requires a tax to be paid by a beneficiary of domestic or foreign trust on accumulation distributions. Form 4970 is used to compute the tax adjustment attributable to an accumulation distribution and to verify whether the correct tax has been paid on the accumulation distribution.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 30,000.

Estimated Time per Response: 1 hour, 25 minutes.

Estimated Total Annual Burden Hours: 42,900.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 7, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–02118 Filed 2–12–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8288–B

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8288–B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.

DATES: Written comments should be received on or before April 15, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to Sara Covington, (202) 317–6038, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Property Interests.

OMB Number: 1545–1060.

Form Number: 8288–B.

Abstract: Section 1445 of the Internal Revenue Code requires transferees to withhold tax on the amount realized from sales or other dispositions by foreign persons of U.S. real property interests. Code sections 1445(b) and (c) allow the withholding to be reduced or eliminated under certain circumstances. Form 8288–B is used to apply for a withholding certificate from IRS to reduce or eliminate the withholding required by Code section 1445.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 5,079.

Estimated Time per Respondent: 5 hrs., 46 min.

Estimated Total Annual Burden Hours: 29,256.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 7, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–02119 Filed 2–12–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Financial Research Advisory Committee

AGENCY: Office of Financial Research, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: The Financial Research Advisory Committee for the Treasury's Office of Financial Research (OFR) is convening for its 13th meeting on Thursday, February 28, 2019, in the Cash Room at Main Treasury, 1500 Pennsylvania Ave., NW, Washington, DC 20020, beginning at 9:00 a.m. EST. The meeting will be open to the public and limited seating will be available.

DATES: The meeting will be held on Thursday, February 28, 2019 beginning at 9:00 a.m. EST.

ADDRESSES: The meeting will be held in the Cash Room at Main Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20020. The meeting will be open to the public. A limited number of seats will be available for those interested in attending the meeting, and those seats would be on a first-come, first-served basis. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting MUST contact the OFR by email at *OFR_FRAC@ofr.treasury.gov* by 5 p.m. EST on Thursday, February 14, 2019, to inform the OFR of their desire to attend the meeting and receive further instructions about building clearance.

FOR FURTHER INFORMATION CONTACT: Tricia Driver, Designated Federal Officer, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 622–1766 (this is not a toll-free number), or *OFR_FRAC@ofr.treasury.gov.* Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, 10(a)(2), through implementing regulations at 41 CFR 102–3.150, *et seq.*

Public Comment: Members of the public wishing to comment on the business of the Financial Research Advisory Committee are invited to submit written statements by any of the following methods:

- *Electronic Statements.* Email the Committee's Designated Federal Officer at *OFR_FRAC@ofr.treasury.gov.*
- *Paper Statements.* Send paper statements in triplicate to the Financial Research Advisory Committee, Attn: Patricia Driver, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

The OFR will post statements on the committee's website, *http://www.financialresearch.gov,* including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. The OFR will also make such statements available for public inspection and copying in the Department of the Treasury's library, Annex Room 1020, 1500 Pennsylvania Avenue NW, Washington, DC 20220 on official business days between the hours of 8:30 a.m. and 5:30 p.m. EST. You may make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: The committee provides an opportunity for researchers, industry leaders, and other qualified individuals to offer their advice and recommendations to the OFR, which, among other things, is responsible for collecting and standardizing data on financial institutions and their activities and for supporting the work of Financial Stability Oversight Council.

This is the 13th meeting of the Financial Research Advisory Committee. Topics to be discussed include presentation of reports to the central counterpart clearing, presentation of bond market liquidity and the presentation of regulatory reporting charge. In addition, new charges will also be presented. For more information on the OFR and the committee, please visit the OFR website at *http://www.financialresearch.gov.*

Dated: February 6, 2019.

Barbara Shycoff,

Chief of External Affairs.

[FR Doc. 2019–02153 Filed 2–12–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0014]

Agency Information Collection Activity: Authorization and Certification of Entrance or Reentrance Into Rehabilitation and Certification of Status

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before *April 15, 2019.*

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administrations (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0014 in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Daniel S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Authorization and Certification of Entrance or Reentrance Into Rehabilitation and Certification of Status—VA Form 28–1905.

OMB Control Number: 2900–0014.

Type of Review: Extension without change of a currently approved collection.

Abstract: VA case managers use VA Form 28–1905 to identify program participants and provide specific guidelines on the planned program to facilities providing education, training, or other rehabilitation services. Facility officials certify that the claimant has enrolled in the planned program and submit the form to VA. VA uses the data collected to ensure that claimants do not receive benefits for periods for which they did not participate in any rehabilitation, special restorative or specialized vocational training programs.

Affected Public: Individuals and households.

Estimated Annual Burden: 7,500 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 90,000.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2019–02136 Filed 2–12–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that a meeting of the Advisory Committee on Cemeteries and Memorials will be held on May 7–May 8, 2019. The meeting sessions will take place at the Veterans of Foreign Wars Memorial Building, 200 Maryland Avenue NE, Washington, DC 20002. The meeting sessions are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of national cemeteries, soldiers' lots and plots, the selection of new national cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. The Committee will make recommendations to the Secretary regarding such activities.

On Tuesday, May 7, 2019, the Committee will convene with an open session from 8:30 a.m. to 4:00 p.m. eastern time. The dial-in number is 1–800–767–1750, access code is 02668#. The agenda will include remarks by the VA Leadership, Ethics refresher training, briefing from the Advisory Committee Management Office, introductions of new member appointments, and status updates from Ex-Officio members, and a site visit to Alexandria National Cemetery (in Virginia) to observe cemetery operations, and memorialization products of the Veterans Legacy Program.

On May 8, 2019, the meeting will reconvene an open session from 8:30 a.m.–3:00 p.m., eastern time. The dial-in number is 1–800–767–1750, access code is 02668#. The agenda will include status updates on the National Cemetery Scheduling Office, Pre-Need Burial Determination, burial needs for Native American Veterans, status update of 2017 & 2018 recommendations, new charges, and next steps.

Any member of the public wishing to attend the meeting should contact Ms. Christine Hamilton, Designated Federal Officer, at (202) 461–5681. The Committee will also accept written comments. Comments may be transmitted electronically to the Committee at *Christine.hamilton1@va.gov* or mailed to the National Cemetery Administration (40A1), 810 Vermont Avenue NW, Room 400, Washington, DC 20420. In the public's communications with the Committee, the writers must identify themselves and state the organizations, associations, or persons they represent.

Dated: February 8, 2019.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–02135 Filed 2–12–19; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 84 Wednesday,

No. 30 February 13, 2019

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 107

Operation of Small Unmanned Aircraft Systems Over People; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 107

[Docket No.: FAA–2018–1087; Notice No. 18–07]

RIN 2120–AK85

Operation of Small Unmanned Aircraft Systems Over People

AGENCY: Federal Aviation Administration (FAA) and Office of the Secretary of Transportation (OST), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FAA proposes to amend its rules applicable to the operation of small unmanned aircraft systems (UAS). This rulemaking would allow operations of small unmanned aircraft over people in certain conditions and operations of small UAS at night without obtaining a waiver. It would also require remote pilots in command to present their remote pilot in command certificate as well as identification to certain Federal, State, or local officials, upon request, and proposes to amend the knowledge testing requirements in the rules that apply to small UAS operations to require training every 24 calendar months. This proposal would be the next phase in integrating small UAS using a risk-based approach. These amendments would allow expanded small UAS operations and reduce the knowledge testing burden on remote pilot in command certificate holders.

DATES: Send comments on or before April 15, 2019.

ADDRESSES: Send comments identified by docket number [FAA–2018–1087] using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
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FOR FURTHER INFORMATION CONTACT: For small UAS policy questions concerning this proposed rule, contact Guido Hassig, Aviation Safety Inspector, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 55 M Street SE, 8th Floor, Washington, DC 20003; telephone 1–844–FLY–MYUAS; email: *UAS-OverPeople@faa.gov.*

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I. Executive Summary

A. Background

On June 28, 2016, the FAA published the much-anticipated rules that allowed people to begin conducting routine, civil small UAS operations.[1] That rule established a new part in the Code of Federal Regulations, 14 CFR part 107 (part 107), containing remote pilot certification and operating rules for small UAS weighing less than 55 pounds. Under those rules, anyone operating a small UAS must either hold a remote pilot certificate or be under the direct supervision of a remote pilot in command.[2] Throughout this document the FAA uses the term ''remote pilot'' to mean a person authorized to conduct operations under part 107. Part 107 specifically excludes operations by any UAS weighing 55 pounds or greater; by air carriers, regardless of size; and by any UAS, regardless of size that operates pursuant to an exemption issued under Section 333 of Public Law 112–95 [3] (or 49 U.S.C. 44807).[4] In addition, as a result of Public Law 115–254, part 107 also does not apply to limited recreational UAS operations under 49 U.S.C. 44809.[5]

This proposal is the next step in the FAA's incremental approach to integrating UAS into the national airspace system (NAS), based on demands for increased operational flexibility and the experience FAA has gained since part 107 was first published.[6] Specifically, this proposal would expand the activities permitted under part 107 to allow operations over people and at night under certain conditions. As such, it builds on the framework established when the FAA first published part 107. For example, this proposal applies to the same universe of UAS operations identified in the 2016 rule. The FAA will continue to build on this framework as it develops future proposals to allow increasingly more complex operations in the NAS.

This proposal also builds on the performance-based regulatory philosophy established in the 2016 part 107 rule. In that rule, the FAA recognized that the possibilities for innovation in unmanned aircraft technology are virtually boundless and that the industry can move in directions no one can predict. Today, there are even more applications and opportunities for small UAS that either did not exist or were only in their nascent stages in 2016. The FAA's challenge in developing this proposal, therefore, is to balance the need to mitigate the risk small unmanned aircraft pose to other aircraft and to people and property on the ground without inhibiting innovation.

One aspect of the FAA's challenge is that technology moves at the speed of innovation while the administrative rulemaking process, by design, does not. To address this challenge, this proposal is technologically neutral, with the understanding that technology and applications will evolve in the time between the publication of this proposal and the final rule, and beyond. As a result, this proposal incorporates performance-based requirements to achieve the agency's safety objectives while simultaneously encouraging the development of solutions in this dynamic environment.

Taking into account this challenge and these competing considerations, the FAA proposes to relax the prohibition on operations over people and at night under certain circumstances. While this step may have a significant effect on stakeholders, it represents a small change to the regulatory structure for small UAS. The FAA expects all operators to continue to comply with the existing provisions of part 107. The consequences of noncompliance that currently apply to part 107 remain in effect and would be extended to any new provisions implemented following this proposal. Section I.D. discusses the consequences of noncompliance.

B. Overview of the Proposal

1. Night Operations

Current FAA regulations do not permit small UAS operations at night (§ 107.29). An operation at night is defined as an operation conducted between the end of evening civil twilight and the beginning of morning civil twilight, as published in the Air Almanac, converted to local time.[7] Part 107 permits operators to request a waiver from these provisions, however. (§ 107.200). As of December 31, 2017, the agency received 4,837 requests for waivers to operate at night, granted 1,233, and disapproved 2,256; the vast majority of these were disapproved because the waiver requests lacked necessary information.[8] Requests to operate at night are, by far, the most common type of waiver request the FAA receives. To date, the FAA has not received any reports of small UAS accidents operating under a night waiver.

In evaluating the waiver requests, the FAA considered the most critical factors to ensuring safety during night operations to be anti-collision lighting and operator knowledge. Accordingly, the FAA proposes to allow routine, small UAS operations at night under two conditions. First, the operator would complete knowledge testing or training, including new subject matter areas related to operating at night. The second condition would be that the small UAS has an anti-collision light illuminated and visible for at least 3 statute miles.[9] Section IV.A. discusses these proposed requirements.

2. Operations Over People

In the 2016 rule, the FAA established that an operation over people is one in which a small unmanned aircraft passes over any part of any person who is not directly participating in the operation [10] and who is not located under a covered structure or inside a stationary vehicle. (§ 107.39). While the 2016 rule prohibited routine operations over people, it provided a process for a remote pilot to obtain a waiver to conduct operations over people. (§ 107.200).

This rule proposes to allow routine operations over people without a waiver or exemption [11] under certain conditions. The applicable conditions vary depending on the level of risk the small UAS operations present to people

[1] Operation and Certification of Small Unmanned Aircraft Systems, 81 FR 42064 (June 28, 2016).

[2] 14 CFR 107.12.

[3] Signed into law February 14, 2012.

[4] Section 347(b) of Public Law 115–254 (Oct. 5, 2018) repealed Section 333.

[5] Section 349 of Public Law 115–254 repealed section 336 of Public Law 112–95.

[6] Operation and Certification of Small Unmanned Aircraft Systems, 81 FR 42064 (June 28, 2016). In the 2016 rule, the FAA noted that it would continue to work on expanding the types of small UAS operations that would be permitted as it gained more experience with the risks UAS pose to the NAS.

[7] 14 CFR 1.1.

[8] The total reflects a third category of waiver requests: Those that were neither granted nor disapproved. These may include pending, withdrawn, or abandoned requests.

[9] A statute mile is 5,280 feet. This is distinguished from a nautical mile, which is approximately 6,076 feet and is often used as a unit of measure in aviation.

[10] See 81 FR at 42129. To the extent part 107 refers to direct involvement, the FAA considers such involvement to mean the remote pilot in command relies on the person's assistance for the safe conduct of the operation.

[11] Title 14 CFR107.200 states the Administrator may issue a certificate of waiver authorizing a deviation from any regulation specified in § 107.205 if the Administrator finds that a proposed small UAS operation can safely be conducted under the terms of that certificate of waiver. Section 107.205(g) currently lists the operations over people prohibition as a regulation that is subject to waiver. The Administrator also maintains authority to issue exemptions from regulations promulgated under 49 U.S.C. 44701(a) or (b) or any of sections 44702–44706 of title 49, if the Administrator finds the exemption is in the public interest. Title 14 CFR 11.81–11.103 details the process for obtaining such an exemption.

on the ground. The FAA proposes three categories of permissible operations over people based on the risk of injury they present: Category 1, Category 2, and Category 3. Section IV.B. discusses manufacturer and operator requirements for each category.

(a) Category 1

The FAA determined that small unmanned aircraft weighing less than 0.55 pounds pose a low risk of injury when operating over people. Accordingly, Category 1 is simple and straightforward: Operators would be able to fly small unmanned aircraft weighing 0.55 pounds or less over people. While these operations would be subject to all of the existing requirements governing small UAS operations in part 107,[12] the FAA does not propose any additional restrictions as a condition of flying over people. If adopted, remote pilots would be able to conduct operations over people the day a final rule goes into effect. Remote operators would be responsible for weighing or otherwise determining that their small unmanned aircraft does not exceed the weight threshold. The weight restriction would apply from takeoff to landing, meaning that any cargo attached to the UAS could not cause the aggregate weight (unmanned aircraft plus cargo) to exceed 0.55 pounds.

The FAA does not propose any design standards for Category 1. Although the FAA proposes design standards for exposed rotating parts (propellers) for other categories of small unmanned aircraft operations (discussed later in this document), it does not propose comparable standards for Category 1. This is because the FAA believes that exposed rotating parts on this category of small unmanned aircraft pose a low risk of injury to people. Section IV.B.3. discusses Category 1 operations.

(b) Category 2

Category 2 would provide flexibility for operators who wish to conduct operations over people using unmanned aircraft that weigh more than 0.55 pounds. Unlike Category 1, Category 2 is not solely weight-based. The FAA proposes a set of performance-based requirements that would allow a small unmanned aircraft to operate over people if the manufacturer can demonstrate that, if the unmanned aircraft crashed into a person, the resulting injury would be below a certain severity threshold. The manufacturer would have the flexibility to design the unmanned aircraft in any way that would allow it to meet this threshold.

The requirements specific to Category 2 would have three parts. First, the small unmanned aircraft must be designed, upon impact with a person, not to result in an injury as severe as the injury that would result from a transfer of 11 ft-lbs of kinetic energy from a rigid object. Section IV.B.4. provides more detailed information about how the FAA chose this standard, including how to measure the severity of the injury. There are myriad ways a manufacturer could design a small unmanned aircraft to meet this threshold, taking into account weight, speed, altitude limitations, materials, and technological fail-safe measures. For example, a manufacturer could offset weight with speed limitations, or vice versa. Or the manufacturer could use advanced materials or construction methods that are designed to reduce or prevent injury upon impact. For example, using frangible materials, or designing aircraft to crumple upon impact in a way that would likely reduce the amount of kinetic energy transferred and, as a result, the severity of the injury. In addition, the manufacturer could design features or use technology that slow the unmanned aircraft's rate of descent or divert it away from people during a loss of control. These are just a few conceptual examples. The possibilities for designing an unmanned aircraft to meet this standard are too vast to create an exhaustive list. By providing flexibility through performance-based requirements, the FAA enables the ingenuity of the industry to come up with ideas not yet even considered.

Second, the FAA proposes that the unmanned aircraft would not have exposed rotating parts that could lacerate human skin. There are a number of ways a manufacturer could design small unmanned aircraft to comply with this requirement. For example, a manufacturer could design a shroud to protect skin from laceration upon impact. Or it could design blades that do not lacerate upon impact. Another option could be to design the unmanned aircraft without external rotating parts. This proposal leaves the decision to choose any one of these, or create another solution. This proposal sets only the desired outcome; it does not tell manufacturers how to achieve that outcome. The FAA anticipates that manufacturers would present many different designs to meet this requirement.

Third, no small UAS could be operated over people if it has an FAA-identified safety defect. For Category 2, a safety defect would be any material, component, or feature that presents more than a low probability of causing a casualty when operating over people. For this proposal, the FAA defines a casualty to be a serious injury, which corresponds to a level 3 injury on the Abbreviated Injury Scale (AIS). Section IV.B.1. discusses the AIS and includes examples of level 3 injuries. A safety defect could include any hazardous condition that meets this threshold, including those not otherwise identified through the impact kinetic energy or exposed rotating parts analyses. Examples could include exposed wires, hot surfaces, sharp edges, faulty construction, corrupted software as well as many other hazardous conditions. Section IV.B.11.a) discusses safety defects.

Before a Category 2 small unmanned aircraft could be used to fly over people, the manufacturer would be required to demonstrate, to the FAA's satisfaction, that the aircraft met these injury threshold requirements. The process for demonstrating compliance is discussed later. If adopted as proposed, once a manufacturer demonstrated compliance to the FAA, the small unmanned aircraft could be flown over people. Operators would be required to adhere to any other existing requirements in part 107 that apply to operating small UAS generally, but the FAA does not propose any operational restrictions specific to operations over people for Category 2.

More detailed information about Category 2 operations and how the FAA developed the requirements is in Section IV.B.4.

(c) Category 3

The FAA proposes a final category of operations—Category 3—that allows for a higher injury threshold than Category 2, but that limits an individual's exposure to the risk of injury through operational limitations. Similar to Category 2, the requirements specific to Category 3 would have three parts. The first part would require a small unmanned aircraft to be designed, upon impact with a person, not to result in an injury as severe as the injury that would result from a transfer of 25 ft-lbs of kinetic energy from a rigid object. The higher injury threshold means that operators could take into account different weight, speed, altitude, material, and technology factors when choosing a mission-appropriate small UAS. For example, the unmanned aircraft could be faster, heavier, designed to fly higher, made from

[12] For example, the requirements to hold a remote operator's certificate (§ 107.12), operate a small unmanned aircraft in a condition for safe operation (§ 107.15), not operate in a hazardous manner (§ 107.23), operate within visual line of sight (§ 107.31), and others would continue to apply to these operations.

different materials, or use different technology. The second part would be identical to Category 2: The unmanned aircraft would not have exposed rotating parts that could lacerate human skin.

Third, as with Category 2, no small UAS could be operated over people if it has an FAA-identified a safety defect. Category 3 is distinct, however, because the safety defect would be one that presents more than a low probability of causing a fatality when operating over people.

In addition, unlike Category 1 and 2, Category 3 would have an operational requirement. Because of the higher injury threshold, there would be an increased risk of injury to people on the ground. To manage this increased risk, Category 3 operations would include three operational limitations not applicable to the other categories of operations. First, the proposal would prohibit operations over any open-air assembly of people. Second, the operations would have to be within or over a closed- or restricted-access site and anyone within that site would have to be notified that a small unmanned aircraft may fly over them. Third, for operations not within or over a closed- or restricted-access site, the small unmanned aircraft may transit but not hover over people.

As with Category 2, before a Category 3 small unmanned aircraft could be used to fly over people, the manufacturer would be required to demonstrate, to the FAA's satisfaction, that the aircraft meets the injury threshold requirements.

More detailed information about Category 3 operations and how the FAA developed the standards is in Section IV.B.4.

(d) Demonstrating Compliance With Injury Thresholds

Before a small unmanned aircraft could be used to fly Category 2 or 3 operations over people, the manufacturer would have to demonstrate, to the FAA's satisfaction, that the aircraft meets the proposed requirements. The proposed process for presenting evidence of compliance to the FAA is based on processes that the FAA currently uses for determining compliance with standards applicable to manned aircraft. For that reason, members of the manned aviation community may find the processes and terminology in this proposal familiar; however, they differ in that they are streamlined and tailored to the unique requirements of small UAS.

The proposal directs manufacturers to submit evidence of compliance using a Means of Compliance. A Means of Compliance is the term the FAA uses for the method a manufacturer would use to show that its small UAS would not exceed the injury threshold upon impact with a person. The FAA does not propose to tell manufacturers which method or test to use to establish compliance; rather, the proposal allows the manufacturer to develop a test and present evidence to the FAA showing that the test is appropriate and accurately demonstrates compliance. The FAA anticipates that manufacturers or standards setting organizations (SSOs) will come up with a variety of different types of Means of Compliance. Some could include simple measures of kinetic energy, or they could include sophisticated tests or computer modeling or any other method that accurately shows compliance.

If the FAA agreed that the Means of Compliance accurately demonstrates compliance, it would accept the Means of Compliance and allow the manufacturer to use it to demonstrate that small UAS meet the proposed requirements. Once the FAA accepts a Means of Compliance, the FAA would notify the public. The FAA would not disclose commercially valuable information in this document. It would only provide general information stating that FAA had accepted the Means of Compliance.

Given that small UAS manufacturers have varying degrees of sophistication, the FAA proposes to offer one pre-accepted Means of Compliance that measures the transfer of kinetic energy upon impact. The FAA stresses that manufacturers would not have to use this method; it would be merely pre-accepted for manufacturers to use if they so choose.

A manufacturer could use any FAA-accepted Means of Compliance to show that its small UAS meets the standards proposed in this rule. If the small UAS meets the standards, the manufacturer would submit a Declaration of Compliance to the FAA that identifies the Means of Compliance used and certifies compliance with all the applicable requirements. If the FAA accepted the Declaration of Compliance, the manufacturer would be able to consider the small UAS available for operations over people. The FAA would make a list publicly available of the small UAS models for which it accepted a Declaration of Compliance.

The FAA proposes an additional flexibility that would allow a small UAS to be qualified for both Category 2 or 3 operations, as long as there are safeguards that prevent the remote pilot from inadvertently switching between the two modes of operation. For example, the small UAS could have software that limits speed or altitude that makes it eligible for Category 2 operations, but have different settings for Category 3 operations. Or, a small unmanned aircraft could be eligible for Category 2 operations when unladen, but meet Category 3 requirements when carrying a payload. There are many different combinations or options manufacturers could employ to qualify small UAS for operations over people in different modes for different operations. More information on small UAS that are qualified for more than one category of operation is in Section IV.B.6.

Section IV.B.5. provides information about Means of Compliance. Section IV.B.7. includes details concerning Declarations of Compliance.

The FAA also proposes a process to rescind a previously accepted Declaration of Compliance if the FAA determined the small unmanned aircraft did not meet requirements of this rule. More information on the circumstances under which the FAA proposes to consider rescinding a Declaration of Compliance and the proposed process is in Section IV.B.7.b)(6).

(e) Other Requirements for Manufacturers

First, the FAA proposes to require that each manufacturer, including anyone who assumes the role of manufacturer after making modifications, provides remote pilot operating instructions to anyone to whom it sells, transfers, or otherwise provides the small UAS for use. The operating instructions would address what types of payloads are permissible and other information relevant to the eligibility of the small UAS to operate in accordance with its Category 2 or Category 3 qualification. Section IV.B.9. discusses operating instructions.

Second, the rule proposes to require that any manufacturer holding an FAA-accepted Declaration of Compliance allow the FAA to inspect the manufacturer's facilities, technical data, and small UAS covered by that Declaration of Compliance to determine compliance. The FAA also proposes that the manufacturer allow the FAA to witness any tests required for compliance. Section IV.B.11.d) discusses inspection requirements.

Third, the FAA proposes to require that a manufacturer holding an FAA-accepted Declaration of Compliance establish a process to notify the public and the FAA of safety defects or other issues that would render the small UAS ineligible for operations over people. Section IV.B.11.b) discusses reporting requirements.

Fourth, the FAA proposes to require any holder of a Declaration of Compliance or Means of Compliance to retain certain records for a minimum of two years after ending production of related small UAS. Section IV.B.8. discusses recordkeeping requirements.

(f) Rules Applicable to Individuals Who Modify Small UAS

Under this proposal, the FAA would consider not only the original person or company that designed or built a small UAS to be a manufacturer, but also anyone who modifies it after the FAA accepted its Declaration of Compliance. For example, if an individual bought a small unmanned aircraft that the FAA accepted as meeting Category 2 requirements and then modified it in a way that would change its performance so that it would no longer meet Category 2, that person would be considered a manufacturer and would be required either to requalify the small unmanned aircraft or cease operations over people. The purpose would be to prevent someone from buying a qualified small unmanned aircraft, modifying it in a way that would make it unqualified for operations over people, and then continuing to operate over people. Potential disqualifying modifications could include (but are not limited to), changing computer code to remove operational restrictions, replacing compliant propeller blades with noncompliant blades, or attaching a camera or other payload to the unmanned aircraft that was not specifically identified as approved in the manufacturer's instructions. Before flying over people after making disqualifying modifications, the person making the modification would have to test the small unmanned aircraft using an FAA-accepted Means of Compliance and submit a Declaration of Compliance. Section IV.B.7.b)(5) discusses post-acceptance modifications.

(g) Other Requirements for Operators

This proposal includes several other requirements for remote pilots who operate over people. First, any small unmanned aircraft used for Category 2 or 3 operations would have to be marked with a label that identified it as either Category 2 or 3 (or both). While manufacturers would be free to label their small unmanned aircraft, ultimately the responsibility for making sure that an aircraft is properly labeled before each flight falls to the remote pilot. Section IV.B.10. discusses labeling requirements.

Second, operators would be responsible for following the manufacturer's instructions that accompany the small UAS. In some cases, small UAS qualified to operate over people may have specific instructions for operating over people. For example, a manufacturer of a small UAS qualified to operate under more than one category would have to explain how to operate in each category. Similarly, some small UAS may have a mode that does not qualify for any category of operations over people. Remote pilots would have to follow the instructions provided so that they only operated over people when their small UAS are in the right operational mode and are otherwise following all instructions or limitations for safe operations. Section IV.B.9. discusses manufacturer instructions.

Third, under existing rules, remote pilots must conduct certain pre-flight actions to ensure the safety of the operation, including assessing the operating environment and inspecting the small UAS. (§ 107.49). The FAA proposes to require, in addition to the existing pre-flight requirements, that the remote pilot ensure that the aircraft meets the requirements in this proposed rule before flying over people. One way of doing this would be for the remote pilot to verify that the small UAS is qualified for the type of operation over people he or she plans to conduct. This would include making sure that the small UAS is marked with the appropriate category and checking publicly available information from the FAA and the manufacturer to verify that the Declaration of Compliance for that model of small UAS has been accepted by the FAA. Section IV.B.12. discusses pre-flight requirements.

Fourth, although part 107 currently does not allow operations over people in moving vehicles (§ 107.39), the FAA proposes a new section that makes clear that such operations are expressly prohibited. There is more information on operations over moving vehicles in Section IV.B.12.b).

3. Applicability to Existing Small UAS

The FAA recognizes that a great number of small UAS are available in the marketplace and are in use. Accordingly, the FAA proposes to allow any manufacturer or operator to test its small UAS and submit evidence that it is eligible to operate over people using the proposed Means of Compliance and Declaration of Compliance processes described above. Section IV.B.13. discusses provisions applicable to existing small UAS.

4. Waivers

Under existing part 107, remote pilots can request a waiver from specific operational provisions. (§ 107.200). The FAA does not propose to make any changes to this process; however, it does propose to expand the list of provisions from which an operator could seek a waiver. Currently, part 107 allows operators to seek waivers from the following provisions: The prohibition on operations from a moving vehicle or aircraft; the requirement for daylight operations; the requirement to operate within visual line of sight; the provision relating to the use of visual observers; the prohibition on operating multiple small UAS simultaneously; the requirement to yield the right of way; the prohibition on operating over people; provisions relating to operations within certain airspace; and provisions relating to certain operating limitations. (§ 107.205).

This rule proposes to include three additional types of waivers. The first would apply to operations over moving vehicles. Under existing regulations, an operator may seek a waiver to operate over moving vehicles using the waiver provision applicable to operations over people. (§ 107.205(g)). This proposal would establish a stand-alone waiver provision applicable to operations over moving vehicles to make the process clearer for operators. The second would permit an operator to seek a waiver to conduct operations over people that would not otherwise meet the requirements of this proposed rule. The third would permit an operator to seek a waiver of the anti-collision lighting requirement for night and civil twilight operations. In all cases, the waiver applicant would be required to demonstrate that the operations could be conducted at the same level of safety that the proposed requirements provide. Section IV.C. discusses waivers.

5. Miscellaneous Changes to Part 107

In addition to the provisions enabling operations at night and over people, the FAA proposes some other changes to part 107. First, under current regulations, the FAA requires the remote pilot to present his or her remote pilot certificate upon request from the Administrator. (§ 107.7). This proposal would extend that obligation to require the remote pilot to present his or her remote pilot certificate and identification in response to a request from the Administrator; an authorized representative of the National Transportation Safety Board (NTSB); any Federal, State, or local law enforcement officer; and any authorized

representative of the Transportation Security Administration (TSA). Section IV.D.1. discusses this proposed amendment.

Second, the FAA proposes to update existing regulations related to remote pilot certification. Currently, part 107 requires remote pilots to take an initial knowledge test and then another test once every two years to maintain a current remote pilot certificate. (§§ 107.61, 107.65). This rule proposes to convert the subsequent knowledge testing requirement to a knowledge training requirement. In addition, the rule proposes to update the testing and training materials to harmonize initial testing and subsequent training, and to add new information about night operations. Section IV.D.2. provides more information about knowledge testing and training.

C. Security Considerations

While the focus of this proposal is to ensure the safety of operations that fly over people, the FAA is cognizant that security concerns are paramount. As with manned aviation, safety and security walk hand in hand. For that reason, the FAA, which is primarily a safety organization, has partnered with other Federal agencies to identify and address security concerns. Through this partnership, the FAA developed an advance notice of proposed rulemaking (ANPRM), Safe and Secure Operations of Small Unmanned Aircraft Systems, seeking input on various security considerations related to unmanned aircraft.[13] The ANPRM appears separately in this issue of the **Federal Register**.

In particular, the FAA is cognizant of the importance of various stakeholders to be able to identify small UAS to mitigate security concerns that operations may present. Because of the importance of this particular issue, the FAA plans to finalize its policy concerning remote identification of small UAS—by way of rulemaking, standards development, or other activities that other Federal agencies may propose—prior to finalizing the proposed changes in this rule that would permit operations of small UAS over people and operations at night. Section III.A.3. provides more information about security considerations.

D. Compliance and Enforcement Tools

While the FAA does not propose any new penalties or compliance and enforcement tools in this rule, all existing means of addressing noncompliance that currently apply to small UAS operators under existing part 107 or the FAA's general enforcement authority would continue to apply. The FAA expects compliance with all terms of the final rule that follows this proposal. The consequences of noncompliance could include any of the following compliance and enforcement tools the FAA has available to it.

In accordance with its current compliance philosophy, FAA's goal is to find and fix problems before they cause an accident or incident. Under this approach, enforcement is one tool the FAA uses, but it may not be the most effective tool for addressing small UAS compliance concerns, given the relative inexperience of small UAS operators. Therefore, non-enforcement tools, to which the FAA refers as compliance actions, are additional means to achieve compliance with FAA regulations concerning the safety of small UAS. Such tools include counseling in the form of operator education or an informational letter used to communicate effectively the requirements of small UAS regulations.

If an operator is unwilling or unable to comply with, or is deliberately flouting, regulations, the FAA would employ enforcement action. The FAA has a number of enforcement tools available including warning notices, letters of correction, civil penalties, and certificate actions to address violations and help deter future violations. Civil penalties for violations of the Federal Aviation Regulations range from a maximum per violation penalty of $1,437, for individual operators, to $32,666 for large companies. In addition, Congress granted the FAA the authority to levy civil penalties of up to $20,000 for interfering with law enforcement, first responders, or wildfire operations. The FAA may take enforcement action against anyone who conducts an unauthorized UAS operation or operates a UAS in a way that endangers the safety of the National Airspace System. This authority is designed to protect users of the airspace as well as people and property on the ground.

This proposed rule would not alter this enforcement regime. The FAA emphasizes, however, that certain requirements this rule proposes would increase remote pilots' responsibilities. For example, for operations at night, remote pilots in command would be responsible for ensuring their small unmanned aircraft has an anti-collision light visible for a minimum of 3 statute miles, and for completing an updated initial knowledge test or updated training. For operations over people, remote pilots in command would be responsible for ensuring their Category 1 aircraft does not exceed the proposed weight limitation. For Category 3 operations, remote pilots in command would have the responsibility of adhering to specific operating limitations. For both Category 2 and Category 3 operations, remote pilots in command would need to ensure they comply with remote pilot operating instructions. For all proposed categories of operations, remote pilots in command would be required to ensure the small UAS is eligible for the appropriate category of operations. The FAA maintains the discretion and authority to utilize appropriate surveillance and engage in action available to the FAA when the FAA determines to do so.

Table 1 provides a brief summary of the major provisions of this notice of proposed rulemaking (NPRM).

TABLE 1—SUMMARY OF MAJOR PROVISIONS

Issue	Proposed regulation
Presentation of Certificate and Identification	Remote pilots in command must present their remote pilot certificate as well as identification to certain Federal, State, or local officials, upon request. 14 CFR 107.7(a)
Operations at Night	A remote pilot in command may operate a small UAS at night as long as: (1) The remote pilot has satisfactorily completed updated knowledge testing or training requirements; and (2) The small unmanned aircraft maintains an anti-collision light that remains lit throughout the flight.

[13] See Safe and Secure Operations of Small Unmanned Aircraft Systems, RIN 2120–AL26 (Fall 2018), available at *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=2120-AL26.*

TABLE 1—SUMMARY OF MAJOR PROVISIONS—Continued

Issue	Proposed regulation
	14 CFR 107.29
Prohibition on Operation over Moving Vehicles	No operations over people located in moving vehicles.
	14 CFR 107.105
Category 1 Remote Pilot Requirements	Ensure aircraft weighs 0.55 pounds or less.
	14 CFR 107.110
Category 2 Remote Pilot Requirements	(1) Use aircraft qualified and labeled for Category 2 operations;
	14 CFR 107.115(a)
	(2) Ensure aircraft is labeled for Category 2 operations.
	14 CFR 107.150
Category 3 Remote Pilot Requirements	(1) Use aircraft qualified and labeled for Category 3 operations;
	14 CFR 107.120(a)(1)
	(2) Ensure aircraft is labeled for Category 3 operations;
	14 CFR 107.145
	Remote pilots in command cannot conduct Category 3 operations over open air assemblies, and cannot conduct these operations unless the operation occurs: (1) Within or over a closed- or restricted-access site where all people accessing the site have notice; or (2) When the aircraft does not maintain sustained flight over people.
	14 CFR 107.120(a)(2) and (3)
Eligibility Requirements for Category 1	No performance-based requirements (only a requirement that the small UAS weigh 0.55 pounds or less).
	14 CFR 107.110
Eligibility Requirements for Category 2	(1) Meet performance-based requirements by showing the small unmanned aircraft: • will not, upon impact with a person, result in an injury more severe than the injury that would result from a transfer of 11 ft-lbs of kinetic energy from a rigid object; • does not contain any exposed rotating parts that could lacerate human skin upon impact with a person; and • does not contain any safety defects identified by the Administrator. (2) Display a label indicating eligibility for Category 2; (3) Have remote pilot operating instructions; (4) Be subject to a product notification process; and (5) Operate only after the FAA has accepted a Declaration of Compliance for that make/model.
	14 CFR 107.115(b)
Eligibility Requirements for Category 3	(1) Meet performance-based requirements showing the small unmanned aircraft: • will not, upon impact with a person, result in an injury more severe than the injury that would result from a transfer of 25 ft-lbs of kinetic energy from a rigid object; • Does not contain any exposed rotating parts that could lacerate human skin upon impact with a person; and • Does not contain any safety defects identified by the Administrator (2) Display a label indicating eligibility for Category 3; (3) Have remote pilot operating instructions; (4) Be subject to a product notification process; and (5) Operate only after the FAA has accepted a Declaration of Compliance for that make/model.
	14 CFR 107.120(b)
Previously Manufactured Small UAS	A small UAS manufactured prior to the effective date of a final rule implementing these regulations may be operated over people if: It weighs 0.55 pounds or less; or the make/model complies with the impact kinetic energy and exposed rotating parts requirements to render it eligible for operations pursuant to Category 2 or Category 3; and (1) The manufacturer has submitted a Declaration of Compliance for that make/model; (2) The FAA has accepted the Declaration of Compliance; and (3) The aircraft has a label appropriate for the category of operations for which it is eligible to operate.
	14 CFR 107.140
Requirements for a Means of Compliance	For small UAS manufactured to be eligible for Category 2 or Category 3 operations, the small UAS must comply with the requirements of § 107.115(b)(1) or § 107.120(b)(1), as shown by test, analysis, or inspection, or any combination of these options that the Administrator has determined is acceptable. Requests for FAA acceptance of means of compliance must contain: (1) Detailed description of the means of compliance; and (2) Justification, including any substantiating material, showing the means of compliance fulfills the safety level set forth in § 107.115(b)(1) or § 107.120(b)(1).
	14 CFR 107.125
Required Information for Declaration of Compliance.	(1) Applicant's name; (2) Applicant's physical address; (3) Applicant's email address; (4) Small UAS make/model name; (5) Small UAS serial number or range of serial numbers; (6) Whether the Declaration of Compliance is an initial or amended declaration;

TABLE 1—SUMMARY OF MAJOR PROVISIONS—Continued

Issue	Proposed regulation
	(7) If amended, the reasons for the re-submittal of the Declaration of Compliance; (8) Certification that the small UAS satisfies the impact kinetic energy and exposed rotating parts standards of that category through an accepted means of compliance; (9) Certification that the manufacturer has a product support and notification process; (10) Certification that the Administrator will be allowed to inspect the manufacturer's facilities, technical data, and any manufactured small UAS and witness any tests necessary to determine compliance with this subpart; and (11) Other information as required by the Administrator. 14 CFR 107.135
Rescinding a Declaration of Compliance	The FAA may rescind a Declaration of Compliance if: (1) The make/model is no longer compliant with the impact kinetic energy requirements of the category for which it is declared; (2) The make/model is no longer compliant with the exposed rotating parts limitation; or (3) The Administrator identifies a safety defect. 14 CFR 107.135
Recurrent Knowledge Training	A person may only operate a small UAS if that person has completed the following in a manner acceptable to the Administrator within the past 24 months: (1) Passed an initial aeronautical knowledge test covering the areas of knowledge specified in § 107.73; (2) Completed recurrent training covering the areas of knowledge specified in § 107.73; or (3) If a person holds a pilot certificate (other than a student pilot certificate) issued under part 61 and meets the flight review requirements specified in § 61.56, completed training covering the areas of knowledge specified in § 107.74. 14 CFR 107.65

E. Costs and Benefits

The FAA has analyzed the benefits and the costs associated with this proposed rule and expects the benefits justify the costs. This proposal would enable further operations of small UAS that will benefit the economy and enable innovation and growth across a variety of sectors, such as construction, education, infrastructure inspection, insurance, marketing, and event photography. Operations currently allowed under Part 107 would become less onerous and, in many instances, more efficient with this proposal because, in general, remote pilots would not necessarily need to avoid flying over people or clear an area of non-participating people in advance of flying.[14] In addition, this proposal would assist the execution of first responder and emergency management planning and operations.

The costs of this rule include both the FAA converting the administration of tests to administration of training and manufacturers conducting testing, analysis, or inspection to comply with the requirements relevant to manufacturing a small UAS for operations over people. Upon analysis of these costs, the FAA concludes the proposed rule would result in a cost savings for relief provided through online training and testing for remote pilots. The regulatory analysis for this proposed rule presents a range of cost savings based on the three varying fleet forecasts. Subsequently, over the five-year analysis period the net present value cost savings of the proposed rule ranges from $24 million to $121 million at a seven percent discount rate, for net annualized costs savings between $6 million and $29 million. The following table presents quantified costs to manufacturers and the FAA and savings to remote pilots.

TABLE 2—COSTS AND SAVINGS OF PROPOSED RULE [$MILLIONS]

[5-Year period of analysis *]

	7% PV	7% Annualized	3% PV	3% Annualized
Low Case:				
Costs (Manufacturers and FAA)	14	3	15	3
Cost Savings (Remote Pilots)	(38)	(9)	(44)	(10)
Net Cost Savings	(24)	(6)	(29)	(6)
Base Case:				
Costs (Manufacturers and FAA)	14	3	15	3
Cost Savings (Remote Pilots)	(49)	(12)	(57)	(12)
Net Cost Savings	(35)	(9)	(42)	(9)
High Case:				
Costs (Manufacturers and FAA)	14	3	15	3
Cost Savings (Remote Pilots)	(135)	(33)	(158)	(34)
Net Costs Savings	(121)	(29)	(143)	(31)

* Columns may not sum to total due to rounding. Savings are shown in parenthesis to distinguish from costs.

[14] As explained in section IV.B.12., this proposed rule would not permit Category 3 operations over open-air assemblies of people. Operations that occur pursuant to Category 1 and Category 2, however, would not be subject to this prohibition.

The operation of small UAS over people may result in an increased risk to safety. Although the FAA believes the probability of injuries that may occur from operations of small UAS over people is small, when that small probability is multiplied by an increased number of operations, some additional risk of injury exists. This proposed rule's performance-based standards would establish three categories of small UAS operations defined primarily by level of risk of injury posed. Compliance with the manufacturer and operational requirements that apply to these categories would mitigate the risks of operating over people.

II. Authority for This Rulemaking

The primary authority for this rulemaking is based on 49 U.S.C. 44807, which directs the Secretary of Transportation to determine whether ''certain unmanned aircraft systems may operate safely in the national airspace system [NAS].'' Section 44807 directs the Secretary to use a risk-based approach in making such determinations and provides such determinations may occur notwithstanding the completion of the comprehensive plan and rulemaking required in other sections of the statute. Section 44807(b) directs the Secretary to consider a specific list of factors in determining which types of UAS may operate safely: The Secretary must consider size, weight, speed, operational capability, proximity to airports and populated areas, operation over people, operation within visual line of sight, or operation during the day or night. The Secretary must determine, based on these factors, whether operations of the UAS do not create a hazard to users of the NAS or the public. If the Secretary determines, pursuant to section 44807, that certain unmanned aircraft systems may operate safely in the NAS, then the Secretary must ''establish requirements for the safe operation of such aircraft systems in the national airspace system.'' 49 U.S.C. 44807(c).

This rulemaking is also promulgated pursuant to 49 U.S.C. 40103(b)(1) and (2), which directs the FAA to issue regulations: (1) To ensure the safety of aircraft and the efficient use of airspace; and (2) to govern the flight of aircraft for purposes of navigating, protecting and identifying aircraft, and protecting individuals and property on the ground. In addition, 49 U.S.C. 44701(a)(5) charges the FAA with promoting safe flight of civil aircraft by prescribing regulations the FAA finds necessary for safety in air commerce and national security.

III. Background

A. Related FAA and DOT Actions

This rulemaking is a deliberative step in further integrating small UAS into the NAS in a safe and secure manner. The FAA is incorporating the operation of small UAS into the NAS using a phased, incremental, and risk-based approach.[15] In 2012, Congress passed the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95). Section 333 of Pub. L. 112–95 directed the Secretary to determine which types of UAS do not create a hazard to users of the NAS or the public or pose a threat to national security. Based on such findings, Congress directed the Secretary to establish requirements for the safe operation of such UAS.[16] On June 28, 2016, the FAA published the final rule for Operation and Certification of small Unmanned Aircraft Systems (hereinafter, ''2016 final rule''), which was among the first steps to allow small UAS operations.[17]

As technology improves and the utility of small UAS for activities that previously required manned aircraft increases, the FAA anticipates an increased demand for flexibility in small UAS operations. The proposal to permit small UAS operations over people and small UAS operations at night is one of a number of regulatory steps the FAA is taking to allow for this growth while still maintaining the safety of the NAS. Possible small UAS operations that may operate over people or at night include motion picture filming, newsgathering, law enforcement, aerial photography, sports photography, and construction or surveying. This proposed rule would enable further operations of small UAS that would benefit the economy by increasing opportunities for commercially beneficial small UAS operations.

1. Registration and Marking Requirements for Small Unmanned Aircraft

On December 16, 2015, the FAA published the Registration and Marking Requirements for Small Unmanned Aircraft (Registration Rule).[18] The Registration Rule established a streamlined, web-based registration system for small unmanned aircraft in 14 CFR part 48. The FAA provided this process as an alternative to the registration requirements for manned aircraft found in 14 CFR part 47. Regardless of whether they chose the process in part 47 or part 48, the Registration and Marking rule required all small UAS owners to register by February 16, 2016.

The Registration Rule also established marking requirements for small unmanned aircraft. In accordance with that rule, all small unmanned aircraft must display a unique identifier. Each small UAS operated under part 107 must display a unique registration number, visible upon inspection of the small unmanned aircraft.

2. Operation and Certification of Small Unmanned Aircraft Systems

On June 28, 2016, the FAA and DOT jointly issued the 2016 final rule.[19] That rule, codified at 14 CFR part 107, allows small UAS operations without requiring airworthiness certification, exemption, or a certificate of waiver or authorization (COA). Part 107 generally sets forth a framework of operational rules and robust restrictions to permit routine civil operation of small UAS in the NAS in a safe manner.

To mitigate risk to people on the ground and other users of the airspace, the 2016 final rule limited small UAS to daylight and civil twilight operations, confined areas of operation, and visual-line-of-sight operations. The 2016 final rule also addressed airspace restrictions, remote pilot certification, visual observer requirements that apply when a remote pilot in command opts to use a visual observer, and operational limits to maintain the safety of the NAS and ensure small UAS do not pose a threat to national security. Finally, the 2016 final rule included a waiver provision, which allows individual operations to deviate from many of the operational limitations if the Administrator finds the applicant could safely conduct the proposed operation under the terms of the certificate of waiver.

In its NPRM that preceded the 2016 final rule, the agency proposed including special provisions applicable to UAS weighing less than 4.4 pounds (micro UAS), but concluded such provisions were best addressed in a separate proposal.[20] A number of comments were submitted on micro UAS operations in response to the Operation and Certification of Small Unmanned Aircraft Systems NPRM,[21] and the FAA considered many of those

[15] For more information regarding the operation of small UAS, see *http://www.faa.gov/uas.*

[16] Section 347 of Public Law 115–254 repealed Section 333, but replaced the relevant substantive provisions, codified at 49 U.S.C. 44807.

[17] 81 FR 42064.

[18] 80 FR 78594.

[19] 81 FR 42064.

[20] 81 FR 42064 at 42122–23.

[21] Operation and Certification of Small Unmanned Aircraft Systems, Notice of Proposed Rulemaking, 80 FR 9544 (Feb. 23, 2015).

comments during the development of this proposal. This proposal for small UAS operations over people is distinct from that proposal and not all of the originally submitted comments remain relevant. Nevertheless, the agency encourages members of the public to submit comments on this proposal regardless of whether they had submitted comments to the previous proposal.

3. Secure Operations of Small Unmanned Aircraft Systems

The FAA has been engaged in extensive outreach with Federal, State, local, and tribal law enforcement entities on the subject of small UAS operations. The FAA recognizes law enforcement officials are often in the best position to detect and deter unsafe and unauthorized drone operations. Therefore, the FAA works closely with these agencies to provide information regarding the evidence needed by the FAA to take enforcement actions and provide a communications link wherein state and local law enforcement can pass along reports in a timely manner. For example, all remote pilots operating in accordance with part 107 must obtain an FAA-issued remote pilot certificate with small UAS rating. The process for obtaining this certificate includes the same Transportation Security Administration (TSA) review procedures that are currently used under 49 U.S.C. 46111 to ensure that airman certificate applicants do not pose a security risk. Although this proposed rule would modify the recurrent knowledge testing requirements, an applicant for a remote pilot certificate would still be subject to initial and continuing TSA vetting.[22] After initial vetting, TSA conducts recurrent vetting to ensure that certificate holders do not subsequently become a security threat. This framework is similar to the framework applicable to pilots who operate manned aircraft.

The FAA remains committed to working with security partners to ensure that appropriate means exist to mitigate security risks that small UAS operations may present. In this regard, the FAA seeks input on whether certain standards and restrictions should apply to operations of small UAS. In particular, the FAA is currently engaged in two distinct projects in which the FAA seeks feedback.

On May 4, 2017, the FAA convened an Aviation Rulemaking Committee (ARC) of industry stakeholders and observers from relevant government agencies to provide recommendations regarding technologies available for remote identification and tracking of UAS. The ARC's objectives included identifying and recommending emerging technology as well as identifying requirements for fulfilling security and public safety needs of law enforcement, homeland defense, and national security communities. The ARC's members included experts with knowledge and experience in electronic data capture, law enforcement, and public safety, among other areas. The FAA is cognizant of the importance of conducting research to develop potential standards relevant to remote identification and tracking of small UAS and is committed to ensuring further development of such standards and protocol in the interest of enabling adequate security measures to mitigate security concerns that operations of small UAS may present. As a result, the FAA plans to finalize its policy concerning remote identification of small UAS—by way of rulemaking, standards development, or other activities that other Federal agencies may propose—prior to finalizing the proposed changes in this rule that would permit operations of small UAS over people and operations at night.[23]

In addition, the FAA is collecting comments in response to its publication of the Safe and Secure Operations of Small Unmanned Aircraft Systems advance notice of proposed rulemaking (ANPRM). In publishing the ANPRM, the FAA intends to gather information from the public to inform the FAA's efforts in assessing options for reducing risks to public safety and national security associated with further integration of UAS into the NAS. The FAA may consider one or more rulemaking efforts based on the comments it receives in response to the ANPRM.

B. Advantages of Operations Over People and at Night

The high level of interest in small UAS rulemaking reflects the small UAS industry's strong desire for integration of unmanned aircraft in the NAS. UAS integration will likely create substantial economic, technological, and societal benefits while ensuring that the United States retains its role as a global leader in innovation and aviation safety.

Today, remote pilots in command who are compliant with part 107 can fly a small UAS within the remote pilot's visual line of sight within a safe distance from people, but not over people who are not participating in the operation, and not at night. Without this proposed rule, the only entities allowed to operate small UAS over people or at night are: (1) Public entities holding an active certificate of waiver or authorization (COA), (2) entities holding an exemption from the FAA that permits UAS operations over people or at night, (3) entities that hold a waiver to the prohibitions on operations over people or operations at night, or (4) civil small UAS that have received airworthiness certification from the FAA and operate with a COA. The FAA has issued over 6,000 exemptions for operations of small UAS, some of which permitted operations over people or operations at night. In addition, since part 107 took effect, the FAA has issued 9 waivers for operations over people and over 1,200 for operations at night. Under the terms of this proposed rule, individuals would be able to operate small UAS over people and at night in the NAS under part 107 without a waiver or exemption, as long as the remote pilot in command conducts the activity pursuant to the proposed provisions.

With this proposed rule, the FAA expects the small UAS industry to continue finding new and creative ways for deploying small UAS, and thereby grow the industry through innovation. The proposed performance-based framework would enable an entirely new realm of operations, such as emergency response efforts, newsgathering, aerial surveying and photography, and certain infrastructure inspections.

During an emergency situation, response time often corresponds to lives saved. Remote pilots in command operating pursuant to the proposed provisions would not need to expend time clearing an area of any people not directly involved in the small UAS operation before operating the small UAS pursuant to Category 1 or Category 2. Police or special weapons and tactics (SWAT) units could operate small UAS over people in situations that would otherwise present risk to law enforcement officers and support personnel, such as a hostage situation or similar type of incident. Other examples include firefighters using small UAS over a burning building and over people while colleagues actively fight the fire inside, providing real time footage of isolated pockets of fire, safe entry or egress points, or the location of trapped people or animals. A remote pilot could provide small UAS visual or infrared imagery for search and rescue missions

[22] See 49 U.S.C. 44903(j)(2)(D)(i).

[23] The UAS Identification and Tracking Aviation Rulemaking Committee charter is available at *https://www.faa.gov/news/updates/media/UAS_ID_and_Tracking_ARC_Charter.pdf.*

while personnel are active on the ground beneath the small unmanned aircraft. First responders to major transportation disasters, such as train derailments or bus accidents, could use small UAS eligible for operations over people to locate victims or assess danger from a distance while the small unmanned aircraft proceeds over people involved in responding to the disaster. This would allow more targeted and efficient rescue efforts on the ground. The advantages of such operations are driven by timely and accurate decisions that save lives and reduce injuries.

The advantages of enabling small UAS operations over people and at night extend beyond the realm of emergency response. With safety standards for operations over people, media outlets could gather aerial images and video with greater ease and safety, giving them the flexibility to cover a wide array of news stories. Likewise, the potential for scientific and professional applications are numerous. A farmer could survey an entire field, even as employees are working in it. Small UAS, which are ideal for operations at low altitudes, could enable wildlife biologists to track and collect data on animal populations in towns and cities where people may traverse below, providing more accurate data on myriad aspects such as the efficacy of pest control efforts and the progression of habitat loss. In addition, the use of small UAS during sporting and cultural events could afford enhanced viewer experience, more dynamic visuals, and greater accuracy. Using a small UAS to observe the performance of athletes, a judge would be able to measure competitors against one another with precise data the small UAS obtains.

Permitting small UAS operations at night would obviate the need for people to engage in activities that present a risk to their safety, such as nighttime inspections of infrastructure, wildlife, and other activities that may be preferable during nighttime hours. The absence of a person actually performing such inspections or higher-risk activities would therefore result in a decrease in the associated costs of the activities. As a result, the benefits of utilizing small UAS to engage in various activities are diverse.

The FAA continues to prioritize safety as it develops subsequent rulemakings for the entire aviation community. Providing a set of flexible, performance-based regulations enables the next phase of UAS operations, thereby ushering in additional economic and societal advantages while maintaining the safety of the NAS.

C. Micro UAS Aviation Rulemaking Committee

On February 24, 2016, the FAA chartered the Micro UAS Aviation Rulemaking Committee (ARC) (hereinafter ''the ARC'') on the subject of enabling operations of small UAS over people. As such, the ARC provided recommendations on enabling such operations. ARC members were familiar with small UAS designed for aerial data collection and photography with a focus on safety features and miniaturization of the aircraft and sensors; in addition, ARC members' experience included development of performance-based regulations for operations within the NAS, consensus standards, consumer product testing techniques, manufacture of unmanned aircraft, and human injury research. The ARC provided a forum to discuss and provide recommendations to the FAA on enabling the operation of micro UAS over people who are not directly participating in the operation of the UAS or under a covered structure. On April 2, 2016, the ARC provided a final report with recommendations.[24]

The ARC recommended the FAA establish four categories for operations over people with small UAS. Specifically, the ARC suggested the establishment of risk thresholds based on the probability that direct impact with a person on the ground from a small unmanned aircraft would cause an injury that qualified as level 3 or higher on the Abbreviated Injury Scale (AIS).[25] The Association for the Advancement of Automotive Medicine (AAAM) classifies AIS level 3 injuries as ''serious.''[26] The ARC focused on this ''serious'' category, and assumed any small UAS flown over people may experience a failure and therefore fall, impacting a person. The ARC did not attempt to quantify the current risk of experiencing a failure or an acceptable failure rate, and did not specify the acceptable probability of a human impact occurrence. For each particular model of small UAS to qualify for operations over people, the ARC recommended the manufacturer of that model would have to certify that the aircraft's energy upon impact, as measured by a test established by an industry consensus standards body, would not, in the most probable failure modes, exceed a specified threshold. Such a test would establish the typical or likely impact energy of the most probable failure mode, and not simply the worst-case condition.

Based on the foregoing structure for categorizing risk, the ARC recommended four categories of operations of small UAS over people. Under ARC Category 1, the ARC recommended a small UAS could operate over people if the small unmanned aircraft weighed 0.55 pounds or less. Based on the data the ARC received, the ARC believed the level of risk of injury posed by this category of small UAS was so insignificant that no performance standards or specific operational restrictions would be necessary. To demonstrate a small UAS qualifies for ARC Category 1 operations over people, the ARC recommended the manufacturer of small UAS either: (1) Label the product retail packaging of the small UAS with the actual weight of the aircraft, or a general statement that the aircraft weighs 0.55 pounds or less; or (2) declare the aircraft weighed 0.55 pounds or less, and submit that declaration to the FAA in a form and manner acceptable to the FAA.

To conduct ARC Category 2, 3, and 4 operations, the ARC recommended a small UAS should be able to operate over people if it did not exceed the impact energy threshold specified for each category, as determined by the manufacturer using test methods contained in industry consensus standards. Additionally, the ARC recommended the remote pilot for such operations should comply with operational restrictions specified for each category. Because the level of risk increases between ARC Categories 2, 3, and 4, the ARC recommended scaling up the performance-based standards and operational restrictions in each category to mitigate the increased risks.

Under ARC Category 2, the ARC recommended that a small unmanned aircraft be permitted to operate over people if it weighed more than 0.55 pounds, but still presented a 1 percent or less chance of ''serious injury'' (AIS level 3 or greater) upon impact with a person. The manufacturer would be required to certify that the small UAS did not, in the most probable failure modes, exceed the typical or likely impact energy threshold, in accordance with test methods contained in industry

[24] A copy of the ARC's final report has been placed in the docket for this rulemaking.

[25] AAAM developed the AIS as: ''an anatomically based, consensus derived, global severity scoring system that classifies each injury by body region according to its relative importance on a 6-point ordinal scale (1=minor and 6=maximal).'' See *https://www.aaam.org/abbreviated-injury-scale-ais/*. Explanations of the AIS were presented to the ARC by several speakers. See section IV.B.1. for a description that contains more information concerning the FAA's use of the AIS in this proposed rule.

[26] In a presentation on the historical basis for FAA occupant safety, an FAA presenter provided the following examples of level 3 injuries to the head: Small penetrating skull, sinus thrombosis, ischemic brain damage, basilar fracture/loss of consciousness for 1 to 6 hours.

consensus standards. The ARC also recommended the operator[27] of the small UAS comply with the manufacturer's operator manual for the small UAS, developed in accordance with industry consensus standards. Lastly, the ARC recommended the operator maintain minimum set-off distances of 20 feet vertically or 10 feet laterally away from people, and generally not operate so close to people as to create an undue hazard for them.

Under ARC Category 3, the ARC recommended a small UAS could operate over people if it presented a 30 percent or less chance of causing an AIS level 3 or greater injury upon impact with a person. The manufacturer of the small UAS would be required to certify to the FAA that the small UAS did not, in the most probable failure modes, exceed the typical or likely impact energy threshold. The ARC also recommended the operator comply with the manufacturer's operator manual for the small UAS, developed in accordance with industry consensus standards and that flight over crowds or dense concentrations of people never be permitted under this category. In addition, the ARC recommended small UAS eligible for operations over people pursuant to ARC Category 3 only be permitted to operate over people if: (1) The operation is conducted over a closed- or restricted-access work site with the permission of the site's owner or operator; or (2) overflight of people is limited to transient or incidental operation, rather than sustained flight over people. The performance standards and operational restrictions applicable to ARC Category 2 operations would also apply to ARC Category 3.

The ARC recommended an ARC Category 4 to include operations in which a small UAS may operate over people, including flights over crowds or dense concentrations of people prohibited in ARC Category 3, if: (1) The manufacturer of the small UAS certifies the aircraft satisfies the same impact energy threshold as small UAS eligible to conduct ARC Category 3 operations; (2) the small UAS complies with industry consensus standards; and (3) the operation is conducted in compliance with a documented risk mitigation plan, which would be developed and adopted in accordance with industry consensus standards for conducting risk mitigation. The ARC's recommended performance standards for ARC Category 3 and operational restrictions for ARC Category 2 would also have applied to ARC Category 4 operations.

The ARC recommended the means by which manufacturers would comply with the provisions would be to: (1) Declare the small UAS met industry consensus standards applicable to the category; (2) submit the declaration to the FAA in a form and manner acceptable to the FAA; (3) label the product or retail packaging in accordance with industry consensus standards; and (4) provide an operating manual to the operator that includes operator instructions for flight over people. The operator would be responsible for knowing the category of operations for which his or her small UAS is qualified, and any operational limitations he or she would be required to follow.

In addition, the ARC recommended the FAA establish a distinct knowledge testing framework for ARC Category 1 operations. Based on the proposed requirements for part 107, a majority of the ARC recommended the knowledge test be available online and the TSA vetting process (background checks) be reconsidered or eliminated for ARC Category 1 operations. The ARC based this recommendation on input that the process is unduly burdensome and therefore detrimental to safety because the process discourages operators of small UAS from complying with the procedural requirements.[28]

The FAA considered the ARC's recommendations in the context of the agency's statutory authorities and responsibilities, as well as the practical realities of administering the regulatory scheme, while carefully deliberating over the ARC's recommendations and other public policy factors.

IV. Discussion of the Proposed Rule

This proposed rule would amend part 107 to enable routine small UAS operations over people and at night. This rule would require manufacturers ensure that small UAS they build for flying over people adhere to certain standards to mitigate the risk of injury to people should the aircraft fail. This rule would also set operational standards for all remote pilots in command who conduct operations over people and who conduct operations at night.

A. Operations at Night

This rule proposes permitting operations of small UAS at night, subject to specific requirements.

The requirements that accompany each of the operations this proposed rule would permit would adequately mitigate the risk of collision with other aircraft, as well as the risk of injury to people. Such an analysis is consistent with the FAA's grant of exemptions under section 333 that preceded the promulgation of part 107, as well as waivers the FAA has issued for operations that occur at night and operations over people under § 107.200.

This proposed rule would amend § 107.29 to permit operations at night only: (1) When the small unmanned aircraft has an anti-collision light that is visible for 3 statute miles, and (2) when the remote pilot in command has completed an updated knowledge test or recurrent training as applicable, to ensure familiarity with the risks and appropriate mitigations for nighttime operations. Under 14 CFR 1.1, the definition of ''night'' is applicable for purposes of proposed § 107.29. Section 1.1 defines ''night'' as follows: ''the time between the end of evening civil twilight and the beginning of morning civil twilight, as published in the Air Almanac, converted to local time.''

1. Analysis of Risk of Night Operations

The FAA recognizes the 2016 final rule limited operations of small UAS to daytime and civil twilight, based on the assessment that operations at night pose a higher safety risk. The FAA based this presumption on the general difficulty involved in maintaining visual line of sight and in ensuring discernment of the location of other aircraft during night hours. The portion of the 2016 final rule that explained the agency's rationale for the prohibition stated the distance and movement of small unmanned aircraft relative to the distance and movement of other lighted manned aircraft are difficult to judge, due to the relative size of the aircraft.[29] Moreover, the agency determined visual autokinesis, which is the apparent movement of a lighted object, may occur when the person maintaining visual line of sight stares at a single light source for several seconds on a dark night; as a result, darkness

[27] The FAA notes that the ARC used the term ''operator,'' as the FAA proposed in the Operation and Certification of Small Unmanned Aircraft Systems NPRM. When the FAA finalized that rule, it changed the term ''operator'' to ''remote pilot.''

[28] Representatives of the Air Line Pilots Association (ALPA); National Agricultural Aviation Association (NAAA); Helicopter Association International (HAI); and Professional Aerial Photographers Association, International (PAPA) did not agree with the majority of the ARC on changing the testing requirements for remote pilots conducting Category 1 operations. These organizations all maintained that an individual intending to exercise the privileges permitted under the proposed part 107, which include commercial small UAS operations, ''should fully comply with the necessary training and certification as currently described in part 107, no matter the size or complexity of the aircraft.'' ARC Report at 13. In addition, these organizations argued that data was not provided to the ARC.

[29] 81 FR 42064, 42103.

increases the difficulty of perceiving reference points that could be used to help understand the position and movement of the lighted manned aircraft, the small unmanned aircraft, or other lighted object. Based on the difficulty of perceiving reference points and other associated risks the FAA identified, the FAA opined in the preamble of the 2016 final rule that operations of small UAS at night could increase the risk of collision with people, obstacles on the ground, and other aircraft.[30] The FAA, however, acknowledged the many comments in favor of permitting operations at night and stated it planned to consider commenters' recommendations as part of future rulemaking efforts.[31]

While the FAA carefully analyzed the risks that operations of small UAS at night present, the FAA remains mindful of the fact that the remaining rules of part 107 address risks in a comprehensive manner. In this regard, aside from amending the provisions of §§ 107.29 and 107.39, none of the amendments the FAA proposes in this NPRM would change the remaining operational restrictions and requirements of part 107.[32] The FAA determined these existing operational provisions, in addition to the proposed requirements of an anti-collision light and additional knowledge testing or recurrent training, mitigate the risk posed by small UAS operations at night.

2. Review of Exemptions and Waivers

The current prohibition on nighttime operations of small UAS may be waived, and the FAA has analyzed the effects of risk mitigation measures the FAA requires under such waivers. Since the effective date of the rule on August 29, 2016, the agency has received 4,837 [33] requests for waiver of the prohibition on nighttime operations. The agency has issued 1,233 [34] waivers for operations at night, and has determined the operations that proceed in accordance with those waivers are safe.

The FAA also has granted exemptions pursuant to section 333 for UAS operations at night under 14 CFR part 91, which contains a different framework than part 107.[35] The FAA considered in its analysis the fact that it did not exempt the requirements of §§ 91.205(c) and 91.209, which require lighting on aircraft. In addition, most of the airman qualification requirements under 14 CFR part 61 applied to such exemptions. The FAA considered these two factors—anti-collision lighting and airman knowledge—as critical to ensuring safety in the NAS when permitting the UAS operations at night under section 333. In addition, the current version of § 107.29(b) requires anti-collision lighting for operations during periods of civil twilight. The FAA has determined this requirement is a suitable risk mitigation measure for operations at night.

The FAA has also assessed the potential effects of operations of small UAS at night in conjunction with the other type of operation this proposed rule would permit, which is operations over people. First, risks of operations at night are distinct from those that operations over people present. As explained in this proposed rule, the FAA classifies the risk mitigations for operations over people via proposed categories that are based on the level of risk of injury posed. Manufacturers of small UAS who seek to produce small UAS eligible to operate over people would need to consider the mass of an anti-collision light if they include such a light on the small unmanned aircraft.

The lighting conditions at the time of the flight do not change the level of risk that small UAS operations that occur over people present. If the small UAS used in the operation complies with one of the categories of aircraft listed in proposed subpart D of part 107, then the remote pilot in command may operate the small UAS over people pursuant to the proposed requirements within subpart D, as well as other requirements that may apply.

3. Visual Observation at Night

Visual observation is the means by which a remote pilot in command ensures the small unmanned aircraft does not collide with other aircraft. Several factors influence a person's ability to detect aircraft visually. For example, size, orientation, visual clutter, and the location of the image on a person's retina all affect the discernment of an aircraft with unaided human vision. Creating contrast, which is the difference in luminance between an object in its background, enhances the safety of aviation operations that occur at night because contrast facilitates one's ability to observe aircraft and therefore avoid a collision. Contrast consists of paint schemes, aircraft lighting systems, atmospheric conditions, and variations in background.[36]

Feedback from an FAA Pathfinder participant supports the FAA's conclusion that such contrast affects the remote pilot's ability to avoid a collision based on visual observation. The Pathfinder participant operated a small UAS at night and staged a manned aircraft in the same area as the unmanned aircraft. In that case, both the remote pilot in command and the manned aircraft pilot spotted one another more easily during night operations than during the day, due to the increased conspicuity that anti-collision lighting provided.[37]

4. Anti-Collision Lighting

Small unmanned aircraft, in most cases, are significantly smaller than their manned counterparts. The reduced size, combined with the reduced visibility due to darkness, favors requiring an anti-collision light for reduction of the risk involved with small UAS operations at night. The FAA anticipates the presence of the light will provide other aircraft with awareness of the small unmanned aircraft's presence. The FAA's rationale for the proposed anti-collision light for night operations in this rule remains consistent with the rationale the FAA articulated in the 2016 final rule with regard to the

[30] Id. at 42104.

[31] Id. at 42105.

[32] For example, remote pilots must still maintain a valid remote pilot certificate and may not operate the small UAS in an unsafe manner. Remote pilots remain prohibited from: Operating small UAS from a moving vehicle (other than over sparsely populated areas) or aircraft and operating in the absence of the capability to discern visually the speed, altitude, attitude, and position of the small unmanned aircraft. In addition, remote pilots may only operate in Class G airspace unless they first obtain prior authorization and must thoroughly check the area of operation and the small UAS in advance of the operation. Furthermore, remote pilots must continue to yield to other aircraft.

[33] This information is current as of December 31, 2017.

[34] This information is current as of December 31, 2017.

[35] Section 333 required the Secretary to determine which types of UAS do not create a hazard, based on considerations that include unmanned aircraft size, weight, speed, operational capability, proximity to airports and populated areas, and operation within visual line of sight. Id. Public Law 112–95 section 333(b)(1). Based on such determinations, the FAA issued exemptions from various operating rules applicable to manned aviation operations to enable operations of UAS. Some exemptions permitted operations of UAS at night, pursuant to certain conditions and limitations. See, *e.g.,* Industrial Skyworks, Exemption No. 16341 (April 18, 2016) (concluding, ''the petitioner's use of anti-collision lights that are visible from 5,000 feet are adequate for the PIC and [visual observer] to maintain [visual line of sight] capability and as an additional means for collision mitigation.'').

[36] See Williams and Gildea, A Review of Research Related to Unmanned Aircraft System Visual Observers, DOT/FAA/AM–14/9 Civil Aerospace Medical Institute (October 2014) (stating operations at night offer the potential advantage of higher contrast conditions because the small unmanned aircraft's light against a dark sky provides a difference in luminance).

[37] A copy of correspondence with staff from Pathfinder participant Burlington Northern Santa Fe (BNSF) is available in this rulemaking docket.

requirement for the light during civil twilight operations.[38]

Although a remote pilot in command might be able to discern the position of the small unmanned aircraft with his or her unaided human vision when the aircraft is further away at night due to the lighted anti-collision light this proposed rule would require, the remote pilot may not be able to rely solely on that light as a manner of complying with the existing requirements applicable to visual line of sight operations. Existing § 107.31(a) requires the remote pilot to be able to see the small unmanned aircraft throughout the flight to: Know the unmanned aircraft's location; determine the unmanned aircraft's attitude, altitude, and direction of flight; observe the airspace for other air traffic or hazards; and determine that the unmanned aircraft does not endanger the life or property of another.

In almost all cases, the remote pilot in command will need to restrict the operational area of the aircraft at night or use a small UAS that contains an additional system, such as position lighting, to meet § 107.31(a) requirements while operating at night. Such a necessity arises from the fact that reduced lighting and contrast at night makes it difficult for remote pilots in command to maintain the capability of visually discerning the location, attitude, altitude, and direction of the flight of the aircraft. In the interest of enabling remote pilots in command with the flexibility to determine the appropriate solution for each unique operation, the FAA decided not to propose amending existing § 107.31 to require additional requirements on visual line of sight operations at night. The FAA invites comments from the public, however, on whether it should require position lighting, in addition to the anti-collision lighting the FAA proposes in this rule, for night operations.

Currently, § 107.29 requires an anti-collision light visible for 3 statute miles during periods of ''civil twilight.'' The 2016 final rule cited 14 CFR 103.11 as the source of the requirement for an anti-collision light.[39] Section 103.11 prohibits operation of ultralight vehicles at night, and sets forth an anti-collision light requirement for ultralight vehicles during twilight periods. The FAA is aware that the anti-collision light requirement for ultralights does not constitute a precise analogy to small UAS operations. Nevertheless, the FAA has considered the anti-collision light requirement as it applies to ultralights as instructive for both the existing version of § 107.29 as it relates to civil twilight operations, as well as the version of § 107.29 that the FAA proposes in this NPRM.

In promulgating this requirement for ultralights, the FAA stated ''[t]he visibility from above of ultralights operating at very low levels can be significantly enhanced by the addition of an anti-collision light on these vehicles.''[40] The FAA stated, for purposes of § 103.11, an anti-collision light is ''any flashing or stroboscopic device that is of sufficient intensity so as to be visible for at least 3 statute miles.''[41] Overall, the 3 statute mile visibility standard for anti-collision lighting for night operations of ultralight vehicles has been a longstanding requirement.

The FAA considered incorporating the standards of 14 CFR 27.1401, Anti-collision light system, for night operations under part 107. Part 107 does not contain aircraft certification rules or standards, and the FAA concludes the reduced risk small UAS operations pose does not warrant application of such standards. Prescribing lighting requirements would be overly burdensome for both the FAA and manufacturers of small UAS because they would be forced to make tradeoffs that affect both the weight of the aircraft and the aircraft's power source and supply. The FAA proposes small UAS operating at night must simply have an anti-collision lighting component that is visible for 3 statute miles, rather than a light that fulfills prescriptive design criteria. The FAA, however, invites comments on the following:

- Should the FAA impose a specific color or type requirement concerning the anti-collision light; the most helpful comments on this issue will explain how a prescriptive standard would achieve the objective of ensuring safety of small UAS operations at night, in light of the risks the FAA has identified in this proposed rule.
- Are there characteristics or effects of anti-collision lights at low altitude that could have an effect on normal human activities? If so, are there potential mitigations or alternatives to consider?

5. Waiver

The FAA also proposes making the anti-collision lighting requirement for small UAS night operations subject to waiver. The FAA would consider granting a certificate of waiver allowing a nighttime small UAS operation without an anti-collision light visible for 3 statute miles if an applicant demonstrated sufficient measures to mitigate the risk associated with the proposed operation. In this regard, as with the FAA's current manner of responding to requests for waiver, the FAA would expect waiver applicants to establish that operating at night without an anti-collision light (or with a light that is visible at a distance of less than 3 statute miles) would not reduce the level of safety of the operation.

6. Preflight Familiarization

The FAA also considers the existing preflight familiarization, inspection, and actions for aircraft operation under § 107.49 to mitigate the risk of operations of small UAS at night. Section 107.49 will continue to require the remote pilot in command to assess in advance of the operation the location of persons and property on the surface as well as other ground hazards. The remote pilot in command must also determine the functionality of the small UAS and its required components. Similar to the requirements of § 91.205(a), the FAA expects the remote pilot to check the anti-collision light in advance of the operation to ensure the light is in an operable condition for the duration of all flights during civil twilight and at night.

In addition to verifying the functionality of the anti-collision light prior to commencing the operation and after noting the locations of hazards during the assessment of the operating environment, the remote pilot in command must determine how to avoid the identified hazards to ensure continued safe operation of the small UAS in accordance with §§ 107.15 and 107.19(c). Prior to the flight, the remote pilot in command must also ensure he or she will be able to keep the small unmanned aircraft within the intended area of operation and within visual line of sight for the duration of the operation. This preflight assessment provides flexibility to the remote pilot in command and allows him or her to exercise judgment in using the principles of Aeronautical Decision Making. Advisory Circular 107–2[42] contains recommended best practices for operational site assessments and avoiding flight over non-participating people, unless the operation satisfies the proposed requirements of § 107.39.

The FAA considered amending § 107.49 to include an explicit

[38] 81 FR at 42103.

[39] 81 FR 42064, 42103 (June 28, 2016).

[40] 47 FR 38770, 38773 (Sept. 2, 1982).

[41] Id. at 38773–74.

[42] Small Unmanned Aircraft Systems (sUAS), Advisory Circular 107–2 (June 21, 2016), available at *https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_107-2.pdf.*

requirement to check the functionality of the anti-collision light prior to night operations. The FAA decided such an amendment is unnecessary because the language in the proposed version of § 107.29(a)(2) would specifically require a lighted anti-collision light. This language is identical to the original § 107.29(b) for civil twilight operations that also did not require checking the functionality of the light in § 107.49.

7. Remote Pilot Knowledge

The remote pilot's first-hand knowledge of the risks nighttime small UAS operations present, as well as the appropriate risk mitigations and aeronautical judgment, are critical to enhancing the safety of operations of small UAS at night. As a result, the FAA would require remote pilots complete either an updated knowledge test or recurrent training that addresses small UAS operations at night prior to operating as a remote pilot in command at night.

The additional test questions the FAA anticipates including on the initial knowledge test under § 107.73 and the recurrent training under § 107.74 would focus on night physiology and night illusions. The remote pilot in command's ability to maintain both the small unmanned aircraft and any intruding aircraft within his or her field of view will directly affect his or her ability to discern the potential for a collision.[43] As such, maintaining the ability to view the airspace pertinent to the operation is a principal mitigation of the risk small UAS operations present under part 107. Therefore, the additional knowledge questions and training relevant to night operations would emphasize the ability to maintain uninhibited visual observation of the airspace and would address how to detect aircraft in a dynamic, visually complex operational environment.

In addition, the FAA will continue to provide resources to remote pilots in command concerning practical tips and best practices for ensuring the safety of small UAS operations at night. The FAA publishes several resources that contain information and best practices for night operations. The FAA encourages remote pilots to become familiar with certain sections of the Aeronautical Information Manual (AIM),[44] Pilot's Handbook of Aeronautical Knowledge,[45] and Airplane Flying Handbook.[46] The FAA intends to update Advisory Circular 107–2 with specific sections pertaining to night operations and currently maintains brochures and training videos for night operations. Remote pilots have free online access to these materials.

A remote pilot who obtained his or her remote pilot certificate under part 107 prior to the effective date of this rule and has not completed updated training would not be eligible to act as remote pilot in command and operate their small UAS at night under this rule. Any person who wishes to be a remote pilot in command and operate at night must complete the updated training, which includes night operations, regardless of the amount of time that has passed since the person completed the previous test or course, before operating at night.

B. Operations Over People

This rule proposes amendments to part 107 that would enable operations of small UAS over people. The FAA bases its proposed framework on the presumption that small UAS operating under part 107 are not airworthy, given that they are not subject to the requirement of an airworthiness certificate.[47] Accordingly, the FAA proposes three categories of operation that could be conducted over people,[48] based on likelihood and severity of injuries that could result.

This section describes the FAA's proposed requirements applicable to the three categories that would ensure the safety of operations over people. These requirements address the manufacturing of small UAS that fulfill the safety thresholds of this proposed rule as well as restrictions that may apply to the operation. In addition, this section describes the measures of oversight the FAA will employ in ensuring compliance with the proposed requirements.

1. Definitions

This proposed rule includes two new definitions applicable to manufacturing small UAS eligible to conduct operations over people: ''casualty'' and ''declaration of compliance.'' For purposes of this rule, the FAA considers a ''casualty'' as an Abbreviated Injury Scale (AIS) level 3 or greater injury. The AIS provides a means of classifying the type and severity of injuries throughout the body. Although originally designed to map a series of anatomically-defined injury descriptions using several parameters (energy dissipation, threat to life, permanent impairment, treatment period, and incidence) specifically for vehicular crashes, the U.S. Department of Transportation as well as many university and industry research teams in the United States, Europe, and Australia have adopted the AIS severity level scale as the standard for various crash investigation teams. Within the AIS system, injuries are classified on a scale of 1 to 6, as follows:

TABLE 3—ABBREVIATED INJURY SCALE

AIS Level	Definition
1	Minor injury.
2	Moderate injury.
3	Serious injury.
4	Severe injury.
5	Critical injury.
6	Non-survivable injury.

Throughout this NPRM, the FAA uses the phrase ''low probability of causing a casualty'' for Category 2 operations to mean a low chance exists that a person whom a small unmanned aircraft impacts would experience a serious injury. The FAA notes that the AAAM classifies all AIS level 3 injuries as ''serious.'' Similarly, although the FAA does not propose codifying a definition of ''fatality'' in this rule, this NPRM uses that term in descriptions concerning Category 3 operations, which appear in section IV.B.4. For purposes of this discussion, the FAA regards a ''fatality'' as an AIS level 6 injury, which means the injury ultimately results in death. Because a casualty is an AIS level 3 or greater injury, AIS level 6 is included within the definition of a casualty.[49] Overall, consistent with the ARC's recommendations, the FAA uses the AIS in assessing the levels of risks of injury small unmanned aircraft operating over

[43] See M.A. Crognale, UAS/UAV Ground Observer Performance: Field Measurements, DOT/FAA/AR–10/1 (Dec. 24, 2009).

[44] AIM, Ch. 8: Medical Facts for Pilots, Sec. 8–1–6 ''Vision in Flight,'' available at *https://www.faa.gov/air_traffic/publications/media/aim.pdf* (April 27, 2017).

[45] Pilot's Handbook of Aeronautical Knowledge, Ch. 17: Aeromedical Factors at p. 17–19 ''Vision in Flight,'' available at *https://www.faa.gov/regulations_policies/handbooks_manuals/aviation/phak/media/19_phak_ch17.pdf* (2016).

[46] Airplane Flying Handbook, Ch. 10: Night Operations (March 23, 2017).

[47] 81 FR 42068–70 (stating Pub. L. 112–95 section 333(b)(2) allows for the determination that airworthiness certification is not necessary for certain small UAS, such as those part 107 covers).

[48] As discussed in the preamble of the 2016 final rule, the term ''over'' refers to the flight of a small unmanned aircraft directly over any part of a person, regardless of the dwell time. 81 FR 42064, 42129.

[49] AIS 3 head injuries can result in a loss of consciousness of 1 to 6 hours, or specific types of skull fractures. AIS 3 neck injuries include dislocations, fractures, and injuries that put the spinal cord at risk. While an AIS 3 injury may not be life-threatening as a stand-alone injury, compounding factors may lead to death. Therefore, the FAA notes that a person could experience an AIS 3 injury as a result of a small unmanned aircraft impact that could develop into a more serious injury if, for example, the person does not seek the appropriate medical attention.

people may present, in the interest of determining the appropriate manner for reducing such risks.

This proposed rule would also define a ''Declaration of Compliance'' as a document a manufacturer submits to certify that a small UAS conforms to the Category 2 or 3 requirements for operations over people. As discussed in section IV.B.7., this rule would require manufacturers producing small UAS for Category 2 and 3 operations to submit a Declaration of Compliance to the FAA. Although these aircraft systems would not be certificated as airworthy under this rule, the FAA would rely on a manufacturer's Declaration of Compliance to ensure the make and model of aircraft complies with the applicable standards at the time of manufacture.

2. ARC Recommendation

As noted previously, the ARC recommended a small UAS operating over people should present only a low probability of causing a serious injury to uninvolved people. The ARC used two concepts to address the risk to persons from small UAS operations over people: injury threshold and impact kinetic energy threshold. The injury threshold is the maximum injury level a person would be expected to suffer as a result of being impacted by a small unmanned aircraft under normal operating conditions. The impact kinetic energy threshold is the maximum kinetic energy that the small unmanned aircraft could transfer to a person upon impact without exceeding the injury threshold. The ARC identified threshold injury levels using the AIS for each category: a one percent chance of causing an AIS level 3 injury for ARC Category 2 operations and no more than a 30 percent chance of causing an AIS level 3 injury for ARC Category 3 operations.[50]

The ARC recommended the proposed rule should limit the kinetic energy a small UAS could transfer upon impact in order to limit the injury the small UAS could cause. The ARC encouraged the FAA to use the injury thresholds to calculate corresponding impact kinetic energy thresholds. The ARC recommended using an impact kinetic energy threshold measured in Joules per centimeter squared (J/cm^2) to calculate the impact kinetic energy thresholds that correspond to these injury thresholds, by way of a performance-based requirement that limits the risk of injury. Based on a presentation it received from Transport Canada, the ARC stated this calculation would result in a value of 12 J/cm^2, and that a quadcopter UAS weighing 4 to 5 pounds would qualify for an ARC Category 2 operation, depending on its design characteristics and operating instructions.[51]

3. Category 1 Operations

This rule would establish a category of operations over people using small UAS that weigh 0.55 pounds or less, including everything that is on board or otherwise attached to the aircraft at the time of takeoff. The FAA refers to this category as Category 1, and proposes to enable Category 1 operations without any additional manufacturer or operational restrictions beyond what part 107 already requires and any other applicable laws and regulations.

The FAA's proposal is consistent with the ARC's recommendation for Category 1 operations. Based on information from experts in government, industry, and academia,[52] the ARC concluded, ''the level of risk of injury posed by this category of UAS is so low that no performance standards and no operational restrictions beyond those imposed by the proposed part 107 are necessary.'' [53] The ARC came to this conclusion based on the following: (1) An example provided by Dr. Paul Wilde of the FAA in which a small UAS weighing 0.55 pounds and operating over people presented a ''probability of serious injury or fatality consistent with existing levels of safety for non-participating people when exposed to aviation risks;'' [54] (2) data provided by Mr. Arterburn, of the University of Alabama in Huntsville's Alliance for System Safety of UAS through Research Excellence (ASSURE), who ''correlated various human injury thresholds with risks associated with sporting events'' [55] and suggested that a UAS, under certain conditions, could transfer as low as 38 percent of its total kinetic energy on impact; [56] and (3) the Registration Task Force's selection of a weight threshold of 0.55 pounds for registration purposes. There is more information about the ARC's analysis of the risks posed by Category 1 operations in its report, a copy of which has been placed in the docket. The FAA adopts this conclusion that a small unmanned aircraft that weighs 0.55 pounds or less poses a low risk of injury when operated over people.

The FAA anticipates Category 1 operations would consist almost exclusively of aerial photography, due to the small size of aircraft eligible for such operations. For example, a small UAS qualified for Category 1 operations might be used to film a wedding, collect pictures of a school sporting event, or take a self-portrait. The FAA invites comments containing data on the risk of injury to persons posed by operations using small UAS that weigh 0.55 pounds or less.

The FAA anticipates manufacturers would design small UAS to meet the Category 1 qualifications for marketing purposes, but responsibility for determining whether a small unmanned aircraft weighs 0.55 pounds or less rests with the remote pilot in command. The remote pilot in command would be in the best position to determine, before flight, whether the small unmanned aircraft satisfies the weight limitation and can therefore conduct Category 1 operations. For example, the remote pilot in command may choose to add or change the small unmanned aircraft's batteries or camera, which may cause a small unmanned aircraft that previously satisfied the 0.55-pound limit to exceed that weight and no longer qualify for Category 1 operations. Overall, the remote pilot in command must ensure the small UAS is eligible for operations under Category 1 prior to operating the small UAS over people.

4. Category 2 and 3 Operations

While the proposal for Category 1 operations is based on weight alone, the proposed amendments for enabling Category 2 and 3 operations require a more sophisticated analysis. This rule proposes categorizing eligibility for Category 2 and 3 operations based on the risk of human injury, which is consistent with the ARC's recommendations. The following discussion describes the level of safety this rule proposes as the standard for limiting human injuries from the energy a small unmanned aircraft transfers upon impact. This discussion also summarizes the sources of relevant information the FAA considered and will continue to monitor.

[50] ARC Report at 9–10.

[51] ARC Report at 7.

[52] In addition to presentations from FAA experts, presentations made at the ARC included analyses from researchers at ASTM International (ASTM), Transport Canada, National Aeronautics and Space Administration (NASA), National Institute of Standards and Technology (NIST), Alliance for System Safety of UAS through Research Excellence (ASSURE), Virginia Tech, RTCA, Praxis Aerospace Concepts, MIT Lincoln Labs, Simpson College, Naval Sea Systems Command (NSWC Dahlgren), EASA, U.S. Navy, UAS Insurance Association, and the Consumer Product Safety Commission. See ARC Report at Appendix A

[53] ARC Report at 4.

[54] ARC Report at 6.

[55] ARC Report at 6.

[56] ARC Report at 6.

(a) International Activities and Ongoing Research

Since the ARC, the FAA has carefully examined additional information with regard to injury risks and energy thresholds. The European Aviation Safety Agency (EASA) published a prototype regulation in August 2016, followed by a Notice of Proposed Amendment (NPA) on May 4, 2017.[57] The NPA introduces categories of permissible small UAS operations based on maximum takeoff masses; the ''open'' category is most permissive, and proposes a subcategory to permit small UAS operations over uninvolved people, but not over assemblies of people, as long as the aircraft does not exceed 250 grams maximum takeoff mass and does not have sharp edges. These aircraft would be limited to 50 meters (approximately 164 feet) above ground level (AGL) and eligible for operations that remote pilots of any age could conduct, provided they have educational materials to ensure competence. Other commercially built small unmanned aircraft would be permitted to operate over uninvolved people if they fulfill several product safety requirements, including either an energy transmitted to the human body less than 80 joules upon impact or a maximum takeoff mass, including payload, of less than 900 grams and a maximum cruising speed of 18 meters per second. These other aircraft would also be subject to the limit of 50 meters AGL unless the pilots conducting the operations take online training with a test, in which case they could conduct operations up to 120 meters AGL. The NPA proposes allowing other operations that do not fulfill these criteria, as long as they do not operate directly over uninvolved people and comply with certain operational restrictions.[58]

In the NPA, EASA also states it relied on the Joint Authorities for Rulemaking on Unmanned Systems (JARUS) concept that identifies three categories based on several factors concerning the intended operations. JARUS is a collaborative group of international participants that develop guidance material to assist governing authorities in promulgating standards. The FAA participates in JARUS in developing such materials, and has considered JARUS activities and proposed policies in furtherance of the FAA's goal of integrating UAS safely into the NAS. In this regard, the FAA continues to contribute to JARUS and its stated mission to develop a regulatory framework for unmanned aircraft operations and proposals for the regulation of operations the member states would consider ''low-risk.''

Since 2015, the FAA has collaborated with the academic community and its affiliates by fostering cooperative research and developing intellectual capabilities of primary interest to the FAA and the UAS community, through the work of the UAS Center of Excellence under the Alliance for System Safety of UAS through Research Excellence (ASSURE). Recent research from one ASSURE study has informed the FAA's decision-making concerning operations of small unmanned aircraft over people.[59] The results of the study corroborate the FAA's impact severity estimates that form the basis for this rule, in that the ASSURE researchers used kinetic energy upon impact as a basis for estimating the severity of injury a small UAS impacting a person causes.

This research substantiates the need for the development of manufacturer standards that will address how to measure the potential for human injury that results from small UAS impacts with a person. In particular, given the significant variability in the impact dynamics and amounts of energy transfer that the report identified, the ASSURE research indicates addressing impact dynamics, aerodynamic drag, the shape and material properties of the small UAS, and other potential factors, will be persuasive aspects to consider for creating standards that ensure safety. The A4 Report also highlights the necessity for safer blade designs or restrictions that could limit the effects of exposed rotating parts.

(b) FAA Proposal

This proposed rule would use the term ''safety level'' in the requirement applicable to means of compliance: In particular, applicants that submit means of compliance for FAA acceptance must show the means of compliance would achieve the safety level the proposed standards reach. This safety level refers to the limitation of injury severity caused by transfers of kinetic energy, exposed rotating parts, or safety defects. With regard to the impact kinetic energy limitations in this rule, the small unmanned aircraft must not be capable of causing an injury to a human being that is more severe than injury that would result from an impact kinetic energy transfer of 11 ft-lbs (Category 2) or 25 ft-lbs (Category 3) from a rigid object. In addition, this proposed rule would prohibit small UAS eligible for operations in either Category 2 or Category 3 from having exposed rotating parts that could lacerate human skin and from having any safety defects. Finally, to establish an appropriate safety level, this rule would also require certain operational limitations for Category 3 operations. Consistent with the ARC recommendation, this rule proposes a performance-based standard that the FAA believes is equivalent to reducing the likelihood of causing a certain level of expected injury.

(1) Safety Level

This proposed rule's establishment of a safety level that, in part, limits the effects of kinetic energy upon impact arises from the FAA's consideration of the AIS as a means of establishing the acceptable injury thresholds. In the Supplemental NPRM (SNPRM) titled ''Licensing and Safety Requirements for Launch,'' the FAA discussed the concept of levels of injury risk from impacts with inert debris resulting from commercial space launches.[60] In determining the acceptable level of risk of injury from inert debris, the FAA stated: ''[o]ne must note that not every impact of debris at 11 ft-lbs or greater would necessarily result in a casualty. The probability of casualty due to such an impact is further dependent on a number of other factors specific to the debris and the impact scenario.''[61] The FAA considered the concept of the risk of injury from inert debris in proposing standards for small unmanned aircraft, as explained below.

(a) Transfer of Energy From Rigid Object

This rule proposes a performance-based standard that includes the term ''rigid object'' with regard to the transfer of energy. For purposes of this proposed rule, the FAA considers a rigid object to be a body on which the distance between two points never changes, notwithstanding the amount of force applied on it. Such a definition, therefore, includes a body that does not

[57] Introduction of a Regulatory Framework for the Operation of Drones—Unmanned Aircraft System Operations in the Open and Specific Category, Notice of Proposed Amendment 2017–05, available at *https://www.easa.europa.eu/system/files/dfu/NPA%202017-05%20%28A%29_0.pdf.*

[58] Similar to the FAA, EASA may consider ongoing research as it determines the suitability of energy thresholds and the likelihood of human injury in attempting to categorize the risk small UAS operations over people may present.

[59] Arterburn, et al., FAA UAS Center of Excellence Task A4: UAS Ground Collision Severity Evaluation: Revision 2 (Apr. 28, 2017) (hereinafter ''A4 Report''). The final report underwent peer review of researchers from FAA, the National Aeronautics and Space Administration, and industry participants. The report is available in the docket for this rulemaking.

[60] See Licensing and Safety Requirements for Launch, Supplemental Notice of Proposed Rulemaking, 67 FR 49456 (July 30, 2002), which the FAA finalized on August 25, 2006. 71 FR 50508.

[61] 67 FR at 49465.

deform under the influence of forces. The FAA is fully aware that many factors affect the transfer of kinetic energy. For example, elasticity, impact dynamics, impact orientation, and a variety of other factors would ostensibly reduce the amount of energy the object actually transfers. Research suggests a rigid object impacts someone with more kinetic energy and therefore could cause injuries more severe than those a small unmanned aircraft would cause upon impact.

The A4 Report from ASSURE suggests a vertical drop test that measures kinetic energy upon impact alone is not the most accurate means of estimating injury that occurs as a result of the energy transfer. The ASSURE research also proposed alternatives to measuring injury that would result from a small unmanned aircraft that impacts a person. The study suggested other test methods that account for the design configuration and material properties of the small UAS may measure the severity of blunt trauma that results from an impact more accurately than kinetic energy measurements alone. ASSURE is conducting further research on alternative methodologies as indicators of the severity of injuries from impacts with small unmanned aircraft.

The study strongly suggests the transfer of energy from a small unmanned aircraft, while difficult to measure, is unlikely to reach 100 percent of the total kinetic energy. In this regard, the study states:

> The energy that is directly absorbed is the difference between the transferred energy and the change in kinetic energy of the impacted object. Absorbed energy is a function of the deformation of the impacted mass and the associated damping caused by the materials from which the impacted object is manufactured.[62]

The study indicates deformation and absorption of energy are influential factors to consider when measuring energy from a small unmanned aircraft falling on a person because ''[i]n the case of a person being hit by a UAS, deformation and absorbed energy contribute to the injuries associated with blunt force trauma.'' [63]

The study attempted to theorize the likelihood of injury that would result from an impact with a small unmanned aircraft as compared to an impact with blunt, dense objects such as a ball of steel and a block of wood.[64] The risk of a serious injury from such objects varies, given the frangibility and dense nature of the object, among other factors. The research conducted impact testing of each of these objects and established that the transfer of energy from these objects varies greatly due to design characteristics and the variation of materials that compose the objects. The study showed the transfer of energy from a rigid object was more likely to cause injury than the energy transferred from an object that is less rigid, such as a small unmanned aircraft of the same weight. The FAA intends the practice of comparing the energy transferred from a rigid object to the transfer of energy from a small unmanned aircraft will permit manufacturers, likely by way of an industry consensus standard, to design small unmanned aircraft that fulfill the safety levels the FAA proposes in this rule. Ultimately, the FAA intends its inclusion of the term ''rigid object'' to provide flexibility applicable to each small unmanned aircraft design, based on limiting human injury caused by the transfer of energy.

Along with the inclusion of the term ''rigid object'' in the standards that would govern the qualification of small UAS eligible to conduct operations in Category 2 and Category 3, the FAA proposes measurements of energy that would ensure a low likelihood that the small unmanned aircraft would cause a casualty or fatality upon impact. The FAA's use of 11 ft-lbs as the basis for the injury standard applicable to Category 2 operations is consistent with existing commercial space safety regulations at 14 CFR part 417, Launch Safety, and longstanding Range Commander's Council (RCC) standards. Specifically, 14 CFR 417.107(c) establishes 11 ft-lbs as the impact kinetic energy threshold for inert debris from a commercial space launch operation that could cause a casualty from blunt trauma to a person not under a covered structure. The FAA bases this threshold on extensive government research of human injury thresholds discussed in the RCC Common Risk Criteria Standards for National Test Ranges, RCC Standard 321 and associated supplements. The stated intent of RCC Standard 321 is to ''establish safety criteria and guidelines to provide definitive and quantifiable measures to protect mission-essential personnel'' [65] and the general public from launch and reentry hazards generated by guided and unguided missiles, missile intercepts, space launches and reentry vehicles. The RCC conducted extensive testing and analysis to address blunt force injuries that may result from falling inert debris. Based upon this information and human injury criteria, the RCC established threshold values that correlate to low probabilities of specific human injury levels. Section 6.2 of RCC 321–07, for example, states ''the threshold criterion for protection against blunt trauma and crushing injuries is 11 ft-lbs impact kinetic energy.'' [66] Section 6.2.1 of RCC 321–10 states, this criterion is designed to afford protection against injury levels of an Abbreviated Injury Scale (AIS) of level 3 or worse. This statement explains that 11 ft-lbs is the appropriate standard for a ''low probability'' of an AIS level 3 injury. In addition, the standard is consistent with the use of 11 ft-lbs as the threshold for casualties in commercial space launch safety analyses and with the ARC recommendation. The document further establishes 25 ft-lbs as a higher impact kinetic energy threshold for limiting fatalities due to blunt trauma. When modeling debris fragments and their impacts on unsheltered people, the RCC standard explains the impacts that transfer kinetic energy in the amount of 25 ft-lbs or less have a low probability of causing a fatality.

This research arose from criteria the RCC issued in 1999, which provided government and military Range Commanders a common approach to safety risk assessments.[67] These documents refer to the impact kinetic energy data in RCC Document 321–00 as the basis for calculating the casualty expectation criteria for unmanned aircraft operations at national test ranges. Using the probability of fatality data developed in RCC 321–00, the RCC determined casualty expectation criteria with the same data the FAA uses in this proposed rule to establish the impact kinetic energy thresholds.

Because the RCC impact kinetic energy thresholds are based on impacts from metallic fragments, the criteria does not take into account any potential loss of kinetic energy from non-rigid objects that can be shown to transfer only a portion of their total kinetic energy to person upon impact. The RCC thresholds presume all kinetic energy from a rigid object would transfer to a person upon impact. The ASSURE research, however, demonstrates that small UAS do not always impact a person or surface in the same manner that metallic fragments impact them.

[62] A4 Report at 32–33.

[63] Id.

[64] A–4 Report at 84.

[65] RCC Range Safety Group, Common Risk Criteria Standards for National Test Ranges: Supplement 321–10 at sec. 1.3 (2010).

[66] RCC Range Safety Group, Common Risk Criteria Standards for National Test Ranges: Supplement 321–07 at sec. 6.2.a (2007).

[67] RCC Range Safety Group, Range Safety Criteria for Unmanned Vehicles: Standard 323–99 (1999); see also Range Safety Criteria for Unmanned Vehicles—Rationale and Methodology Supplement (1999).

The FAA proposal for using injury avoidance as a threshold, rather than an impact kinetic energy threshold alone, takes into account the disparity between impacts from metallic fragments and small unmanned aircraft. The performance-based standards the FAA proposes in this rule intend to encourage development of testing methodologies and other means of compliance that account for the transfer of kinetic energy that may occur upon impact from small unmanned aircraft.

With regard to analyzing the transfer of energy, the FAA considers impact kinetic energy thresholds established in the RCC standards as instructive. The RCC based its thresholds primarily on the assumption that inert debris exists in rigid form. Because kinetic energy depends on weight and speed, the human injury models of the RCC report recorded data of impacting fragments for various weights, such as one, 10, or 80 pounds. The resulting kinetic energy of these weights can be measured due to the changing velocity of the impacting fragments. For example, a lightweight unmanned aircraft flying at a certain speed could have the exact same impact kinetic energy as a heavier unmanned aircraft flying at a slower speed. Due to the variability in the kinematics of these systems, the FAA considers the transfer of this impact energy to be the determining factor for safe operations over people. For determining whether a means of compliance fulfills the safety levels the FAA proposes at §§ 107.115(b)(1) and 107.120(b)(1), the FAA will consider long-held science on which the RCC standards are based, as well as other analytical models that may be relevant at the time of the FAA's analysis.

Based on the foregoing, the FAA identified two existing impact kinetic energy thresholds that analyze public safety risk from commercial space launches, government space launches, and aircraft operations at national test ranges. The FAA concludes, based on the research cited above, that a small unmanned aircraft that transfers no more than 11 ft-lbs of kinetic energy to a person on impact would have a low probability of causing a casualty to that person. Therefore, the FAA considers this rule's proposed standard for Category 2 to consist of the limitation of the results, or injury, that arise from a transfer of 11 ft-lbs of kinetic energy from a rigid object upon impact. Similarly, the FAA proposes setting the standard for Category 3 as limiting the injury to that of an impact of 25 ft-lbs from a rigid object because a small unmanned aircraft that transfers no more than 25 ft-lbs of kinetic energy to a person on impact would have a low probability of causing a fatality to that person. As discussed further below, the FAA also proposes standards for exposed rotating parts applicable to Categories 2 and 3 as well as operational restrictions for Category 3 operations.

(b) Measurements of Transfer of Energy

With regard to energy transfer, the FAA proposes setting the safety level in this rule as the limitation of injuries caused by the total kinetic energy transferred from a rigid object to a person upon impact, rather than the impact kinetic energy per unit area. The FAA acknowledges the ARC recommended the FAA adopt a measurement of J/cm^2 for the energy limitation aspect of this proposed rule, but declines to propose this measurement. This decision is the result of the fact that the contact area varies considerably, based on many factors (varying shapes of aircraft, size and positioning of the person, and so on). Further, the orientation of the aircraft at the time of impact will also greatly affect the contact area as well as the position of the person who is impacted. Impact kinetic energy thresholds alone consider neither the dimensions of the small unmanned aircraft nor the area of the small unmanned aircraft that makes contact with a person upon impact. Moreover, impact kinetic energy transferred to a person may result in blunt trauma injuries. Thresholds specified in units of energy per area, such as J/cm^2, are used to measure the risk of non-lacerating, or ''chunky penetration'' injuries, not blunt trauma injuries.[68]

Manufacturers or others who do not seek to use an industry consensus standard may also present a manner of measuring energy transfer the FAA deems acceptable, via a custom means of compliance. Once the FAA accepts a means of compliance for measuring the transfer of energy that accounts for mitigating factors, such as dissipation or absorption of post-impact kinetic energy by the small unmanned aircraft, the FAA would consider the means as fulfilling the performance-based requirements of Category 2 and 3, respectively. As described below, manufacturers would then take advantage of the accepted means of compliance by declaring a particular make and model of small UAS they have manufactured fulfills the appropriate standard by submitting a declaration of compliance.

At present, no means of measuring exists to establish that a specific amount of energy equates with a likelihood of injury. Nevertheless, the FAA's adoption of a performance-based standard as a performance-based measurement should encourage development of various means of compliance to ensure small UAS do not present an unacceptable level of risk of injuring a person when operating over people. The FAA emphasizes further research is necessary on the subject of proper modeling of small unmanned aircraft impact physics as it correlates to human injury. From the variation of kinetic energy thresholds in the historical blunt trauma research, the FAA understands the rigidity of the small unmanned aircraft can have an effect on the impact dynamics, as seen when comparing small UAS data with rigid object data points. Additional research may suggest other ways of measuring injury that results from the transmission of energy upon impact.

The FAA seeks comment on whether establishing an impact kinetic energy threshold and using kinetic energy transferred upon impact is the appropriate method to measure the potential injury a small unmanned aircraft could cause upon impact with a person.

(c) Reduction in Likelihood of Injury

As noted above, the FAA uses the term ''safety level'' to refer to the limitation of injury severity caused by transfers of kinetic energy from a rigid object, exposed rotating parts, or safety defects. The FAA proposes to establish the safety levels set forth in Category 2 and 3 based on a risk assessment that does not attempt to predict the precise types or probability of injuries. A chain of events must occur for a small UAS to cause an injury. A Category 2 operation resulting in a low probability of casualty and a Category 3 operation resulting in a low probability of fatality assumes a small UAS would experience a failure during an operation over people and that it would impact a person. A one hundred percent chance that each of these events would occur is impossible. Therefore, the probability of injury such thresholds would present is uncertain.

This proposal also does not consider which part or section of a small unmanned aircraft impacts a person, but rather assumes the occurrence of the worst case in a typical failure mode. For example, the orientation of a small unmanned aircraft as it impacts a person might affect the amount of kinetic energy it transfers. Similarly, if

[68] Impact kinetic energy per unit area, such as J/cm^2 is the most appropriate means of measuring non-lacerating or ''chunky penetration'' injuries, not blunt trauma injuries. A4 Report at 83 (Table 30, comparison of energy densities and related metrics for chunky penetration).

the arm of a small unmanned aircraft is bendable or breakable and comes into contact with a person, the full energy of the impact might not transfer to the person; therefore, that person may experience an injury of reduced severity. The FAA assumes that, to determine the maximum kinetic energy the small unmanned aircraft transfers upon impact with a person, the test would utilize the aircraft orientation likely to cause the most harm to the person. For example, the standard assumes the small unmanned aircraft would not impact the person at an angle or in a manner that curtails the fall of the small unmanned aircraft. The standard does not take into account these less hazardous orientations because a small unmanned aircraft's position at the time of impact with a person is unpredictable.

In addition, the FAA is aware that different parts of the human body have different vulnerabilities depending on the weight of the impacting object. The 11 ft-lbs and 25 ft-lbs thresholds for Category 2 and 3 consider these variations using data, analyses, and studies performed by the RCC. This threshold also considers these variations for all parts of the body for both adults and children, including when people are in various positions, such as standing, sitting, and prone.

The FAA seeks comment on methods, processes, or procedures used in the studies on which the FAA bases these proposed standards. In particular, the FAA invites comment on the costs associated with meeting these proposed standards, in light of such research. Collecting operational safety data for small UAS operations over people will assist in the FAA's evaluation of the effectiveness and continued applicability of the safety standards the agency proposes. The FAA also seeks comment on the need for a process, and the details of that process, to enable the FAA to reassess and possibly adjust the safety thresholds in this proposed rule based on such safety data. The FAA acknowledges the lack of certainty concerning failure rates and estimates of injury severity based on failures. The FAA seeks specific information regarding methods used to deal with such uncertainty.

(2) Exposed Rotating Parts

Exposed rotating parts, which could cause lacerations or other serious injuries if these parts were to come into contact with a person, are a feature common to small UAS on the market today. Due to the hazards this feature can pose, the FAA has determined small UAS eligible for operations in Category 2 and 3 of this proposed rule must be designed such that they would not lacerate human skin upon impact with a person.

The ARC recommended manufacturers limit the risk of injuries caused by exposed rotating parts because energy transfer requirements alone would not mitigate this risk sufficiently. The ARC stated the analysis of exposed rotating parts should ''focus on serious injury (level 3 or greater)'' without any distinction based on the category of operation. Although the ARC used the term ''exposed rotating parts'' to identify any rotating part that could cause an injury, the most common example of this on a small unmanned aircraft is a propeller. In a multi-rotor unmanned aircraft configuration, propellers are generally arranged symmetrically around the periphery of the unmanned aircraft. In a fixed-wing unmanned aircraft configuration, propellers are generally arranged in either a puller (propeller in front) or pusher (propeller in back) configuration. These propellers generally spin at high speeds, and could cause injuries, even if on small unmanned aircraft.

The ASSURE study predicted that the severity of cutting or tearing injuries could be greater than impact injuries from existing rotorcraft designs on UAS.[69] The study indicated blade tip speed, blade sharpness, and leading edge sharpness may all significantly affect the potential for laceration of human skin from UAS blades. The ASSURE study clarified that all propellers can lacerate skin. Based on this research, the FAA concludes any small UAS that conducts operations over people should not have exposed rotating parts capable of lacerating human skin upon impact with a person. Manufacturers would need to ensure the small UAS fulfills this standard using a means of compliance the FAA accepts. This requirement would not apply to operations of small UAS that occur pursuant to Category 1. The FAA invites public comment, however, on the issue of whether operations of small UAS eligible to operate pursuant to Category 1 should be subjected to a performance-based requirement for exposed rotating parts.

The FAA is aware that exposed rotating parts could be capable of injuries beyond just lacerations. For example, injuries to hair, teeth or eyes, rather than skin, may occur. The FAA, however, considered carefully the proposed limitation on exposed rotating parts that could lacerate human skin and determined the prohibition on skin lacerations, combined with the limitation on transfer of kinetic energy on impact and prohibition of safety defects, will mitigate the risk of injuries that may not involve skin. Moreover, the FAA is keenly aware that permanently disfiguring injuries could result from lacerations of skin.[70] As a result, and based on the ASSURE research that highlighted the concern that exposed rotating parts present, the FAA proposes a general prohibition on such parts that could lacerate skin.

This proposal is the result of the agency's determination that any allowance for serious injury from exposed rotating parts would have a compounding effect and would add to the overall level of risk for Category 2 and 3 operations. The FAA concluded that this proposed standard of prohibiting lacerations of human skin would maintain the risk posed by Category 2 operations as a low probability of causing a casualty, and Category 3 operations as a low probability of causing a fatality. As described below, manufacturers would fulfill this standard by either providing descriptions of their test methodology and test data; analyses with substantiating data; or inspection information.

A manufacturer may establish it has fulfilled the limitation on exposed rotating parts by ensuring the small unmanned aircraft simply does not have parts that are exposed. For example, if the propellers that provide lift and thrust for the small unmanned aircraft are internal to the unmanned aircraft, such as in a ducted fan configuration, and are incapable of making contact with a person as a result of an impact, then the parts would not be exposed, and the aircraft would satisfy this proposed requirement. The FAA may require testing and analysis to conclude the rotating parts could not become exposed as a result of an impact with a person. For example, if the forces on the small unmanned aircraft during an impact with a person could cause structural failures that result in the rotating parts becoming exposed, then that design would not achieve the requisite safety level of this proposed rule. The FAA seeks comment on other

[69] A4 Report at 89.

[70] In this regard, the FAA's decision to ensure protection of skin from lacerating injuries is similar to the logic the National Highway Traffic Safety Administration employs. See Federal Motor Vehicle Safety Standards: Glazing Materials, 65 FR 44710, 44711 (July 19, 2000) (explaining NHTSA's decision to assess whether ''advanced glazings'' are more likely to cause lacerations than ''current glass,'' and stating, ''[a]lthough facial lacerations injuries are relatively minor (AIS 1 or 2), they . . . can be disfiguring'').

means of compliance it could include in a final rule.

5. Means of Compliance

This rule proposes several performance-based requirements that would accommodate varying means of compliance. In this manner, the FAA would build flexibility into the regulations, which would allow the regulatory scheme to progress alongside the fast pace of small UAS innovation and development. Additionally, this rule would establish a process by which the FAA could expedite the acceptance of voluntary consensus standards as means of compliance with requirements related to impact kinetic energy and exposed rotating parts. This proposal would align with the direction of the Office of Management and Budget (OMB) Circular A–119, which favors the use of performance-based regulations and voluntary consensus standards. The FAA proposes to accept both voluntary consensus standards and non-consensus standards as means of compliance with the proposed performance-based requirements.

Given the current absence of voluntary consensus standards that could apply to operating small unmanned aircraft over people, the FAA is proposing one means of compliance for each proposed performance-based standard for operations over people, to allow interested stakeholders to begin demonstrating compliance as soon as this rule goes into effect. Additionally, the FAA is proposing a process by which it would approve additional means of compliance. A voluntary consensus standards body, an industry, a manufacturer, or an individual may develop these means of compliance. Each means of compliance, including the FAA's proposed means, would constitute one way, but not the only way, to satisfy the proposed performance-based standards. The FAA would consider other means of compliance as entities or individuals develop and submit them to the FAA for review.

(a) Establishing Compliance

The FAA proposes to require a manufacturer producing a small UAS eligible for Category 2 or 3 operations to establish compliance with the proposed safety level by using a means of compliance the FAA has accepted. A manufacturer would then declare on its Declaration of Compliance what means of compliance, or combination of them, it used. This proposal sets forth three ways of establishing compliance: (1) The FAA-proposed means of compliance, discussed in this preamble; (2) an FAA-accepted means of compliance developed by a voluntary consensus standards body; and (3) an FAA-accepted custom means of compliance developed independent of either the FAA or a voluntary consensus standards body. A custom means of compliance would require more extensive review by the FAA than a means of compliance developed by a voluntary consensus standards body.

(1) FAA-Provided Means of Compliance

Under this proposed rule, any person may establish compliance with the applicable safety levels the FAA proposes in this rule in a variety of ways. The FAA must affirmatively accept the means of compliance before a manufacturer can rely upon it to demonstrate compliance. Because no means of compliance currently exist to address the requirements this rule proposes, the FAA proposes one means of compliance it would accept immediately, to allow manufacturers to demonstrate their small UAS would fulfill the level of safety the FAA proposes in this rule for operations over people. Section IV.B.5.c) provides a description of this means of compliance. The FAA may provide additional FAA-accepted means of compliance based on future research.

(2) Voluntary Consensus Standards Body Means of Compliance

A voluntary consensus standards body develops standards that incorporate openness, balance, due process, appeals process and consensus. These characteristics also necessarily result in voluntary consensus standards being peer reviewed. Because voluntary consensus standards bodies are composed of a wide selection of industry participants, and often include FAA participation, the FAA expects its review of a means of compliance developed by a voluntary consensus standards body to be more expeditious than a custom means of compliance developed in the absence of a voluntary consensus standards body.

The FAA has an extensive history of working with voluntary consensus standards bodies such as RTCA, ASTM International, Society of Automotive Engineers (SAE), and Institute of Electrical and Electronics Engineers (IEEE). In accordance with the ARC recommendation to use industry consensus standards for small UAS, and with the precedent already set for general aviation aircraft, the FAA anticipates voluntary consensus standards bodies to take the lead in offering means of compliance for FAA review.

(3) Custom Means of Compliance

The FAA proposes that a manufacturer or other person may propose a custom means of compliance to fulfill the safety level set forth in this proposed rule's impact kinetic energy or exposed rotating parts standards. As discussed further in this section, a custom means of compliance would be subject to a more comprehensive review than a means of compliance submitted by a voluntary consensus standards body. If a person proposes an alternate means of compliance to the impact kinetic energy or exposed rotating parts requirements in the rule, or an alternate method to any FAA-accepted means of compliance, the FAA would evaluate the means of compliance on a case-by-case basis. A custom means of compliance would need to set forth a manner by which an applicant could comply with the impact kinetic energy and exposed rotating parts standards of § 107.115(b)(1) or § 107.120(b)(1), as applicable.

Applicants should consider carefully the additional time and effort that could be necessary to coordinate a new or alternate means of compliance when scheduling their projects. FAA coordination may require the efforts of FAA technical specialists, Chief Scientific Technical Advisors, and other government agencies. The use of existing FAA-accepted means of compliance would be more expeditious because the FAA has already reviewed them. Not all developers of custom means of compliance would be manufacturers who submit a Declaration of Compliance. The FAA, therefore, would provide a process by which an applicant could submit a custom means of compliance for FAA review separate from submitting a Declaration of Compliance. This process is described in further detail in Advisory Circular 107–2.

When reviewing a custom means of compliance, the FAA would utilize a comprehensive set of criteria. To demonstrate compliance with the impact kinetic energy or exposed rotating parts requirements, the FAA would determine whether the applicant has shown compliance by testing, analysis, or inspection that demonstrates the manufacturer has met the appropriate level of safety provided in the proposed standards. The FAA would also determine whether the custom tests or analyses are performed in accordance with accepted methods used by the medical industry, consumer safety groups, or other peer-reviewed test methods. In addition, the FAA would determine whether the proposed

means of compliance required unreasonable skill on behalf of the remote pilot in command or incorporation of mitigations to meet the standards. Lastly, the FAA would determine whether the means of compliance addressed design features such as deployable devices, parachutes, or other features. Those additional features would require the FAA's review to determine whether they assist in achieving an acceptable means of compliance when those features function as intended.

The FAA's proposed regulatory text in § 107.125 of this rule sets forth the information the FAA must receive in determining whether to accept the means of compliance. This information would ensure FAA oversight at a level that is appropriate for the risk operations of small UAS over people present. In addition, the model for ensuring compliance that the FAA proposes in this rule would also permit the FAA's adoption of an industry consensus standard that fulfills the applicable standard.

(b) Submittal and FAA Acceptance of Means of Compliance

As described previously, manufacturers or industry stakeholders may establish compliance in a variety of different ways; however, the FAA must affirmatively accept the means of compliance before the manufacturer can rely on it for self-certification.

Any person may submit a means of compliance to the FAA for review. To submit a means of compliance, a person would be required to identify whether the manufacturer achieves compliance by way of test, analysis or inspection, and provide a detailed description of the means of compliance that establishes exactly how the testing, analysis, or inspection fulfills the safety level set forth in the standards of § 107.115(b)(1) or § 107.120(b)(1). The rule proposes requiring any person who submits such a custom means of compliance to provide any substantiating data, studies, information, or the like to explain precisely how their proposed means of compliance achieves the safety level that the standards of § 107.115(b)(1) or § 107.120(b)(1) represent. For example, if a manufacturer would achieve compliance by conducting testing, then the manufacturer's request for the FAA's acceptance of the means of compliance should include test procedures that outline the test methodology, an analysis to support the equivalency of the testing to the safety level identified in § 107.115(b)(1) or § 107.120(b)(1), and all substantiating data that supports the test, methods, results, and conclusions. On the other hand, if a manufacturer seeks to achieve compliance by analysis, then the manufacturer should submit the standard to which the manufacturer compared his or her specific model of small unmanned aircraft and explain how the data and interpretation of it establishes that the manufacturer fulfills the applicable standard. For example, if the manufacturer has a simulation with modeling of the impact dynamics that the FAA has validated, then the FAA would evaluate the analysis that utilizes the impact dynamics data to confirm that the analysis establishes fulfillment of the standard. In sum, anyone may submit a variety of types of means of compliance using testing, analyses, inspections, or any combination of them, in seeking the FAA's acceptance of their means of compliance. As described previously, the FAA would more closely scrutinize custom means of compliance not submitted by a voluntary consensus standards body.

The FAA would indicate acceptance of a means of compliance by publishing a Notice of Availability in the **Federal Register** identifying the means of compliance as accepted and by sending a letter to the applicant accepting the proposed means of compliance. If a manufacturer referred to a custom means of compliance on its Declaration of Compliance, FAA acceptance of that Declaration of Compliance would also indicate acceptance of the custom means of compliance.

Once the FAA has accepted a custom means of compliance, the FAA would consider it as equally valid as a voluntary consensus standard that the FAA had accepted. If the FAA did not accept a custom means of compliance, the FAA would notify the applicant of the rationale for its decision and would reject any associated Declarations of Compliance that rely on that particular custom means of compliance. For both custom means of compliance and voluntary consensus standards, the FAA could rescind a previously accepted means of compliance if the FAA determined from service history that the means of compliance did not meet the applicable standards for operations over people.

(c) Types of Means of Compliance

This proposal provides latitude for people who request acceptance of a means of compliance to show compliance by testing, analyses, inspections, or any combination of the three. In all proposed means of compliance cases, the FAA would review data based on the worst-case scenario of a typical failure of the small unmanned aircraft. The applications for approval of proposed means of compliance that include data and relevant information regarding a reasonably foreseeable worst-case scenario will facilitate the most straightforward, efficient type of review from the FAA. In general, the FAA expects the amount of information needed to justify the proposed means of compliance will be proportionate to the complexity of factors relevant to both common and worst-case scenarios.

(1) Tests

Anyone may submit test data to show their small UAS fulfills the safety level the FAA proposes in this rule. The description below describes tests used for both a pre-accepted means of compliance based solely on the impact kinetic energy measurement, as well as tests used for an alternate means of compliance.

(a) Impact Kinetic Energy Transfer

As explained below, this proposed rule includes one potential means of compliance that manufacturers may use to declare compliance. For all potential means of compliance, the FAA expects manufacturers, during their testing, to install or enable any mechanisms that could affect the transfer of kinetic energy upon impact. For example, manufacturers must employ any systems that could limit the velocity of the small unmanned aircraft upon which the means of compliance relies. In such cases, the manufacturer should provide information on the proper use of those systems or equipment, as well as any restrictions, in the remote pilot operating instructions, as discussed in section IV.B.9.

The FAA anticipates a person who seeks to comply via a custom means of compliance would implement these types of systems or equipment through hardware, software, or a combination of both. If an operator can operate the small UAS regardless of whether these systems or equipment are enabled or installed, such as in a variable-mode small UAS, then the manufacturer should provide information in the remote pilot operating instructions to ensure remote pilots in command understand any restrictions or limitations associated with the different modes.

Pre-Accepted Means of Compliance

One means, but not the only means, of complying with the proposed limitation with regard to the transfer of kinetic energy upon impact would entail a manufacturer's calculation of kinetic energy transferred when a small

unmanned aircraft impacts a person. This type of means of compliance would not account for impact dynamics or other factors, but consists of using only the formula the FAA describes to measure kinetic energy upon impact. Use of this formula alone would establish the small unmanned aircraft fulfills one of the standards described above because 11 ft-lbs (for Category 2 operations) and 25 ft-lbs (for Category 3 operations) are thresholds that establish low probability of occurrence of a casualty or fatality would exist, respectively.

This pre-accepted means of compliance would be based on the maximum performance capabilities of a small unmanned aircraft during a typical failure mode. To test a small unmanned aircraft using this means of compliance, a manufacturer would first determine the maximum forward airspeed that the small unmanned aircraft may attain at full power in level flight during typical environmental conditions. The manufacturer would use a reliable and accurate airspeed measurement method. For example, a manufacturer could measure the maximum speed using a GPS groundspeed indicator, a radar gun, or tape measure and stop watch. Next, the manufacturer would determine the ground impact speed resulting from an unpowered free-fall from the highest altitude the small UAS is capable of attaining at full power. The ground impact speed could be determined by performing a drop test from the altitude determined in the previous step using a reliable and accurate vertical speed measurement method under typical environmental conditions.[71]

If a manufacturer determines it is unreasonable to perform a drop test from the highest attainable altitude, then the manufacturer may perform a drop test from a lower altitude sufficient to determine the small unmanned aircraft free-fall aerodynamic characteristics, such as the coefficient of drag, to calculate accurately the ground impact speed from a free-fall from the highest attainable altitude. The substantiating data the manufacturer would submit would include sufficient information concerning the environmental conditions and the maximum speeds the manufacturer utilized, as well as any unique test conditions for both the level flight and free-fall scenarios.

The above tests account for speeds a small unmanned aircraft could reach prior to or during a typical failure mode, such as losing power and falling with both a vertical and horizontal speed component. The tests do not take into account small UAS failure modes or pilot actions that would cause the small unmanned aircraft to exceed the speeds determined in the previous steps. One example is a powered descent in which the ground impact speed of the small unmanned aircraft exceeds its unpowered free-fall ground impact speed. The FAA assumes these types of failure modes or pilot actions are not typical, and while possible, have a low likelihood of occurring. If a manufacturer determines these types of failure modes or pilot actions could typically occur and result in speeds greater than those determined in the previous steps, then the manufacturer should use higher speeds to determine the maximum impact kinetic energy.

Once the manufacturer determines the maximum speeds associated with a horizontal and vertical impact, the manufacturer would ascertain the highest combination of these speeds that he or she could achieve as a result of a reasonably foreseeable failure. These conclusions would lead to the manufacturer's determination of the maximum impact kinetic energy. In such a case, the manufacturer should use the highest combination of horizontal and vertical impact speeds unless he or she can show the highest combination is not possible in a reasonably foreseeable failure and another combination is therefore more appropriate. The manufacturer should assess reasonably foreseeable failures caused by system or equipment loss of function or malfunction as well as those that pilot error could cause.

To calculate the impact kinetic energy, manufacturers would use the following equation:

$$KE_{impact} = 0.0155 * w * v^2$$

Where KE_{impact} is the maximum impact kinetic energy in ft-lbs, w is the weight of the small unmanned aircraft measured in pounds, and v is the maximum impact speed measured in feet per second (ft/s).[72]

For example, a small UAS that weighs 1.0 pound and has a maximum impact speed of 26 ft/s has a maximum impact kinetic energy of:

$$KE_{impact} = 0.0155 * 1.0 * (26)^2 = 10.5 \text{ ft-lbs}$$

Similarly, a small UAS that weighs 1.0 pound and has a maximum impact speed of 40 ft/s has an impact kinetic energy of:

$$KE_{impact} = 0.0155 * 1.0 * (40)^2 = 24.8 \text{ ft-lbs}$$

Utilizing the formula $KE_{impact} = 0.0155 * w * v^2$, the two tables below provide examples of maximum impact speeds, rounded to whole numbers, associated with the impact kinetic energy thresholds of the different categories and the weight of the small unmanned aircraft. One table provides speeds in feet per second and the other table provides speeds in miles per hour. Manufacturers could use these tables when following this proposed means of compliance based on the maximum performance of a small UAS. These tables do not consider any energy-absorbing characteristics of a small unmanned aircraft that may reduce the amount of energy transferred to a person during an impact.

TABLE 4—MAXIMUM IMPACT SPEEDS (FT/SEC) FOR A GIVEN WEIGHT AND IMPACT KINETIC ENERGY[73]

Weight (lbs)	Maximum speed (ft/sec)	
	Category 2 (11 ft-lbs)	Category 3 (25 ft-lbs)
1.0	26	40
1.5	22	33
2.0	19	28
2.5	17	25
3.0	15	23

TABLE 5—MAXIMUM IMPACT SPEEDS (MPH) FOR A GIVEN WEIGHT AND IMPACT KINETIC ENERGY

Weight (lbs)	Maximum speed (mph)	
	Category 2 (11 ft-lbs)	Category 3 (25 ft-lbs)
1.0	18	27
1.5	15	22
2.0	13	19
2.5	11	17
3.0	10	16

This proposed means of compliance does not account for the use or testing of design features such as parachutes, ballistic recovery systems, or other deployable devices that, once deployed,

[71] Small unmanned aircraft operated under part 107 may not exceed the speed limitations in part 107 unless authorized under a Certificate of Waiver or an exemption. See 14 CFR 107.51(a) (stating the ground speed of the small unmanned aircraft may not exceed 87 knots (100 miles per hour)) and § 107.205 (listing § 107.51(a) as a provision that is subject to waiver).

[72] The FAA used the constant 0.0155 in order to allow a person to plug in the weight, rather than the mass, of a small unmanned aircraft. Using the following equations, KE = ½ *mass*velocity^2 and mass= weight/gravity, the FAA determined that, in English units, KE = ½ * weight/32.17 * velocity^2 and KE = ½ * (1/32.17) *weight* velocity^2 therefore KE = 0.0155 * weight * velocity^2. Note that 32.17 is the gravitational constant measured in English units.

[73] The values provided in Tables 4 and 5 are based on the factors summarized in footnote 75.

create drag to reduce the maximum impact speed. The discussion below, concerning custom means of compliance, addresses the potential use of such design features.

As discussed in section IV.B.7.b), if a remote pilot in command or other person modified a small unmanned aircraft in a manner that increases its maximum speed or weight beyond what is identified in the remote pilot operating instructions, then the small unmanned aircraft would no longer fulfill the safety level set forth at § 107.115(b)(1)(i) or § 107.120(b)(1)(i). To conduct operations over people, a manufacturer would have to verify that the modifications satisfied the impact kinetic energy requirements by re-testing and submitting a new Declaration of Compliance for the modified small UAS.

Custom Means of Compliance

Under this proposal, any person may propose a custom means of compliance showing the small unmanned aircraft achieves the safety level the FAA proposes in § 107.115(b)(1) or § 107.120(b)(1). At the time of this proposal, the FAA has not identified a means available to determine the actual amount of kinetic energy that is transferred upon impact with a person. Nevertheless, research into this area is ongoing. Taking advantage of the opportunity to employ a customized solution that ensures compliance with the safety levels set forth in §§ 107.115(b)(1) and 107.120(b)(1), the manufacturer would request the FAA's acceptance of a means of compliance that establishes how the manufacturer has made this determination.

The structural configuration, materials of construction, or other design features may function to reduce the amount of the total kinetic energy that is transferred to a person from a small unmanned aircraft during an impact. The FAA's proposed means of compliance described above does not take into account the effect of these aspects during an impact with a person, because it assumes that the total kinetic energy of the small unmanned aircraft would be transferred to the person upon impact. In reality, however, the small unmanned aircraft may transfer much less energy. For example, the presence of energy-absorbing materials, or an energy-absorbing protective cage, may reduce the transfer of kinetic energy during an impact with a person. Under these circumstances, a manufacturer may wish to provide data showing the amount of kinetic energy that is transferred to a person during an impact, based on the impact-absorbing characteristics of the small unmanned aircraft. In this regard, some small UAS manufacturers may seek to use design features such as parachutes or other deployable devices to establish that a reduced amount of transferred energy exists for their small unmanned aircraft. Such design features would require the FAA's review to determine whether they assist in achieving an acceptable means of compliance if the small UAS is reliant on the proper functioning of these features.

The means of compliance discussed in the preceding paragraphs should not be confused with the Declaration of Compliance discussed in Section IV.B.7.b), below. The testing or analysis conducted to determine the maximum kinetic energy that a small unmanned aircraft could transfer to a person upon impact during a typical failure scenario would be the actual means of compliance under this rule. The Declaration of Compliance would be the ''evidence'' or ''artifact'' that is the final step in demonstrating to the FAA that the small UAS is in compliance with this proposed rule.

(b) Exposed Rotating Parts

Anyone who seeks approval of a means of compliance may establish, using test descriptions, results, and data, that a small unmanned aircraft does not contain any rotating parts that could cause lacerations of human skin. An industry consensus organization could develop a standard for small unmanned aircraft that have rotating parts that are protected by safety features, such as propeller guards. The standard could require testing to support the determination that the protective safety features accomplish their intended function of preventing rotating parts from contacting a person during an impact. If the manufacturer has tested those safety features and established they would remain intact during an impact, this could be one means of demonstrating that exposed rotating parts would not be capable of lacerating human skin. If a small unmanned aircraft has rotating parts that are exposed without any protective safety features, this rule proposes to permit manufacturers or others to show through testing, analysis or inspection that the rotating parts are not capable of lacerating human skin upon impact with a person. Manufacturers or others who seek to obtain approval of a means of compliance could submit testing results and data that consider the size, shape, rotational speed, material, and orientation of the rotating parts, and concludes that these parts could not cause lacerations under any impact scenarios.

The more sophisticated or complex the materials or design of the small unmanned aircraft, the more sophisticated the analysis or testing should be. If a small unmanned aircraft had propellers made out of soft, flexible material, a manufacturer would likely not need to employ a means of compliance that had used a sophisticated analysis or testing to demonstrate that the exposed rotating parts are not capable of causing a laceration. However, if a manufacturer chooses to design a small unmanned aircraft with exposed propellers that have sharp leading edges, are made of a rigid material such as a carbon fiber composite and are driven by high torque motors, that manufacturer would likely have to perform a more sophisticated analysis or testing to demonstrate that the propellers are not capable of lacerating human skin upon impact with a person.

Tests and associated data could also consist of utilizing exposed rotating propellers at maximum revolutions per minute (RPM) and contacting a medium that accurately represents human skin to establish the propeller would not lacerate human skin. Similarly, for shrouded propellers, such a test would establish that the propellers, while turning, would not lacerate human skin. This test would establish the effectiveness of the shroud or covering in a dynamic impact scenario. Such a test may consist of a drop test or test using a pendulum to show the shrouds remain effective when the propeller did not lacerate the medium that represents human skin.

Further, in the exemplar test described above, the test data manufacturers or others submit would likely require a description of the skin media used to determine that the shrouded propellers did not lacerate human skin. Research that has led to the development of standards and analyses on the subject of laceration injuries includes the use of media such as a medium that is 10 percent gelatin,[74] a

[74] Nicholas and Welsch, Ballistic Gelatin 2, Pennsylvania State University Applied Research Laboratory, (2004), available at *http://www.firearmsid.com/Gelatin/Ballistic%20Gelatin%20Report.pdf.*

pig cadaver,[75] plasticine,[76] and a medium that may include chamois, among other components.[77] In this rulemaking, the FAA does not endorse any of the aforementioned media as substitutions for human skin. Rather, a manufacturer or industry consensus group that seeks acceptance from the FAA of a means of compliance for establishing exposed rotating parts would not lacerate human skin may provide test data, analyses, or information that employs one of the above media, or another medium. The FAA would review the entire submission of information in order to determine whether the agency will accept the potential means of compliance.

(2) Analysis

A person may submit means of compliance that consist of analyses to establish they have achieved the level of safety set forth in § 107.115(b)(1) or § 107.120(b)(1). In general, the FAA envisions many proposed means of compliance could employ computer modeling analysis to comply with the energy transfer standard or the exposed rotating parts standard.

(a) Impact Kinetic Energy Transfer

A proposed means of compliance may involve the use of analyses to predict the amount of kinetic energy transferred upon impact with a person. For example, a person who submits a means of compliance for acceptance may seek to incorporate the aerodynamic effects (including drag) of the small unmanned aircraft in a dynamic model of impact with a person. The person could utilize computational fluid dynamics (CFD) and finite element modeling (FEM) into the simulation. Such a simulation would analyze the aerodynamic properties of the aircraft.[78] The model would calculate the interaction of the geometry of the object in a flow field of the medium. Further, the model may also simulate the dynamic interaction of the aircraft structure with a validated model of a person to calculate the amount of kinetic energy that is transferred.

The person who seeks FAA acceptance of the means of compliance would need to document the justification by including any analysis or validation testing. Such records should establish validity of the aerodynamic modeling as well as any other modeling techniques used in the computation of impact kinetic energy values. Therefore, in evaluating the proposed means of compliance based on analysis, the FAA would expect submission of a full description of the process and an explanation of the precise effect of the aerodynamic or other characteristics that influence the flight envelope in which the small unmanned aircraft operates. As with all proposed custom means of compliance, the FAA would expect to evaluate information and data concerning the worst-case scenario of a typical failure, combined with mean data that depicts common scenarios within the aircraft's flight envelope.

(b) Exposed Rotating Parts

A person may also choose to confirm that exposed rotating parts on the small unmanned aircraft they have manufactured would not lacerate human skin by submitting analysis. Such analysis could include verified data from relatable studies that models the small unmanned aircraft's propellers at a maximum RPM, and the material choice of the propeller and strength characteristics of an average human's skin in an FEM simulation,[79] and performs a finite element analysis (FEA)[80] to determine the laceration characteristics of the propeller. In such a case, the FAA would expect the justification related to this method to explain the rationale for concluding that the use of the previously accepted data and FEA methodology is appropriate for the small UAS design at issue.

(3) Inspection

Manufacturers may also opt to confirm that the small UAS they have manufactured would fulfill the safety level set forth in this proposed rule by submitting information based on inspection. The FAA would expect a full description of the inspection and the results or conclusions from that inspection in order to accept the means of compliance. Often, manufacturers may use the inspection option when a small UAS has undergone modifications.

(a) Impact Kinetic Energy Transfer

For purposes of establishing that the kinetic energy a small unmanned aircraft transfers upon impact does not exceed the applicable standard, a manufacturer may submit records to establish the manufacturer has performed an inspection verifying that the small UAS adheres to the standard. For example, a small UAS model the FAA has previously determined fulfills the standard may continue to do so after a modification when the manufacturer has simply replaced a part on the small unmanned aircraft that weighs less than the original part. The manufacturer would provide justification to verify the new part does not alter the small unmanned aircraft such that it would increase the kinetic energy the small unmanned aircraft transfers upon impact. In this example, the manufacturer would present information to establish that the overall weight and structure of the small unmanned aircraft did not change to render it out of compliance with the applicable standard regarding energy transfer.

(b) Exposed Rotating Parts

In addition, a manufacturer's design with propeller blade guards to fulfill the prohibition on exposed rotating parts may lend itself to a verification of the means of compliance by way of inspection. For example, a manufacturer with a previously accepted means of compliance who wishes to replace or upgrade propellers could do so with a propeller design of the same size, fit and weight that has fulfilled the previously accepted means of compliance, and thus demonstrate compliance through inspection means and not need to retest or perform another analysis. When the manufacturer has completed previous tests the FAA had verified demonstrated the effectiveness of blade guards, the Administrator may presume

[75] Sullivan et al, The Pig as a Model for Human Wound Healing, The International Journal of Tissue Repair and Regeneration (2001); Simon and Maibach, The Pig as an Experimental Animal Model of Percutaneous Permeation in Man: Qualitative and Quantitative Observations An Overview, Skin Pharmacology and Physiology 13.5 at 229–34 (2000).

[76] Röhrich et al, Skin Injury Model Classification Based on Shape Vector Analysis, BMC Medical Imaging (2012), available at *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3599354/*.

[77] Bir, et al., Skin Penetration Surrogate for the Evaluation of Less Lethal Kinetic Energy Munitions, 220 Forensic Science International 126, 127 (2012), available at *http://www.sciencedirect.com/science/article/pii/S0379073812000801?via%3Dihub.*

[78] CFD, as used in the example above, refers to a simulation that incorporates Navier-Stokes equations in a mathematical and computational program that utilizes a multi-dimensional model of an object. Constantin and Fioas. Navier-Stokes Equations. Univ. of Chicago (1988).

[79] FEM, as used in the example above, refers to the utilization of multi-dimensional model of an object that subdivides the model into smaller components with attached algebraic equations to help represent complex geometry and the dynamics associated to such geometry during simulated stresses or impacts.

[80] FEA, as used in this example, is a numerical analysis of a system to simulate the impact dynamic reaction when developed with the material and design characteristics of the small unmanned aircraft and surrounding objects that are relevant to the analysis. Manufacturers may use FEA in computer modeling by using boundary value problems for partial differential equations and variation methods from calculus disparities to approximate a solution using algebraic equations attached to small, subdivided pieces of the model and by minimizing an associated error function.

replacement of propellers would not have an effect on the function of the guard to prevent laceration.

6. Aircraft with Variable Modes and Configurations

Although this rule proposes three distinct categories of operations over people, the FAA proposes to allow small UAS to be configured to conduct operations within more than one category. For example, an aircraft may be designed in such a way that it would be qualified to conduct Category 2 operations in one mode or configuration, and Category 3 operations in another mode or configuration. Alternatively, a small UAS could meet the requirements to operate over people in one mode or configuration, but not in another. For example, an aircraft could operate within the restrictions of an operation over people, but could also operate using higher performance characteristics when not operating over people.

To transition between various modes or configurations, a manufacturer may choose to use a variety of methods, such as software-enabled performance limitations including altitude or groundspeed limitations, hardware configurations, or any combination thereof. Using different modes or configurations, a manufacturer could design a small UAS to meet the performance capabilities of multiple categories of operations over people. Additionally, a manufacturer could design a small UAS that has removable propeller guards or cages that would need to be installed for operations over people but could be removed when not operating over people.

The design of a small UAS should not permit a remote pilot to change the mode or configuration inadvertently. Regardless of whether the method of transitioning between various modes or configurations involves software or control station selections, a change of mode or configuration must result only from a deliberate action on the part of the remote pilot in command. For example, a remote pilot in command could be required to enter a passcode that would intentionally alter the mode of operation, thereby switching the category of operation for the aircraft.

To test a small UAS with multiple modes or configurations, a manufacturer should test the small UAS in the mode or configuration that allows the small UAS to meet the requirements for the category to which a manufacturer wishes to declare compliance. If a small UAS could meet the requirements for operations in both Category 2 and Category 3 based on the mode or configuration in which the small UAS is operated, then the manufacturer must submit to the FAA a Declaration of Compliance that includes each category for which the manufacturer has tested or analyzed the small UAS.

The FAA seeks comment on the need for means of compliance that address incorporation of software, including software updates or changes, to enable performance limitations, variable modes, or variable configurations to meet the safety level proposed in this rule. The FAA also seeks comment on how the FAA should review an acceptable means of compliance for the impact kinetic energy or exposed rotating parts safety thresholds to address the appropriateness of using software to limit or establish the small UAS performance to meet the safety level proposed in this rule.

7. Declaring Compliance

The FAA agrees with the ARC recommendation that self-certification is the appropriate method for manufacturers to declare compliance with a performance standard. Self-certification, combined with the FAA's determination that the means of compliance the manufacturer has used is acceptable, will ensure the small UAS meets the appropriate safety level the FAA proposes in this rule. In addition, the FAA's other proposed measures for overseeing manufacturers, as described in section IV.B.12, below, would result in a level of oversight and accountability the FAA has determined is appropriate for manufacturers of small UAS that certify eligibility to operate over people in accordance with this proposed rule.

(a) Applicability to Manufacturers

In this proposed rule, the FAA would consider a manufacturer to be any person or entity that designs, produces, or modifies a small UAS that is eligible to operate over people within the United States under part 107. The FAA expects the most common form of manufacturer under this proposed rule would be an entity that produces and sells a complete and operable small UAS.

Additionally, an entity that sells a kit that contains all the components and parts from which to build an operable small UAS would be considered a manufacturer. The kit would contain all the components necessary to build the small UAS and would not require the owner to purchase any additional materials to meet the requirements of this proposed rule. A kit manufacturer would be required to test the assembled, completed small UAS, rather than its component parts, to demonstrate the small UAS satisfies the standard for Category 2 or 3 operations.

A person who builds a small UAS from parts not provided as a kit would also be a manufacturer under this proposal. For example, anyone may purchase the component parts of a small UAS separately and build small UAS themselves. The FAA would consider such a person to be a manufacturer, and would require submission of a Declaration of Compliance regarding the eligibility of the small UAS to conduct Category 2 or 3 operations.

A manufacturer would also be a person who modifies a small UAS covered under an existing Declaration of Compliance to a condition that is non-compliant with the original declaration. ''Non-compliant'' means the small UAS has been altered such that it no longer matches the configuration that was originally declared. Any person who makes this kind of a change would be required to submit a new Declaration of Compliance for the modified configuration(s) prior to conducting operations over people within that category. Not all modifications would cause a previously determined small UAS to become non-compliant, however. A manufacturer may include a list of acceptable modifications in the remote pilot operating instructions to ensure that a remote pilot in command who may replace parts or otherwise modify the small UAS is aware of which modifications would allow it to remain compliant in the category to which compliance has been declared.

Additionally, a manufacturer may be a person who modifies a small UAS to be compliant with one or more categories of operations over people. For example, this would include a person who modifies a small UAS not previously eligible to conduct operations over people to a small UAS that is eligible to conduct Category 2 or 3 operations over people. Similarly, a person who modifies a small UAS that was previously qualified to conduct only Category 2 operations so that it may now conduct only Category 3 operations, by, for example, increasing the weight of the small unmanned aircraft, would be a manufacturer. The manufacturer identified on the most recent FAA-accepted Declaration of Compliance would not carry the responsibility for the new configuration of the small UAS that is the subject of the Declaration. Instead, the person who made the modification assumes the role of the manufacturer. A person making such modifications and still seeking to operate over people would have to first

submit a new Declaration of Compliance.

The FAA would not consider a person performing maintenance on a small UAS, including replacement of components and parts in accordance with the manufacturer's maintenance or operating instructions, to be a manufacturer as long as the maintenance or replacement does not alter the configuration or characteristics of the small UAS such that it no longer meets its Declaration of Compliance. As a result, such a person would not need to submit a new Declaration of Compliance. For example, if a manufacturer provides replacement propellers with instructions on how to install them, someone could install the parts in accordance with the manufacturer's instructions. If the manufacturer, however, does not provide or identify propellers in the remote pilot operating instructions with specific maintenance instructions, the owner could inadvertently become a manufacturer by virtue of replacing those propellers with different replacement parts.

The FAA applies the term manufacturer as described in this section for the purposes of proposed subpart D of part 107 only. For example, a UAS manufacturer that holds a type certificate (TC) or production certificate (PC) would not be a manufacturer under this proposal because the regulatory oversight for a TC/PC holder is codified at 14 CFR part 21. Rather, this discussion applies only to manufacturers of non-type-certificated or non-production-certificated small UAS who declare compliance with the standards of either Category 2 or Category 3 for operations over people.

(b) Declarations of Compliance

For a small UAS to be eligible to conduct Category 2 or 3 operations over people, this proposed rule would require a manufacturer to declare compliance with the impact kinetic energy and exposed rotating parts standards applicable to aircraft eligible to conduct Category 2 or 3 operations demonstrated through an FAA-accepted means of compliance. The manufacturer would do this by submitting a Declaration of Compliance via an electronic form available on the FAA's website. For Category 1 operations, manufacturers would not be required to submit a Declaration of Compliance.

By submitting a Declaration of Compliance, a manufacturer would also certify that it (1) established and maintained a process to notify owners of small UAS and the FAA of any unsafe conditions that render those small UAS non-compliant with proposed subpart D, (2) would correct any safety defects the FAA identified, and (3) would allow the Administrator to inspect its facilities, technical data, and any manufactured small UAS and witness any tests necessary to determine compliance with this subpart. As explained below in section IV.B.7.b)(4), a manufacturer would be permitted to label its small UAS for Category 2 or 3 operations after it receives notification of acceptance of its Declaration of Compliance from the FAA.

(1) Contents of Declaration of Compliance

The proposed Declaration of Compliance would be an electronic form available on the FAA's website. A manufacturer interested in labeling a small UAS as eligible for Category 2 or 3 operations over people would submit a Declaration of Compliance to the FAA. A completed Declaration of Compliance would include information the Administrator would require for both determining that a small UAS complied with the regulation and tracking those models of small UAS that were declared compliant with the regulation. A manufacturer would declare compliance with the safety level established by the impact kinetic energy and the exposed rotating parts standards and include the following information:

- Means of compliance used,
- Name of the manufacturer,
- Physical address of the manufacturer,
- Email address of the manufacturer,
- Small UAS make and model
- Serial number or range of serial numbers for the small unmanned aircraft (open-ended are permitted), and
- Whether the Declaration of Compliance was an initial or an amended Declaration of Compliance.

In the event a manufacturer is re-submitting the Declaration of Compliance, the manufacturer would be required to include the reason for such re-submittal. For example, the re-submittal could be to correct a safety defect, or it could be to correct the misspelling of the manufacturer's name or an incorrect address.

The FAA would make information contained in Declarations of Compliance publicly available. By posting the Declarations or otherwise making the information in the Declarations publicly available, the FAA and the public would be able to determine which make and model of small UAS are eligible to conduct Category 2 and 3 operations over people.

(2) Declaring Compliance for Multiple Small UAS With the Same Make and Model

The FAA understands that manufacturers who are producing the same make and model of small UAS on a large scale may not wish to perform individual unit testing to demonstrate that each small UAS meets the requirements of this proposal. The FAA would encourage these manufacturers to establish and maintain a production quality system and design configuration control system to provide for consistent repeatability. Such a system would provide increased confirmation that each individual small UAS meets the requirements of the category of operations for which the manufacturer declared compliance, so that a manufacturer could avoid testing every unit it constructed. If a manufacturer utilizes a quality assurance system, the FAA would remain confident that each unit subsequently manufactured would comply with the proposed impact kinetic energy, exposed rotating parts, and safety defects standards.

(3) Multiple Categories of Operation

This proposal would also allow a manufacturer to design a small UAS that could meet the performance requirements of multiple categories of operations over people. If a manufacturer conducts testing or engages in analysis or inspection to determine a small UAS could meet the requirements for operations in both Category 2 and Category 3 in the appropriate modes or configurations, the small UAS manufacturer would need to submit only one Declaration of Compliance to the FAA. On that Declaration of Compliance, the manufacturer would identify the categories of operation for which it determined the small UAS was compliant, and the means of compliance used for each category.

(4) FAA Acceptance of Declaration of Compliance

This proposed rule would require a manufacturer to provide information on its Declaration of Compliance regarding whether it has used an FAA-accepted means of compliance or a custom means of compliance the FAA has not yet accepted. A manufacturer would label its small UAS for Category 2 or 3 operations once it receives notification of acceptance of its Declaration of Compliance from the FAA. Once the FAA accepts a Declaration of Compliance, the FAA would make the Declaration of Compliance, or

information from the Declaration, publicly available.

If a manufacturer uses a custom means of compliance that the FAA has not yet accepted, the FAA must review and accept the means of compliance before it accepts the Declaration of Compliance. This could result in additional review time prior to acceptance of the Declaration of Compliance. The FAA would notify the manufacturer upon its decision regarding acceptance of the custom means of compliance and Declaration of Compliance.

(5) Modifying a Small UAS and Resubmitting a Declaration of Compliance

Any person who modifies a small UAS in a way that could affect the eligibility of the small UAS to operate over people under Category 2 or Category 3 of this proposed rule would be required to submit a new Declaration of Compliance before the small UAS could be operated over people. This requirement would not apply to those situations in which an individual performs a modification that the manufacturer identifies in the remote pilot operating instructions as an allowable change or modification for that small UAS, as discussed in section IV.B.9. When a manufacturer seeks to submit a Declaration of Compliance for a small UAS that was not previously eligible for operations over people, however, the FAA would undertake the same review process to verify the small UAS fulfills the performance-based standards described previously.

The requirement to submit a new Declaration of Compliance would ensure any small UAS operated under this framework meets the applicable requirements for operations over people. In this way, the FAA would have the ability to track the responsible manufacturer as well as any modifications that the small UAS may undergo during its lifetime. For these reasons, the FAA would require any person who modifies a previously declared small UAS to take on the responsibilities of a manufacturer and submit a new Declaration of Compliance if the modification took the small UAS outside the configuration originally declared.

(6) Rescission Process

Under this proposed rule, the FAA would rescind a manufacturer's Declaration of Compliance if the agency becomes aware that a small UAS for which a manufacturer has declared compliance is no longer qualified for operations over people. The FAA is proposing new procedural rules, described below, to govern any action to rescind a Declaration of Compliance. Therefore, the FAA's rules under 14 CFR part 13 would not apply.

(a) Notification of Safety Issues

The FAA proposes in § 107.135(c) that it would notify the manufacturer when the FAA becomes aware of a safety issue that could affect a manufacturer's Declaration of Compliance, either because the small unmanned aircraft is not compliant with the exposed rotating parts or kinetic energy standards, or because the small UAS has a safety defect as described in section IV.B.11. (a). If a safety issue arises in which the small UAS no longer fulfills the safety level set forth in this proposed rule, either by way of a safety defect, material, component, or feature on the small UAS, then the manufacturer must notify the FAA. At that point, the manufacturer would have the opportunity to discuss the potential safety issue with the FAA. As a result of such a discussion, the FAA may determine that a safety issue does not actually exist, that the manufacturer has incorporated an adequate mitigation to address and correct the safety issue, or that a safety issue still exists.

(b) Proposed Rescission of a Declaration of Compliance

If the FAA determines, as a result of the discussion described above, that a safety issue remains unaddressed, the FAA would send the manufacturer a notice of proposed rescission of a Declaration of Compliance. The notice would set forth the agency's basis for the proposed rescission and provide the manufacturer 10 business days to submit evidentiary information to refute the proposed notice of rescission.

(c) Notice of Rescission of a Declaration of Compliance

After receiving a proposed notice of rescission, a manufacturer may provide information demonstrating the small UAS meets the requirements of this part within 10 business days. If a manufacturer fails to establish that a safety issue does not exist, or if the manufacturer fails to respond within 10 business days, the FAA would issue a notice rescinding the Declaration of Compliance. At this point, the FAA would publish this rescission. The FAA would also specify on its website for which category the Declaration of Compliance has been rescinded. Remote pilots in command would not be permitted to operate the particular small UAS over people if the FAA has rescinded the Declaration of Compliance.

If the FAA rescinds a Declaration of Compliance as a result of a safety issue, a manufacturer would be able to modify the small UAS such that the safety issue is resolved, at which point the manufacturer could submit a new Declaration of Compliance. The FAA would review the new Declaration of Compliance and notify the manufacturer of whether the FAA has deemed it acceptable.

(d) Petition for Reconsideration of a Rescission of a Declaration of Compliance

Once a Declaration of Compliance is rescinded, a manufacturer would have the opportunity to petition the FAA for reconsideration. A manufacturer seeking reconsideration under this rule must petition the FAA within 60 days of the date of issuance of the notice of rescission. The petition would have to show: (1) The lack of a material fact in the original response to the notification of the safety issue, and address why that fact was not present in the original response; (2) an important factual error existed in the decision to rescind the Declaration of Compliance; or (3) the FAA did not correctly interpret a law, regulation, or precedent. The FAA would consider this petition and issue a final agency decision either affirming or withdrawing the rescission of the Declaration of Compliance. A manufacturer could appeal the final agency decision as provided in 49 U.S.C. 46110.

(e) Emergency Rescission of a Declaration of Compliance

Prior to rescission of a Declaration of Compliance, the FAA would typically initiate the safety issue notification process with the manufacturer as discussed previously. However, if the Administrator determines an emergency exists and safety of persons on the ground requires an immediate rescission of a Declaration of Compliance, the FAA may exercise its authority under 49 U.S.C. 46105(c)[81] to issue an emergency order rescinding a Declaration of Compliance. Under these circumstances, rescission would go into effect immediately, prior to the FAA initiating the notification process or the rescission procedures described above. The order would remain in effect until the basis for issuing the order no longer

[81] When the Administrator determines that an emergency exists related to safety in air commerce and requires immediate action, the Administrator may issue an immediately effective order to meet the emergency, with or without notice. 49 U.S.C. 46105(c).

exists. The emergency order would be considered a final agency decision; as such, a manufacturer may appeal the decision as provided in 49 U.S.C. 46110 following the issuance of the order.

8. Recordkeeping Requirements

This proposed rule would require manufacturers maintain small UAS records related to their Declarations of Compliance for a minimum of two years after ceasing production. The FAA also proposes to require manufacturers to retain the substantiating data for a custom means of compliance for as long as the means of compliance remains accepted. In the event of a safety defect, or if the FAA initiated an action against a manufacturer, this information would be critical to determine the cause, scope, and severity of the defect or infraction. The FAA requests comment on the appropriateness of this proposed amount of time for record retention.

For a Declaration of Compliance that uses an accepted means of compliance, the manufacturer would keep substantiating data that includes a description of the method used to demonstrate compliance as well as the results. Specifically, if the manufacturer established compliance by testing, the manufacturer would retain detailed information on the test method and the results used to demonstrate the small UAS meets the applicable impact kinetic energy and exposed rotating parts standards.

For a custom means of compliance submitted independently of a Declaration of Compliance, the submitter would keep:

- Test procedures that outline the test methodology (if the manufacturer established compliance by testing);
- An analysis or record of inspection to establish the equivalency of the means of compliance to the safety level identified in this proposal; and
- Substantiating data that supports the test (if applicable), methods, results and conclusions.

This information would likely include details on the method and the results the submitter used to demonstrate the small unmanned aircraft meets the applicable impact kinetic energy and exposed rotating parts standards. Substantiating data could include detailed information on whether the testing or analysis was done consistent with accepted methods used by the medical industry, consumer safety groups, or other peer-reviewed test methods. Such information should also indicate whether the proposed means of compliance required unreasonable skill or mitigation to meet the requirements.

For a Declaration of Compliance that uses a custom means of compliance that requires direct FAA review, a manufacturer would keep both the records for its Declaration of Compliance and its custom means of compliance, as discussed above. The FAA may require access to that information in several types of situations. For example, if the FAA rescinded a Declaration of Compliance, it may request the original set of substantiating data from a manufacturer if a manufacturer elects to correct the safety issue and submit a new Declaration of Compliance for the same small UAS. Upon resubmittal, the FAA would likely require all substantiating data from prior to the identification of the safety issue, as well as supporting data after anyone had made modifications. Additionally, if a manufacturer submitted a Declaration of Compliance and identified a custom means of compliance the FAA had not previously accepted, the FAA would require the manufacturer to submit substantiating data to facilitate the FAA's review of the means of compliance.

9. Remote Pilot Operating Instructions

In order to operate a small UAS safely over people, the remote pilot in command would be responsible for knowing what category of operations his or her small UAS is eligible to conduct, and what technical and operational limitations apply to the operations. Accordingly, the FAA proposes to require manufacturers to provide remote pilot operating instructions with product-specific information related to operations over people that would occur in Category 2 or Category 3.

This proposed requirement is consistent with the ARC's recommendation. Specifically, the ARC recommended small UAS manufacturers provide operating manuals to the operators of the small UAS that would include operating instructions for Category 2 and 3 operations.[82] The ARC did not provide any information regarding the contents of the operating manual, leaving that determination to future voluntary consensus standards. The ARC recommended the FAA require the operator to comply with the operating manual.

This rule proposes to require manufacturers to provide operating instructions upon sale, transfer, or use of the aircraft by someone other than the manufacturer. This requirement would apply to anyone who is a manufacturer for the purposes of this proposed rule, as described above in section (IV.B.7.(a). In addition, the manufacturer would be required to keep the instructions up-to-date to account for any changes it makes to an aircraft over time.

Specifically, the FAA proposes in §§ 107.115(b)(3) and 107.120(b)(3) that the remote pilot operating instructions include, at a minimum, the following information:

- General information, including system description and system limitations, and the category or categories of operations over people for which the manufacturer of the small UAS has declared compliance;
- If modifications of the small UAS can occur, those modifications the manufacturer has determined do not bring the small UAS out of compliance with the category declared; and
- If the small UAS has variable modes or configurations, information regarding those modes or configurations.

Existing regulations require remote pilots to conduct a preflight inspection and ensure that the small UAS is in a condition for safe operation.[83] These existing regulations would continue to apply to operations over people conducted under the terms of this proposed rule. The additional information contained in the remote pilot operating instructions would serve to inform a remote pilot in command of the characteristics of the small UAS, which in turn would assist the remote pilot in conducting his or her preflight check and ensuring the small UAS is in a condition for safe operation prior to conducting a Category 2 or 3 operation.

Manufacturer-required components that make up the small UAS must be listed in the remote pilot operating instructions to help the remote pilot ensure that all components of the small UAS are present. This is necessary

[82] ARC Report at 7–8. The FAA uses the term ''remote pilot operating instructions'' in this proposal in lieu of the ARC's suggested term of ''operating manual,'' to avoid confusion with manned aircraft flight manuals.

[83] The remote pilot in command must check the small UAS to ensure it is in a condition for safe operation prior to each flight. 14 CFR 107.15(a). Further, no person may continue flight of the small unmanned aircraft when he or she knows or has reason to know that the small UAS is no longer in a condition for safe operation. § 107.15(b). Section 107.49(a) requires that, prior to flight, the remote pilot in command must assess the operating environment, considering risks to persons and property in the immediate vicinity both on the surface and in the air. This assessment must include becoming aware of: (1) Local weather conditions; (2) local airspace and any flight restrictions; (3) the location of persons and property on the surface; and (4) other ground hazards. The preflight assessment must also include verification that all control links between the ground control station and the small unmanned aircraft are working properly. 14 CFR 107.49(c). Finally, § 107.49 requires that, if the small UAS is powered, the remote pilot in command must ensure that there is enough available power for the small UAS to operate for the intended operational time.

because, if a small UAS is missing any components, the small UAS would not comply with the category of operations over people for which the manufacturer declared compliance. A manufacturer must also clarify the category or categories of operations over people for which the small UAS is eligible.

The FAA proposes requiring in §§ 107.115(b)(3)(ii) and 107.120(b)(3)(ii) that a manufacturer include in the remote pilot operating instructions all modifications the manufacturer has determined would not change the ability of the small UAS to meet the requirements for the category of operation for which the manufacturer declared compliance. The FAA acknowledges that modification of a small UAS is a routine event for some remote pilots. Some modifications may not change the flight characteristics of the small unmanned aircraft; for example, replacing one camera with another that has the same weight and size but better optics. However, changing small unmanned aircraft components such as propellers or other articles necessary for flight may change the flight characteristics of the small unmanned aircraft, and could potentially change the small UAS eligibility to conduct operations over people.

The modifications described in proposed §§ 107.115(b)(3)(ii) and 107.120(b)(3)(ii) could consist of adding or exchanging products and evaluating them based on characteristics such as weight, size and shape. For example, a manufacturer could list certain makes and models of payload cameras, or provide weight and size limits along with a generic shape description. A remote pilot would then be able to switch out any payload cameras that meet the described parameters and continue to operate over people. The manufacturer would have to ensure, through an accepted means of compliance, that the small UAS with the included modifications would remain in compliance with the performance-based requirements for the applicable categories of operations. If a person modified a small UAS in a manner not included in the remote pilot operating instructions, the small UAS may no longer comply with its associated Declaration of Compliance. This is because if a person changed anything related to design, performance, coefficient of drag, or energy-absorbing materials, the original test results or analyses concerning the transfer of impact kinetic energy could change, and such alteration could change the category of operations or cause the small UAS to exceed the applicable standard. The same principle would apply concerning the presence of exposed rotating parts. Therefore, should a person make a modification that is not listed in the remote pilot operating instructions, the FAA would consider that person as the new manufacturer of the small UAS, and would require compliance with manufacturer requirements to operate the aircraft over people.

The remote pilot operating instructions must also state whether the small UAS has modifications that will change the determination of the small UAS fulfilling the standard for the category of operation the small UAS is eligible to conduct. For example, a manufacturer may add an interchangeable camera to the small unmanned aircraft that would affect the small unmanned aircraft's eligibility for operating over people in Category 2 or 3 operations.[84] By this proposed rule, the FAA would require the manufacturer to inform remote pilots of the effect of such options to the extent the exercise of those options may affect compliance with the applicable standards. Without this information, a person could change the flight characteristics of the small unmanned aircraft and make it non-compliant with Category 2 or 3 requirements.

For a small UAS that has variable modes or configurations, the FAA would require a manufacturer to provide instructions on how to verify what mode or configuration the small UAS is in, and how to switch between modes or configurations. This information would facilitate a remote pilot's verification that his or her small UAS is in the correct mode or configuration to conduct a certain category of operations over people. Similarly, if a remote pilot chooses to operate in a different category of operations over people, or in a mode or configuration that is not permitted for operations over people but is permitted under part 107, he or she could consult the remote pilot operating instructions to determine how to change the mode or configuration to the desired settings.

The FAA would not require the manufacturer to provide remote pilot operating instructions in a particular format. For example, a manufacturer could choose to provide the operating instructions as part of the packaging of a small UAS, make them available electronically, or provide them in some other way. Manufacturers with products currently on the market would be free to choose whether to incorporate the instructions into existing materials, or they could create a new set of instructions that are specific to operations over people. For products in production before this rule is finalized but subsequently declared to be in compliance and eligible for operations over people, the manufacturer would be responsible for developing remote pilot operating instructions and making them available to remote pilots and owners. The FAA would not prescribe the method for making the instructions available, but acknowledges publishing them online would be an efficient and effective way.

Although the FAA does not propose requiring the remote pilot operating instructions to contain information in addition to the items enumerated above, the FAA encourages small UAS manufacturers to provide additional operational information to remote pilots. Examples of such information appear in Advisory Circular 107–2, which accompanies this NPRM.

10. Labeling Requirements

The FAA proposes to require that manufacturers label any small unmanned aircraft that are qualified for Category 2 or 3 operations over people. Such labeling would assist the FAA in its oversight role by providing a simple and efficient way to determine whether an operation is consistent with this proposal. In addition, it would provide notice to the remote pilot of which category of operations he or she is eligible to conduct using that aircraft.

In its report, the ARC recommended a manufacturer of a small UAS ''label the product or product retail packaging in accordance with industry consensus standards,'' [85] and that the operator be responsible for knowing the category in which his or her small UAS qualifies to operate. Therefore, the operator would presumably know which operating limitations he or she must follow. The proposed labeling requirement would assist the FAA in its oversight role because it provides an efficient means for an inspector to evaluate whether an operation is consistent with the category or categories of operation the small UAS may conduct. Because Category 3 operations would entail unique operating limitations, the label on small unmanned aircraft eligible to conduct Category 3 operations would indicate to the remote pilot that he or she must

[84] As discussed in section IV.B.5. (b), manufacturers must submit a declaration of compliance that identifies a means of compliance the FAA has accepted. When verification of compliance assumes the presence of a component affixed to the aircraft, the FAA must receive information concerning this because it would likely affect the mass of the small unmanned aircraft.

[85] ARC Report at 10.

adhere to the applicable operating limitations.[86]

The FAA is not proposing a specific location for label placement due to the numerous design variations of small unmanned aircraft. In the case of very small unmanned aircraft, manufacturers may need to exercise creativity in determining the location best suited to satisfying the proposed labeling requirement. Labeling a non-critical surface would likely prevent wear and removal during normal operations.

The FAA declines to propose a prescriptive labeling requirement that specifies exactly how a manufacturer must label an aircraft, what size font to use, and so on. Due to the large variety of small UAS models that exist, such a prescriptive requirement would be unnecessarily limiting for manufacturers. Instead, a manufacturer could label the aircraft by any means as long as the label is in English, legible, prominent, and permanently affixed to the aircraft. For example, a manufacturer could use the following labels: ''Category 2'', ''Category 3'', ''Cat. 2'', or ''Cat. 3''.

Given that a small UAS could be qualified to conduct more than one category of operations, the FAA proposes requiring a manufacturer label the small UAS with each category of operations the small UAS is qualified to conduct. For example, a small UAS qualified to conduct Category 2 operations may also be qualified to conduct Category 3 operations. The manufacturer would label such a small UAS with each category, as follows: ''Cat. 2, 3'' or ''Category 2, 3''. The label could be painted onto, etched into, or affixed to the aircraft by some other permanent means.

Some small UAS manufactured prior to final publication of this rule may qualify for a category of operations over people. In a situation in which a manufacturer declared a previously existing make/model of small UAS eligible for Category 2 or 3 operations and has provided remote pilot operating instructions as described in section IV.B.9., the remote pilot could then label that small unmanned aircraft in accordance with the Declaration of Compliance.

[86] The labeling requirement this rule proposes is not the sole means by which a remote pilot in command will be aware of the operating limitations applicable to Category 3 operations. Remote pilots in command must maintain awareness of updated regulations, as required by proposed §§ 107.73(a) and 107.74(a) in this rule. As a result, initial knowledge testing and recurrent training implemented after the effective date of a final rule implementing this proposed rule would include operations over people as a subject area on both the test and training.

In addition to the proposed requirement that a manufacturer label the aircraft, the FAA also proposes requiring a remote pilot ensure his or her small unmanned aircraft is properly labeled before conducting any operations over people. A clear and legible label will enable a remote pilot, an inspector, or a member of the public to identify the types of operations a small UAS may conduct. If a label degrades such that it is no longer legible or attached to the aircraft, the remote pilot is responsible for providing a new label before operating over people. The proposed labeling requirement would apply regardless of whether a person obtains a small UAS directly from a manufacturer or as a subsequent transfer. No pilot would be able to operate the small UAS over people unless he or she verifies the label meets the requirements of this rule.

11. Manufacturer Accountability

After a manufacturer has declared that a specific small UAS fulfills the standard of a particular category, this proposal would require the manufacturer to monitor the small UAS to ensure it complies with the requirements of this subpart. Specifically, a manufacturer should monitor the validity of the means of compliance used to ensure the continued fulfillment of the safety level the standards at §§ 107.115(b)(1) and 107.120(b)(1) establish. The manufacturer should also track the construction, related safety analysis, and service history to ensure they do not reveal any hazardous conditions or safety defects that could increase the risk of a small UAS operation over people. Moreover, the manufacturer has a continuing obligation to ensure that the remote pilot operating instructions satisfy the regulatory requirements. To satisfy these obligations, a manufacturer may have to monitor its manufacturing processes, small UAS operational usage, and collection of accident and incident data. Manufacturer monitoring could also include information that owners and operators of the small UAS provide. Should the FAA identify a safety issue that warrants review of a manufacturer's data, records, or facilities, a manufacturer would be required to grant such access.

(a) Safety Defects

The FAA proposes to require that a manufacturer build a small UAS qualified to conduct Category 2 or 3 operations such that it does not contain any safety defects. For the purposes of this proposal, a safety defect refers to a material, component, or feature on a small UAS that increases the likelihood that the small UAS could cause a casualty or fatality to a person during an operation over people. Under this proposal, a safety defect would cause a small UAS to exceed a low probability of causing a casualty (Category 2) or a fatality (Category 3) to a person during an operation over people. For example, exposed wires or hot surfaces on a small unmanned aircraft could cause electrocution or burns to a person upon impact. Many small unmanned aircraft utilize lithium polymer or lithium-ion batteries as the primary energy source; damaged or defective batteries could cause casualties from battery fires or explosions. Sharp edges or projections on a small unmanned aircraft could cause lacerations or puncture wounds as a result of an impact with a person. As small UAS designs evolve over time, potentially hazardous features or characteristics, unknown at the present time, could emerge.

The FAA would identify safety defects through a variety of means. The FAA may receive consumer complaints, industry safety bulletins, or an individual manufacturer's notification that a safety defect has arisen. Once the FAA has formally identified a safety defect, it would notify the manufacturer of the defect. The manufacturer would have an opportunity to respond by either correcting the defect or demonstrating the small UAS does not contain any materials, components, or features that increase the probability of casualty or fatality for the category of operations for which the manufacturer declared the small UAS as compliant. If the manufacturer is unable to demonstrate the small UAS does not contain any safety defects, the FAA may initiate proceedings to rescind the manufacturer's Declaration of Compliance.

As an ongoing requirement, manufacturers would be responsible for correcting any safety defects they identify after manufacturing the small UAS, to ensure continued qualification for Category 2 or 3 operations. In the event the FAA rescinds a Declaration of Compliance, no small UAS covered by that declaration could operate over people. The small UAS could resume operations only after the FAA reinstates acceptance of the Declaration of Compliance, accepts an amended Declaration of Compliance, or accepts a new Declaration of Compliance that applies to that small UAS. Either the original or a subsequent manufacturer could submit a new Declaration of Compliance in accordance with this proposed rule.

The FAA would publish any final rescission of a Declaration of Compliance on the FAA website, and may publish notification of the safety defect in the **Federal Register** as a Notice of Availability. These actions would serve two purposes: First, to notify remote pilots that the identified aircraft are no longer safe to conduct operations over people and second, to put manufacturers on notice not to incorporate the material, component, or feature into any future small UAS a manufacturer wishes to qualify for Category 2 or 3 operations over people without appropriate mitigations. The FAA notes the rescission of a Declaration of Compliance would not render a small UAS inoperable, but rather only unsafe for operations over people. The FAA seeks comment on whether this process provides sufficient opportunity for notice and comment for manufacturers aside from those whose products the safety directive directly implicates, and whether the process provides the public sufficient opportunity for notice and comment.

If the FAA rescinds a Declaration of Compliance, the FAA would publish the applicable makes and models of small UAS that are no longer eligible to operate over people. Remote pilots would be required to refrain from using those aircraft to operate over people until the manufacturer institutes an acceptable correction. To correct a safety defect, a manufacturer could develop a correction and test the aircraft to ensure the aircraft does not increase the probability of causing a casualty or fatality when operated over people with the correction. The manufacturer would then submit a new Declaration of Compliance to the FAA identifying the means of compliance the manufacturer used to correct the safety defect.

Alternatively, the owner or remote pilot of a small UAS may elect to correct a safety defect associated with his or her aircraft. Should any person choose this option, he or she could submit a Declaration of Compliance to the FAA identifying the means of compliance used to correct the safety defect. That person, by means of modifying the small UAS such that it is again in compliance with the operation over people requirements, would become the manufacturer of his or her specific small UAS, and would assume all responsibilities that apply to manufacturers under this proposal.

(b) Public and FAA Notification Process

This proposed rule would require a manufacturer to certify on its Declaration of Compliance that it has established a process to notify the public and the FAA if the manufacturer identifies an issue with its small UAS that would render the small UAS ineligible for operations over people. Reporting a safety defect to the FAA would not automatically result in the rescission of a Declaration of Compliance. The FAA would evaluate the report and correspond with a manufacturer to determine whether taking corrective action or rescission would be appropriate.

A manufacturer must notify the FAA of any safety issues it identifies. Reporting such issues would both assist the FAA in discovering product hazards and identifying risks of injury the FAA could address through direct communication with manufacturers, publication of Notices of Availability in the **Federal Register**, or education. Manufacturers' reporting would provide a timely and effective source of information about small UAS because manufacturers often learn of potential product safety problems at an early stage. For this reason, this proposed rule would require manufacturers to develop a system for maintaining and reviewing information about their products that might identify when their product may have a defect that increases the probability of causing injury during operations over people. Such information would include, but is not limited to, consumer complaints, warranty returns, insurance claims or payments, product liability lawsuits, reports of production problems, product testing, or other critical information concerning their products.

Subsequent to manufacturers' discovery of noncompliance, this rule would require manufacturers notify the FAA and the public of the existence of the safety defect. Manufacturers' notification to the FAA should describe the nature of the noncompliance and how the manufacturer plans to address it. As stated above, such notification would not automatically result in the rescission of the Declaration of Compliance, but would involve the FAA corresponding with manufacturers to resolve the issue to ensure safety.

Notification to the public and owners of that make/model would also be a critical step in ensuring continued safety. Such notification could take the form of a notice on a manufacturer's website, electronic notification to owners who have registered the small UAS with the manufacturer, or an update to the small UAS software advising the remote pilot of the change in status. The FAA encourages manufacturers to exercise diligence to ensure the intended audience receives communications involving any potentially non-compliant conditions. In this regard, the FAA encourages manufacturers to design and utilize a system that would facilitate communication between the manufacturer and the owners of the small UAS and would successfully inform members of the public at large. In general, the FAA contends potential consumers and the public have an important interest in being aware that proximity to a particular small unmanned aircraft may pose an undue hazard.

(c) Falsification

As defined in this proposal, a Declaration of Compliance would be a record submitted by a manufacturer for a small UAS that certifies the small UAS is eligible for operations pursuant to Category 2 or Category 3 under subpart D of this part. Records are subject to compliance with the falsification provisions of the existing terms of § 107.5. These provisions prohibit any fraudulent or intentionally false record from being made, kept, or used to show compliance with any requirement of part 107. Accordingly, falsifying any part of any record intended to constitute proof of compliance with manufacturer requirements under this proposal could subject the person who submitted the record to a civil penalty, and would be a basis for rescinding a Declaration of Compliance.

(d) Access to Facilities

Under this proposed rule, a manufacturer must grant the FAA access to its facilities upon the FAA's request as described in § 107.7, to validate compliance with this subpart. As part of a manufacturer's Declaration of Compliance, the manufacturer would agree to allow the FAA to inspect its facilities, technical data, and any manufactured small UAS and witness any tests necessary to determine compliance with this subpart. Some occurrences may necessitate facility inspection. For example, facility access would likely become necessary when the FAA and the manufacturer are working together to address a safety defect.

(e) FAA Publication of Status of Declarations of Compliance

The FAA proposes making available on the FAA website the status of each manufacturer's Declaration of Compliance for public access to enable remote pilots to determine which small UAS (by make, model, serial number, and/or category declared) are eligible for operations over people. If the FAA rescinds a Declaration of Compliance,

the FAA would notify the public of the rescission and would identify the small UAS associated with the rescinded Declaration of Compliance as no longer eligible for operations over people. In this way, remote pilots would be aware of whether the model of small UAS they are utilizing was eligible for operations over people.

12. Operational Requirements and Remote Pilot Restrictions

The FAA proposes to include in § 107.49 a requirement that a remote pilot ensure he or she is using a small UAS eligible to conduct an operation over people. This verification would need to occur as part of the pre-flight inspection. Advisory Circular 107–2 would include updates with suggestions concerning the pre-flight procedures a remote pilot could follow to be compliant with this proposed rule.

As a general matter, the FAA acknowledges pilot experience may be relevant in determining whether the operation of a small UAS qualified to operate in either Category 2 or 3 adheres to the safety level the FAA contemplates in this proposed rule. In this regard, the ARC recommended that remote pilots conducting operations over crowds be required to have more training or experience than other pilots, but did not recommend specifically what such training or experience would involve. The FAA sees value in an experience requirement, however, at this time, lacks information and data to assess how much training or time piloting a particular aircraft is warranted. In order to gather information on what mitigations would be appropriate, the FAA requests comments on the following questions: To conduct operations over open-air assemblies using a small unmanned aircraft that can transfer up to 25 ft-lbs kinetic energy to a person upon impact, should the remote pilot-in-command have additional skills, experience, or currency beyond what part 107 currently requires? If so, what kind of skill, experience, or currency should be required (*e.g.,* minimum time operating the small UAS to be used, minimum number of take offs and landings, etc.)? How should that skill, experience, or currency be documented? The FAA will consider carefully all input it receives on this topic.

To conduct Category 1 operations, § 107.110 would require a remote pilot to ensure the small unmanned aircraft weighs 0.55 pounds or less on takeoff and for the duration of the flight, including everything that is on board or otherwise attached to the aircraft. To confirm a small UAS aircraft is eligible to conduct Category 1 operations, a remote pilot could weigh the aircraft. To conduct Category 2 and 3 operations, §§ 107.115(a) and 107.120(a)(1) would require a remote pilot in command to use a small UAS that is qualified and labeled to conduct those operations.

To confirm a small UAS is eligible to conduct Category 2 or 3 operations, a remote pilot must ensure an FAA-accepted Declaration of Compliance exists for his or her small UAS. A situation may occur in which a small UAS previously eligible for operations over people in either Category 2 or Category 3 would either no longer be compliant with the standards with which compliance was declared or would be ineligible for such operations due to rescission of the Declaration of Compliance that previously applied to it. The remote pilot would have to verify the flight eligibility status of his or her small UAS.

(a) Distances From People

The FAA declines to propose that the remote pilot maintain a specific minimum distance from people during small UAS operations because the existing requirements of part 107, combined with the new proposed subpart D, provide a sufficient manner of mitigating risks. Part 107 already requires the remote pilot to ensure the small UAS operation does not pose an undue hazard to other aircraft, people, or property in the event of a loss of control of the aircraft for any reason.[87] In addition, a prescriptive minimum distance from people is not appropriate; for some operations, such a distance may be too burdensome, and for others, it might be too conservative. The FAA acknowledges, however, that the ARC recommended a ''small UAS must be operated at a minimum distance of 20 feet above people's heads, or 10 feet laterally away from people'' for Category 2 and 3 operations.[88]

Section 107.19(c) requires the remote pilot in command to ensure the operation will not pose any undue hazard to other people, other aircraft, or other property in the event of a loss of control of the small UAS. The FAA believes § 107.19(c), as a performance-based requirement, allows a remote pilot in command to determine what specific stand-off distance (if any) is appropriate to the specific small unmanned aircraft and operation that he or she is conducting. To determine this stand-off distance, the preamble of the 2016 final rule stated that a remote pilot should consider the small unmanned aircraft's course, speed, and trajectory to determine whether the small unmanned aircraft would go over or impact a person who is not directly involved in the flight operation (uninvolved person).[89] To comply with §§ 107.19(c), 107.23(a), 107.31(a)(4), and 107.49(a)(3), therefore, a remote pilot conducting operations over people would likely consider several factors when making the determination of a stand-off distance from uninvolved people, all of which the remote pilot must tailor to the intended operation.

The FAA has not received information to demonstrate that a prescriptive stand-off distance would provide a safety benefit beyond complying with part 107's current requirements; therefore, the FAA maintains the position it articulated in the 2016 final rule. Due to the large variety of operations and types of small UAS that exist, and consistent with the mitigations in part 107, the importance of providing flexibility to the remote pilot outweighs any benefit of having a prescriptive standard.

The remote pilot is best suited to determine what distance would be safe and thereby ensure operation of the small UAS would pose no undue hazard to other aircraft, people, or property in the event of a loss of control of the aircraft for any reason. For example, a remote pilot might factor in the traffic along nearby roads, current and forecasted weather conditions, the likelihood of people gathering or transiting under or near the flight path, and property located in or near the flight path. The remote pilot would use this information, in addition to his or her knowledge of the performance of the small UAS under normal operating conditions and probable failure modes such as lost link, fly-away, and power failure, to identify a suitable horizontal and vertical distance from people and property to ensure the small UAS operation would not create an undue hazard. These distances may include an area around people and property.

The FAA requests comment on the following question: Does a prescriptive standard exist for a minimum vertical or horizontal distance that would apply equally across a large variety of

[87] See §§ 107.19(c), 107.23(a), 107.31(a)(4) and 107.49(a)(3).

[88] ARC Report at 11.

[89] 81 FR 42064, 42129. In addition, § 107.23(a) prohibits operating a small UAS ''in a careless or reckless manner so as to endanger the life or property of another.'' Section 107.31(a)(4) requires that the remote pilot in command maintain an ability to see the aircraft and make a determination that the unmanned aircraft does not endanger others. Section 107.49(a)(3) requires the remote pilot in command to conduct a preflight assessment of the risk to persons and property, factoring in their locations.

operations and aircraft and that would provide a safety benefit that outweighs the importance of allowing the remote pilot the flexibility to assess each unique situation? The FAA further requests data to support any comments identifying a prescriptive standard.

(b) Prohibition on Operations Over a Moving Vehicle

Part 107 currently prohibits the operation of a small UAS over a moving vehicle in the absence of a waiver. The FAA established this prohibition because the moving vehicle operating environment is dynamic, as the remote pilot in command cannot control it directly. In addition, the potential forces that would result when a small unmanned aircraft impacts a moving vehicle on a road pose unacceptable risks due to head-on closure speeds. For example, the impact kinetic energy of a small unmanned aircraft on a person who is moving at 40 miles per hour on a motorcycle would be much greater than on a person who is stationary. Impact with a small unmanned aircraft may also distract the driver of a moving vehicle and result in an accident.

The FAA is considering, however, allowing the operation of small UAS over moving vehicles in absence of a waiver. The agency seeks public comment on whether it should take this action, in this or a future rulemaking. The most useful comments on this issue will include data on whether operations over moving vehicles would either increase or decrease safety risks, including distracted driving or other hazards to traffic. The FAA encourages commenters to include information, with supporting data, on how to mitigate any risks they identify.

(c) Restricted Areas of Operation

Due to the increased risk of injury associated with the higher impact kinetic energy threshold, the FAA proposes restricting the areas where Category 3 operations may occur. This rule would permit small UAS eligible for operations in Category 3 to fly over people only when the operator conducts the operation over a closed- or restricted-access site and when people with access to the site have been notified that a small unmanned aircraft may fly over them. In the alternative, if the operation was over people not within a closed- or restricted-access site, the small UAS operating in Category 3 must not sustain flight over one or more people during its operation. For example, small UAS conducting operations pursuant to Category 3 would be limited to transient flights over people unless the operation occurs in a closed- or restricted-access site in which the people within the site have received notice. Moreover, unlike Categories 1 and 2, all Category 3 operations would be prohibited from occurring over open-air assemblies of people.

For Categories 1 and 2, the FAA proposes to permit operations at any location, in accordance with the other requirements of this proposed rule, part 107, and any other applicable laws and regulations. The absence of any restrictions on the location of Category 1 or 2 operations is due to the fact that these categories present a low risk of injuring people. A small UAS qualified to conduct Category 1 or 2 operations could operate over open air assemblies and in public spaces with no applicable restrictions.

In its report, the ARC recommended the FAA prohibit flight over crowds or dense concentrations of people for ARC Category 3 operations. The ARC also stated:

> Category 3 UAS may only operate over people if: (1) the operation is conducted over a closed- or restricted-access work site with the permission of the site's owner or operator; or (2) overflight of people is limited to those who are transient or incidental to the operation, *i.e.,* the overflight of people is incidental to the operation and is not sustained.[90]

Compared to Categories 1 and 2, Category 3 operations under this proposed rule present a higher likelihood of causing a casualty by blunt trauma. In this regard, Category 3 operations could utilize heavier, faster, or higher-operated small UAS. Permitting Category 3 operations would allow for continued and uninterrupted operation at a site, minimize disruption of normal site operations, and limit situations that could compromise the site's operational safety. Examples of closed- or restricted-access sites over which Category 3 operations could be conducted include, but are not limited to:

- Agricultural fields in which workers are conducting agricultural operations;
- Bridge inspections that include workers who may be conducting inspection or construction activities;
- Filming operations that include movie set location employees, such as caterers, set designers, and actors; and
- A wedding in which access is available only to guests and a small UAS is conducting aerial photography or filming operations.

Based on the increased risk associated with Category 3 operations, the FAA proposes to prohibit operating over open-air assemblies of people, as well as the other restrictions described above. The FAA proposes allowing Category 3 operations at closed- or restricted-access sites because the general public would be unable to access the site. In this regard, a closed- or restricted-access site would permit access to those involved in the activity that occurs on the site, but not to the general public. Those people who are permitted access to the closed- or restricted-access site could be advised of precautions or other recommended actions to ensure safety during a small UAS operation.

The FAA would expect a remote pilot to ascertain whether a site is closed- or restricted-access prior to conducting Category 3 operations under this provision. A remote pilot could accomplish this by identifying sites that restrict access to the general public through, for example, public notices and signage, flagging and barricading, erecting temporary fencing, or providing escorts, as appropriate. Remote pilots would be responsible for monitoring activity during the small UAS operation to ensure access to the site remains closed or restricted. Remote pilots must control vehicle and pedestrian access routes onto the site to prevent inadvertent or unauthorized entry of persons onto the closed- or restricted-access site.

In addition, this rule proposes to require that a remote pilot verify that people with access to the closed- or restricted-access site were provided notice that a small UAS may operate over them within the site. The FAA anticipates this notice will enhance the situational awareness of the people over whom the operations will occur. For the purposes of this proposal, actual notice could include a written notice posted at the entry point to the restricted area. When a person receives a letter or contract stating small UAS operations may occur over him or her, this would serve as sufficient actual notice, no matter the amount of time that passes between receipt of the information and the small UAS operation. By this proposed rule, the FAA encourages operators to provide verbal notice in addition to the written notice in cases in which a verbal notification is necessary to ensure the information is received and understood. The remote pilot would not have to be the person who provides the notice, but he or she must ascertain people below the small unmanned aircraft have received notice before conducting a Category 3 operation over a closed- or restricted-access site.

Alternatively, Category 3 operations could take place outside a closed- or restricted-access site as long as the small unmanned aircraft does not maintain

[90] ARC Report at 4.

sustained flight over a person who is not directly involved in the operation. This requirement would prohibit holding above, or maintaining sustained flight above, any part of any person during a Category 3 operation that occurs outside a closed- or restricted-access site. This would include hovering above any person's head, flying back and forth over a person, or circling above an uninvolved person in such a way that the small unmanned aircraft remains above some part of that person. The intent of this proposed requirement is ensuring only momentary exposure to any one person occurs for Category 3 operations.[91] Overall, restricting Category 3 operations from maintaining sustained flight over people enhances safety by reducing the likelihood of injury by limiting protracted duration of a flight over a person or persons.

The ARC suggested permitting flights to occur only over uninvolved people who may loiter beneath the aircraft. The FAA declines to adopt such a suggestion because doing so would place a heavy burden on the remote pilot to anticipate constantly a person's actions during an operation, which could affect the remote pilot's ability to operate the small UAS safely, as the obligation may present a distraction.

In some circumstances, it may not be possible for a small unmanned aircraft to take off and land inside a closed- or restricted-access site. The proposed requirements for Category 3 operations would allow for takeoffs and landings to occur outside the site and transition to the site to conduct the desired operation provided the aircraft does not maintain sustained flight over uninvolved persons when outside the site.

13. Provisions Applicable to Existing Small UAS

The FAA recognizes a significant number of small UAS have already been sold and are operating in the NAS under part 107. Some remote pilots and manufacturers of small UAS may wish to use existing small UAS to conduct operations over people. The FAA does not seek to preclude existing small UAS from conducting these operations, and recognizes the economic benefits of not requiring current owners of small UAS to procure new aircraft solely for the purpose of operations over people when existing aircraft may fulfill the proposed safety level of this rule.

Accordingly, manufacturers of existing small UAS may follow the procedures in this proposed rule to establish the eligibility of their small UAS to operate over people. Once a manufacturer has demonstrated through an FAA-accepted Means of Compliance that the existing small UAS meets the safety levels in this proposed rule, it would submit a Declaration of Compliance establishing compliance with the proposed requirements in §§ 107.115(b)(5) and 107.120(b)(5). A manufacturer would identify those small UAS to which the declaration applied by listing the aircraft serial numbers on the Declaration of Compliance submitted to the FAA. Once submitted, the FAA would handle a Declaration of Compliance for an existing small UAS in the same manner it proposes to handle a Declaration of Compliance submitted for a newly manufactured small UAS. A manufacturer would also be responsible for developing remote pilot operating instructions for the existing aircraft, and making those instructions available to remote pilots or owners of the small UAS.

The FAA emphasizes this proposal would require a manufacturer make the remote pilot operating instructions available; the FAA does not propose requiring a manufacturer to locate owners or remote pilots operating these small UAS and provide the instructions personally to them. Rather, if a remote pilot owns an existing aircraft that a manufacturer has identified on a Declaration of Compliance as eligible for Category 2 or 3 operations, and the remote pilot intends to conduct operations over people using that aircraft, the remote pilot would be able to access the remote pilot operating instructions if the manufacturer posted them online.

Finally, the FAA proposes the remote pilot be permitted to label an existing small unmanned aircraft, not previously labeled, in accordance with the labeling requirements of this rule. The FAA recognizes that requiring a manufacturer to contact all remote pilots of a particular make and model of small UAS and provide labels to those persons would be unreasonable. However, the option for a remote pilot to label the aircraft would not preclude a manufacturer from making a label available, either as a website download or for cost, which a remote pilot could then affix to the aircraft. A remote pilot could choose to label his or her existing aircraft in any manner that meets the requirements of the regulations.

C. Waivers

In the 2016 final rule, the FAA noted its process to integrate UAS is ongoing. As such, the FAA decided to proceed with an incremental approach, which included waiver authority in the regulatory text of part 107 to permit new technologies and unique operational circumstances that part 107 may currently restrict. The FAA does not propose any changes to the existing waiver process in part 107. The FAA proposes, however, to amend 14 CFR 107.205 to allow waivers for specific types of operations over people this proposal would otherwise limit, as well as to allow waivers for the anti-collision light requirement that applies to operations at night and during civil twilight.

1. Prohibition on Operations Over a Moving Vehicle

This proposal would allow small UAS operations over people in moving vehicles through the part 107 waiver process. Although this rule does not address mitigations concerning the types of risks associated with operating a small UAS over a person located in a moving vehicle, the FAA would allow these operations if a waiver applicant is able to demonstrate that these operations can be conducted safely pursuant to the terms of the certificate of waiver. As stated above, the FAA does not propose altering the prohibition on operating over a moving vehicle in this NPRM, but seeks comments on this topic.

2. Operations Over People

While this proposal would enable certain routine operations over people, other operations would remain prohibited. For example, operations using small UAS that exceed the Category 2 or 3 thresholds for kinetic energy transfer would remain prohibited. Under current regulations, an operator that wishes to conduct prohibited operation over people may request a waiver under § 107.205(g). The FAA does not propose to change that provision. Operators seeking to operate over people, but beyond the limits of this rule's requirements, would be able to request a waiver under § 107.205(g).

Some operators of small UAS may seek a waiver of more than simply the operational restrictions applicable to Category 3. For operations over people that would occur, for example, in an aircraft that does not achieve the safety level the FAA proposes in this rule, the FAA may consider an application for waiver of the proposed prohibition of § 107.39. The FAA anticipates such

[91] The FAA considers ''exposure,'' to mean the amount of time during which the small unmanned aircraft would be in a position over or a near a person in which, if it were to experience a failure, it would likely impact the person. For example, in the event a person is lying down, this rule would not permit a small unmanned aircraft to maintain sustained flight over any part of that person.

applications would consider the rationale the FAA has provided in this proposed rule, in an effort to understand the FAA's views on the acceptable level of risk, as well as the agency's expectations with regard to safety of operations over people. As such, the FAA would continue to scrutinize applications for waiver of § 107.39 in light of the agency's risk-based decision-making process, and determine whether any waiver application fulfills the waiver application requirements. In this regard, the FAA expects any person who seeks a waiver of § 107.39 would present a unique risk assessment of the intended area of operation that proves the operation would either present a de minimis risk or that the operator's proposed limitations or provisions would mitigate the risk sufficiently.[92]

D. Remote Pilot in Command Requirements

Since promulgating part 107, the FAA determined that certain amendments to part 107 would enhance clarity as well as consistency with other FAA regulations. As a result, this rule includes a proposal to add to § 107.7 the requirement for remote pilots to present their remote pilot in command certificate with small UAS rating, as well as a form of identification, to authorized individuals upon request. Lastly, this rule proposes permitting remote pilots to maintain currency of their remote pilot in command certificates by participating in recurrent training, rather than knowledge testing.

1. Presentation of Remote Pilot in Command Certificate

Section 107.7 (''Inspection, testing, and demonstration of compliance'') requires a remote pilot in command, owner, or person manipulating the controls of a small UAS to present to the Administrator, upon request, the remote pilot certificate with small UAS rating and any other document, record, or report the regulations of this chapter require. This proposed rule will align the text of § 107.7 with 14 CFR 61.3(l), which requires pilots to present airman certificates upon request.

The FAA proposes amending § 107.7 to require remote pilots to present their remote pilot in command certificates to the Administrator, authorized representatives of the National Transportation Safety Board (NTSB) or Transportation Security Administration (TSA), or any Federal, State, or local law enforcement officer, upon request from any such officials. As noted above, § 61.3(l) includes a parallel requirement for airman certificates, medical certificates, and other similar documents, along with photo identification. When the FAA promulgated 14 CFR 61.3(l), the agency cited security concerns regarding the identification of pilots as the primary impetus for the requirement. 67 FR 65858 (Oct. 28, 2002). The same rationale applies to remote pilots. Law enforcement officials, the Administrator, and the NTSB and TSA must be capable of correctly identifying remote pilots in command in the event that an operation raises security concerns or issues concerning safety in the NAS. Such a provision will enhance the ability of other government agencies and officials to conduct timely investigations in the interest of ensuring safety and security pursuant to their authority.

The FAA proposes requiring presentation of both the remote pilot in command certificate and one of the types of identification the remote pilot could use to establish his or her identity at a knowledge testing center. Section 107.67(b) states a person's application for a knowledge test must include proof of the applicant's identity that contains the person's photograph, signature, date of birth, and permanent mailing address. This proposed requirement would apply equally to remote pilots who hold a certificate under 14 CFR part 61 and obtained their remote pilot certificate by fulfilling the requirements of § 107.61(d)(2).

2. Changes to Knowledge Testing Framework

Following the implementation of part 107, the FAA re-evaluated its testing requirements for remote pilots. This proposed rule would amend the knowledge testing framework by requiring remote pilots to complete recurrent training, rather than pass knowledge tests, to maintain a current remote pilot in command certificate with small UAS rating.

(a) Recurrent Knowledge Testing and Training

The FAA maintains the current initial testing requirement to evaluate a remote pilot's knowledge for operating in the NAS is critical, given the absence of a requirement for a practical test or proficiency course in obtaining a remote pilot certificate. The FAA proposes requiring recurrent training every 24 months, in lieu of recurrent knowledge testing, however, so remote pilots maintain ongoing familiarity with small UAS operations and the provisions of part 107. Moreover, recurrent training, which a remote pilot can complete online, presents a less costly option and will achieve a level of assurance of knowledge that is comparable to the assurance a recurrent test provides. In this regard, the FAA's current use of online training enables the FAA to tailor the training to address the pilot's areas of knowledge in which improvement is necessary. The FAA intends to employ this type of mechanism to remote pilot training, in order to customize the training.

The recurrent training the FAA contemplates in this proposal may take different formats. The primary way the FAA anticipates remote pilots may fulfill the recurrent training requirement would be to complete questions throughout the training, the completion of which the FAA will consider satisfactory once the applicant achieves a score of 100 percent. The FAA may also allow small UAS training to occur within a proficiency program or other approved program. The FAA would either offer, or review and approve, all such training that could fulfill the requirement of the proposed version of § 107.65(b) and (c).

The FAA anticipates the proposed change from recurrent knowledge testing to completion of recurrent training will continue to serve as an important risk mitigation measure. As UAS operations in the NAS continue to evolve, training provides the opportunity to re-emphasize the requirements of part 107 and incorporate any changes the FAA has made to part 107 as a part of subsequent rulemakings, such as this one. A training course provides the FAA with a way to ensure remote pilots are aware of the key requirements that affect them, address new or changed requirements in part 107 as a result of subsequent rulemakings, and highlight the tools and resources available to remote pilots. Such training would ensure remote pilots maintain awareness of recommendations for decision-making so they can continue to operate safely within the boundaries part 107 has established.

Because pilots could complete online training to fulfill the recurrent training requirement, this rule would not require travel to any kind of knowledge testing center every 24 calendar months. Upon completion of the training course, the

[92] For example, one waiver for operations over people included a small unmanned aircraft that only weighed 18.5 grams, while another waiver relies primarily on containment of the operational environment and conclusions regarding reliability of the small unmanned aircraft, which weighs 8 kg. or 17.7 lbs. See Waiver No. 107W–2016–00993A (May 3, 2017) and Waiver No. 107W–2017–03788 (Sept. 25, 2017). In both cases, the FAA first assessed the risks, then provided mitigation measures sufficient to address the level of risk that the operation presented.

pilot would be able to print a completion certificate, which the pilot would use to demonstrate aeronautical knowledge recency in accordance with the proposed revisions to § 107.65.

The FAA uses the term ''training'' rather than ''training course'' in the proposed regulatory text in the relevant sections that address training requirements, which would provide the opportunity for the FAA to consider completion of special pilot proficiency programs, such as an FAA-provided WINGS course [93] specific to small UAS operations, to suffice for fulfillment of the training requirements. Such a program would offer tools and resources to strengthen decision-making skills and thereby enable the remote pilot to continue to ensure he or she operates safely in accordance with part 107. Overall, the FAA expects a recurrent online training course, pilot proficiency program, or similar option would keep remote pilots informed about enhancements to the small UAS industry while reducing costs associated with travel to knowledge testing centers.

(b) Aeronautical Knowledge Areas

The FAA re-evaluated the knowledge topics that are required for initial knowledge tests and those required for training currently identified in §§ 107.73 and 107.74, respectively. In particular, the FAA reviewed the associated knowledge testing standards identified in the Remote Pilot—Small Unmanned Aircraft System Airman Certification Standards (sUAS ACS) document [94] and the resource guidance identified in the Remote Pilot sUAS ACS. As explained above, knowledge regarding operations at night is one of the measures the FAA seeks to employ to ensure the safety of operations at night. As such, the FAA proposes adding a knowledge area that would cover night operations for the initial knowledge test and the training. This area would include questions on night physiology and night illusions.

The FAA also plans to update its guidance, training, and testing material, including the associated knowledge testing standards identified in the sUAS ACS document and the resources listed in that ACS, to ensure the information is available for those remote pilots who seek to operate a small UAS at night. In addition, the FAA would provide educational items to the small UAS community through various means of communication such as *FAASafety.gov*, *FAA.gov/UAS,* and industry organizations.

The existing subject areas on the recurrent knowledge test for remote pilots include fewer topic areas than subject areas on the initial knowledge test. This proposed rule would amend this by requiring inclusion of the same list of subject areas on both the initial test and the recurrent training for pilots who hold a remote pilot certificate under § 107.65(b). As for pilots who already hold a pilot certificate under 14 CFR part 61 as described in § 107.65(c), this proposed rule would likewise require the initial training and the recurrent training cover identical subject areas. The FAA has carefully evaluated the topics applicable in each category and concludes that consistency in pilots' adequate knowledge in all topic areas listed is important for ensuring safety of small UAS operations in the NAS. Topics such as weather, small unmanned aircraft loading, determining the performance of the small UAS, the effects of drugs and alcohol, and radio communication procedures are all sufficiently important to warrant a place in recurrent small UAS training.

In addition, pilots who hold a part 61 certificate and therefore need to complete only an abbreviated listing of topic areas should be required to complete training on weather, small unmanned aircraft loading, and determining the performance of the small UAS. Although the 2016 final rule stated that the validation of skills necessary for a pilot who holds a part 61 certificate to complete flight review for manned aircraft obviated the need to address these topics in recurrent training for unmanned aircraft, the FAA has now revisited its analysis and concluded such a distinction is not well-founded.[95] For example, although a pilot who holds a part 61 certificate will understand the effects of weather on a manned aircraft, such effects could be very different for operations of small UAS. Likewise, determining the performance of a manned aircraft is distinct from the manner in which a pilot should determine the performance of a small UAS; in this regard, the preflight check requirements of § 107.49 are distinct from those codified in part 91 and in other, similar regulations specific to manned aircraft.

The fact that remote pilots operating under part 107 are not subject to flight reviews or any practical test criteria from the FAA also forms a basis for the FAA's rationale in making the recurrent training area topics match the initial topic areas. The FAA has no means of knowing remote pilots' weaknesses or areas in which they lack experience or recollection. As a result, the FAA's presumption that each pilot may lack recollection with regard to every subject area is reasonable. For the foregoing reasons, the FAA now proposes to abandon the distinctions in the topic areas of initial knowledge tests (or training courses) and recurrent training.

Those remote pilots who hold a remote pilot certificate with a small UAS rating who completed initial knowledge testing or training prior to this rule becoming final would not have been tested or initially trained on operations at night. Although all remote pilots who choose to exercise the privileges of their remote pilot in command certificate could receive training through an online recurrent training course that would cover the subject matter, a period of time would exist for some remote pilots in which operations over people would be permitted and those remote pilots would not have completed recurrent training that includes instruction on night operations. As with all airman certificate holders, the FAA expects such remote pilots would adhere to the regulations under which they operate even when those regulations change. As a result, remote pilots who operate at night without having first completed the updated training this rule proposes would be operating in violation of § 107.29. The FAA would update its guidance, training, and testing material to ensure information is available for those remote pilots who seek to exercise this new privilege, and would alert the small UAS community accordingly, through various means of communication.

In addition, the regulatory text the FAA proposes with regard to eligibility and recency requirements for a remote pilot certificate includes the phrase ''in a manner acceptable to the Administrator.'' The FAA's addition of this phrase would serve to ensure remote pilots who already hold a remote pilot in command certificate under part 107 and are not yet required to complete their recurrent training would not need to re-take a knowledge test or complete training immediately, simply because the subject area listings of §§ 107.73 and 107.74 have changed. Instead, remote pilots who wish to operate a small UAS at night must take the updated knowledge test or training before operating at night.

[93] WINGS is a voluntary pilot education and proficiency program the FAA offers. The program addresses accident causal factors associated with common pilot errors, lack of proficiency, and faulty knowledge, and is available online. WINGS provides the opportunity and the structure for pilots to continue pilots' aviation education.

[94] The FAA's sUAS ACS is available at *https://www.faa.gov/training_testing/testing/acs/media/uas_acs.pdf.*

[95] See 81 FR 42064, 42162.

V. Other Amendments

For purposes of consistency throughout part 107, as well as clarity, this rule also includes proposals to make certain, specific amendments to various provisions of part 107. These amendments are minor and concise.

A. UAS Exemption-Holders

The existing text of § 107.1 excludes from the applicability of part 107 remote pilots who hold an exemption for a UAS operation pursuant to section 333 of Public Law 112–95. The text identifies the remote pilot as the person who is excluded from the applicability of part 107. The FAA has concluded this identification is imprecise, as the text should identify the excluded party as the exemption-holder, rather than the remote pilot. In addition, on October 5, 2018, the President signed the FAA Reauthorization Act of 2018.[96] The statute codified within title 49 of the United States Code the authority previously provided in section 333 of Public Law 112–95. As a result, the citation within § 107.1(b)(3) should reflect 49 U.S.C. 44807 as the exemption authority. The FAA proposes re-phrasing the text of § 107.1(b)(3), accordingly.

B. Remote Pilot in Command

Section 107.19 outlines the responsibilities of the remote pilot in command under part 107. Following the promulgation of part 107, the FAA identified the need for a minor edit to paragraph (c) of § 107.19, which currently requires each remote pilot in command to ''ensure the small unmanned aircraft will pose no undue hazard to other people, other aircraft, or other property in the event of a loss of control of the aircraft for any reason.'' The FAA amends the phrase ''loss of control of the aircraft'' to say ''loss of control of the small unmanned aircraft,'' for clarity. The FAA's intention in promulgating § 107.19(c) was to ensure the remote pilot in command remains responsible for the safe operation of a small unmanned aircraft when a loss of control of that small unmanned aircraft occurs. The remote pilot in command is not responsible for ensuring the safety of another person's aircraft in the event of loss of control; as a result, this proposed rule amends the text of § 107.19(c), accordingly.

C. Operation of Multiple Small UAS

The FAA proposes amending the existing text of § 107.35, which prohibits contemporaneous operation of more than one small unmanned aircraft. Following the promulgation of part 107, the FAA realized its use of the term ''operate'' in § 107.35 could result in the perception that a single company or operator was prohibited from employing more than one remote pilot in command and conducting more than one small UAS operation at the same time. The FAA's proposed change to this section would allow companies to run two or more simultaneous small UAS operations, provided each aircraft is under the control of its own remote pilot in command.

VI. Privacy

In the 2016 final rule, the FAA acknowledged various organizations' and commenters' concerns regarding the use of small UAS to collect information about individuals. In that rule, the FAA noted that privacy concerns were beyond the scope of the FAA's mission to ensure safety and efficiency of aviation operations in the NAS, but discussed various methods by which the FAA intended to continue addressing privacy concerns through engagement and collaboration with the public, stakeholders, and other agencies with authority and subject matter expertise in privacy law and policy.

Proposed regulations to address privacy concerns are beyond the scope of the FAA's mission. Nonetheless, the FAA has consistently recognized the importance of stakeholder engagement regarding privacy implications associated with UAS integration and incorporated privacy considerations into the UAS Test Site Program and the UAS Integration Pilot Program, under its contracting authority.

The FAA acknowledges unique characteristics and capabilities of UAS may pose uncertainties with regard to individual privacy. However, these concerns are generally related to technology and equipment, which may be installed on an unmanned (or manned) aircraft, but are unrelated to the safe operation of the aircraft. News helicopters, aerial surveys, film/television production, law enforcement, and other such manned aircraft have long placed cameras and other sensors on them, for a variety of purposes.

Although the FAA regulates the safe and efficient operation of aircraft within the NAS, the FAA has never extended its administrative reach to regulate the use of cameras and other sensors extraneous to the airworthiness or safe operation of the aircraft in order to protect individual privacy. Substantial, ongoing debate among policymakers, industry, advocacy groups and members of the public has occurred regarding: The extent to which UAS operations pose novel privacy issues, whether those issues are addressed by existing legal frameworks, and the means by which privacy risks should be further mitigated. In recognizing the importance of addressing privacy concerns in the proper forum, the FAA has partnered with other agencies with the mandate and expertise to identify, develop, and implement appropriate mitigation strategies to address such concerns. The FAA's discussions with stakeholders have informed the FAA as it furthers plans for UAS integration. As the FAA stated in a July 20, 2018 press release,[97] Congress exclusively authorized the FAA to regulate aviation safety, the efficiency of navigable airspace, and air traffic control, among other things. The FAA further stated, ''[l]aws traditionally related to state and local police power—including land use, zoning, privacy, and law enforcement operations—generally are not subject to federal regulation.'' As a result, cities and municipalities, while not permitted to have their own rules or regulations governing the operation of aircraft, may generally determine the location of aircraft landing sites. The FAA expects the Department of Transportation's UAS Integration Pilot Program[98] to provide the FAA with insight on how best to involve local jurisdictions in the integration of UAS into the airspace while considering local interests in conjunction with aviation safety.

With regard to the information manufacturers and operators may submit in accordance with this proposed rule's requirements, the FAA conducted a privacy impact assessment (PIA) under section 522(a)(5) of division H of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (Dec. 8, 2004) and section 208 of the E-Government Act of 2002, Public Law 107–347, 116 Stat. 2889 (Dec. 17, 2002). As part of the PIA, the FAA analyzed the effect the proposed rule might have on collecting, storing, and disseminating personally identifiable information (PII) of manufacturers and UAS operators. The FAA also examined and evaluated protections and alternative information-handling processes in developing the proposed rule to mitigate potential privacy risks. A copy of the draft PIA is

[96] Public Law 115–254.

[97] Federal Aviation Administration, Press Release—FAA Statement—Federal vs. Local Drone Authority, available at *https://www.faa.gov/news/press_releases/news_story.cfm?newsId=22938.*

[98] 82 FR 51903 (Nov. 8, 2017); Presidential Memorandum for the Secretary of Transportation (Oct. 25, 2017), available at *https://www.whitehouse.gov/the-press-office/2017/10/25/presidential-memorandum-secretary-transportation.*

posted in the docket for this rulemaking.[99]

VII. Section 44807 Statutory Findings

To determine whether certain UAS may operate safely in the NAS pursuant to 49 U.S.C. 44807, the Secretary must find that the operation of the UAS would not create a hazard to users of the NAS or the public. The Secretary must also determine whether a certificate under 49 U.S.C. 44703 (''Airman certificates'') or section 44704 (''Type certificates, production certificates, and airworthiness certificates, and design and production organization certificates''), or a certificate of waiver or certificate of authorization, is required for the operation of small UAS subject to this proposed rule. Using a risk-based approach, the Secretary proposes to determine that small UAS operations under this proposed rule would operate safely in the NAS; the individual findings section 44807 requires are as follows.

A. Hazard to Users of the NAS or the Public

Section 44807(b)(1) requires the Secretary to determine which types of small UAS operations, as a result of their size, weight, speed, operational capability, proximity to airports and populated areas, operation over people, and operation within or beyond visual line of sight, or operation during the day or night do not create a hazard to users of the NAS or the public. In the 2016 final rule, the Secretary's finding of acceptable risk was based on the following mitigations: Requiring operations to be conducted within visual line of sight; limiting maximum gross weight of the small unmanned aircraft to be 55 pounds; limiting the operating altitude to below 400 feet above ground level (AGL); requiring remote pilots to hold valid, current certificates; defining the area of operation; and prohibiting operations over any person who is not directly participating in the operation. This proposed rule would allow operations over uninvolved people; however, these aircraft would still be required to comply with the other restrictions codified in part 107. The additional hazard posed by operating directly over people would be mitigated through manufacturer requirements and operational restrictions, including limited areas of operation for Category 3 aircraft. This rule would also allow for operations at night. The proposed risk mitigation measures of an illuminated anti-collision light and increased airman knowledge would provide sufficient risk mitigation for such operations.

Accordingly, the Secretary proposes to find that small UAS operations subject to this proposed rule would not create a hazard to users of the NAS or the public. The FAA invites comments on this proposed finding.

B. Certificate Requirements

Additionally, 49 U.S.C. 44807(b)(2) requires the Secretary to determine whether small UAS operations subject to this proposed rule pose a safety risk sufficient to require airworthiness certification or airman certification.

Due to the provisions in this proposed rule, in addition to the existing provisions in part 107, the risks associated with small UAS operations over people are significantly distinct from the risks that other types of aircraft operations present. Under part 107, a remote pilot must make a determination of whether the small UAS is in a condition for safe operation prior to and during flight operations. This proposed rule would also require a remote pilot to ensure that his or her unmanned aircraft weighs 0.55 pounds or less or has an FAA-accepted Declaration of Compliance prior to operating over people. Similarly, operations at night may only occur after the remote pilot has taken the updated knowledge test or training that includes content on night operations and when the small unmanned aircraft maintains an illuminated anti-collision light. These proposed requirements serve to mitigate the risks the proposed operations would present.

Small UAS operations that occur in accordance with this proposal and the requirements of part 107 would pose significantly less risk than the level of risk that heavier aircraft present. Moreover, small UAS operating under part 107 must remain in a condition for safe operation. Therefore, the Secretary proposes to find, pursuant to 49 U.S.C. 44807(b)(2), that airworthiness certification would be unnecessary for small UAS subject to this proposed rule.

Part 107 currently requires a remote pilot in command certificate prior to conducting operations under part 107. The FAA has carefully tailored the knowledge and training requirements of part 107, subpart C, to ensure remote pilots in command are adequately aware of the restrictions and requirements of part 107. This framework is a key component of the Secretary's determination. As a result, the Secretary proposes to find, in this proposed rule, that a certificate under 49 U.S.C. 44703 is required. The FAA invites comments on these findings.

VIII. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreement Act of 1979 (Public Law 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreement Act of 1979 requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 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 the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $155 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which is available in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposed rule: (1) Has benefits that exceed costs; (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; (3) is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) would have a significant positive economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not create a Federal mandate likely to result in the expenditure of more than $155 million annually under the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). These analyses are summarized below.

[99] Upon finalization, PIAs are posted on the Department of Transportation's Privacy Program page, available at *https://www.transportation.gov/individuals/privacy/privacy-impact-assessments#Federal%20Aviation%20Administration%20(FAA).*

1. Assumptions and Data

The benefit and cost analysis for the regulatory evaluation is based on the following assumptions:

- The analysis is conducted in constant dollars with 2016 as the base year.
- Because the commercial small UAS industry may evolve differently from current expectations, the FAA determines that a five-year period of analysis is appropriate.
- We use a three percent and seven percent discount rate for the costs and benefits as prescribed by OMB in Circular A–4.[100]
- The small UAS vehicle forecasts used in this analysis are based on the Federal Aviation Administration's FAA Aerospace Forecast 2017–2037.[101]
- Small unmanned aircraft that weigh 0.55 lbs. or less (Category 1) are not part of this analysis as costs are zero to minimal.
- The FAA estimates that 15 existing models may satisfy the performance-based requirements of the rule for Category 2 and Category 3 operations with little or no modification. These operations would be subject to the cost of obtaining a Declaration of Compliance. The FAA also assumes manufacturers would likely introduce a comparable number of compliant models in each of the subsequent years of the analysis.
- The FAA estimates that the remote pilot operating manual is 6 pages in length and requires 150 hours to develop at an hourly rate of $72.91.
- The FAA assumes that five percent of submitted Declarations of Compliance (DoC) documents would be rescinded, rewritten, and resubmitted for acceptance. It is assumed that DoCs resubmitted to the FAA would be accepted.
- The FAA assigns the United States Department of Transportation guidance on the hourly value of time and hourly value of travel time savings as to equal $25.40 for the analysis period.[102]

2. Benefits Summary

This proposed rulemaking would further integrate small UAS into the NAS by enabling operations over people and nighttime operations. These would benefit the economy and encourage innovation and growth across a variety of sectors, such as construction, education, infrastructure inspection, insurance, marketing, and event, film and sports photography.

Today, remote pilots who comply with part 107 can fly a small UAS within a safe distance from people, but are not able to operate over people who are not participating in the operation. Without this proposed rule, the only entities allowed to operate small UAS over people in the NAS are public entities holding an active certificate of waiver or authorization (COA), entities with an FAA-issued exemption, entities that hold a waiver to the prohibition on operations over people provision of part 107, or small UAS that have received airworthiness certification from the FAA who also operate with a COA. When this proposed rule is finalized, individuals would be able to conduct operations of a small UAS over people in the NAS and at night under part 107, so long as the activity is conducted by a small UAS that complies with the proposed provisions.

3. Costs and Savings Summary

A manufacturer would incur costs for demonstrating compliance with the safety requirements of this proposed rule and providing a Declaration of Compliance to the FAA. For both Category 2 and Category 3 operations, this proposed rule would also require the manufacturer to label the aircraft for the appropriate category of operation and to provide remote pilot operating instructions for the small UAS upon sale, transfer, or use by someone other than the manufacturer. Additionally, a small UAS manufacturer would be responsible for the development of a website or other notification process for the purpose of notifying the public of the continued eligibility of small UAS for operations over people under this proposed rule. The costs to the FAA from this proposed rule include notice to a manufacturer that a Declaration of Compliance has been accepted (or rescinded); the development of a website for the FAA to notify the public of small UAS that have a Declaration of Compliance rescinded; and altering knowledge test questions into a training format. FAA costs are minimal.

Over the five-year period of analysis, the total present value cost of the proposed rule is about $14 million with annualized costs of $3 million (using a seven percent discount rate).

This proposed rulemaking would have quantified cost savings. Part 107 currently requires an applicant for a remote pilot certificate with a small UAS rating to go to a knowledge testing center and take the initial knowledge test to be eligible for the remote pilot in command certificate. To maintain the privileges of that certificate, remote pilots currently must pass a recurrent knowledge test at a knowledge testing center every 24 calendar months thereafter. This proposed rule would remove the requirement for completing a recurrent aeronautical knowledge test at a knowledge testing center and replace the requirement with completing online training.

As a result, the remote pilot in command who does not also hold a current certificate under part 61 would be relieved of costs associated with recurrent knowledge testing every 24 months. The cost savings include the elimination of the knowledge test fee; the elimination of the mileage expense for travel to and from the knowledge testing center; and the elimination of the opportunity cost of time studying for the knowledge test and travelling to the knowledge testing center. In total, these costs savings average $460 every 24 calendar months per affected remote pilot.

The full regulatory evaluation for this proposed rule presents a range of cost savings based on three varying fleet forecasts. Subsequently, over the five-year period of analysis, this proposed change would provide a total present value cost savings between $38 million and $135 million with annualized cost savings between $9 million and $33 million (using a seven percent discount rate).

The net present value cost savings (less costs) of the proposed rule ranges from $24 million to $121 million at a seven percent discount rate with net annualized costs savings between $6 million and $29 million. The following table presents quantified costs to manufacturers and the FAA and savings to remote pilots.

[100] *https://www.whitehouse.gov/omb/circulars_a004_a_4.* Accessed August 3, 2017.

[101] FAA Aerospace Forecast Fiscal Years 2017–2037 at 30–33, available at *http://www.faa.gov/data_research/aviation/aerospace_forecasts/media/FY2017-37_FAA_Aerospace_Forecast.pdf.*

[102] Time savings is estimated to be median hourly wage plus benefits as described in the U.S. Department of Transportation Revised Departmental Guidance on Valuation of Travel Time in Economic Analysis dated September 27, 2016.

TABLE 6—COSTS AND SAVINGS OF PROPOSED RULE ($ MILLIONS) 5-YEAR PERIOD OF ANALYSIS *

	7% PV	7% Annualized	3% PV	3% Annualized
Low case:				
Costs (Manufacturers and FAA)	$14	$3	$15	$3
Cost Savings (Remote Pilots)	(38)	(9)	(44)	(10)
Net Cost Savings	(24)	(6)	(29)	(6)
Base case:				
Costs (Manufacturers and FAA)	14	3	15	3
Cost Savings (Remote Pilots)	(49)	(12)	(57)	(12)
Net Cost Savings	(35)	(9)	(42)	(9)
High case:				
Costs (Manufacturers and FAA)	14	3	15	3
Cost Savings (Remote Pilots)	(135)	(33)	(158)	(34)
Net Costs Savings	(121)	(29)	(143)	(31)

* Columns may not sum to total due to rounding. Savings are shown in parenthesis to distinguish from costs.

4. Benefit Cost Summary

This rulemaking responds to Congressional direction that instructs the Secretary of Transportation to determine whether ''certain unmanned aircraft systems may operate safely in the national airspace system.[103] This proposed rule has been initiated at the request of the Administrator and the Secretary of Transportation after consultation with the Office of Management and Budget, and the Office of Science and Technology Policy in the Executive Office of the President. This high-level interest reflects a strong desire from industry for operating small UAS over people and is another step toward an eventual full integration of unmanned aircraft systems operating in the NAS. This rule would expand the opportunities for part 107 remote pilots and supports innovation in the emerging UAS industry.

The operation of small UAS over people may increase safety risk. Although the FAA believes the probability of injury from operating small UAS over people is small, when that small probability is multiplied by an increased number of operations, the risk of the occurrence of injury increases. The proposed performance-based standards would establish three categories of small UAS operations defined primarily by level of risk of injury posed. Additional manufacturer and operational requirements would also apply to certain categories of small UAS to mitigate the risks of operating over people.

[103] *See* Public Law 115–254 347 (2018), codified at 49 U.S.C. 44807.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

The FAA believes this proposed rule would have a significant impact on a substantial number of small entities. Therefore, under Section 603(b) of the RFA, the initial analysis must address:

- Description of reasons the agency is considering the action.
- Statement of the legal basis and objectives for the proposed rule.
- Description of the record-keeping and other compliance requirements of the proposed rule.
- All Federal rules that may duplicate, overlap, or conflict with the proposed rule.
- Description and an estimated number of small entities to which the proposed rule will apply.
- Description of Significant Regulatory Alternatives for Small Entities.

1. Description of Reasons the Agency Is Considering the Action

This rulemaking proposes performance-based requirements to allow small UAS to operate over people or at night under part 107 without obtaining a waiver or exemption. Currently under part 107, a remote pilot must obtain a waiver or exemption explicitly allowing operations over people or at night. As of July 10, 2017, the FAA has received 2,155 requests for waiver to permit operation at night, 477 requests to permit operating over people, and 228 requests to permit operating over people at night.[104]

The proposed requirements would allow small UAS to operate over people and during the hours of night while minimizing the risk these operations may pose to the general public. For operations over people, the FAA's proposed performance-based standards would establish three categories of small UAS operations defined primarily by level of risk of injury posed. Additional manufacturer requirements and operational restrictions beyond those already in part 107 would apply to certain categories of small UAS to mitigate the risks associated with each category.

This rulemaking also proposes to remove the requirement for completing a recurrent aeronautical knowledge test at a knowledge testing center and replaces the requirement with completing training that requires passing an online knowledge check by achieving a 100% score. As a result, the remote pilot in command who does not

[104] As of September 2017, part 107 Non-Airspace Waivers totaled 5,835. Of these 5,835 waivers, 3,915 have been disapproved and 1,060 have been approved. Of the remaining waivers, 543 are in process, with another 317 withdrawn.

also hold a certificate under part 61 would be relieved of costs associated with recurrent knowledge testing every 24 months.

2. Statement of the Legal Basis and Objectives for the Proposed Rule

The FAA promulgates this rulemaking pursuant to the authority set forth in 49 U.S.C. 44807. Section 44807 directs the Secretary of Transportation to determine whether ''certain unmanned aircraft systems may operate safely in the national airspace system.'' If the Secretary determines that certain unmanned aircraft systems may operate safely in the NAS, then the Secretary must ''establish requirements for the safe operation of such aircraft systems in the national airspace system, including operation related to research, development, and testing of proprietary systems.'' [105]

This rulemaking is also promulgated pursuant to 49 U.S.C. 40103(b)(1) and (2), which charge the FAA with issuing regulations: (1) To ensure the safety of aircraft and the efficient use of airspace; and (2) to govern the flight of aircraft for purposes of navigating, protecting and identifying aircraft, and protecting individuals and property on the ground. In addition, 49 U.S.C. 44701(a)(5) charges the FAA with prescribing regulations that the FAA finds necessary for safety in air commerce and national security. Lastly, 49 U.S.C. 46105(c) allows the Administrator to issue immediate orders to address an emergency related to safety in air commerce.

The FAA intends this rule will be an important step in further integrating small UAS operations into the NAS. This rule would permit operations of small UAS over people and operations at night without first obtaining a waiver. This proposed rule would also amend the knowledge testing requirements in part 107 to provide for recurrent training to substitute for in-person knowledge testing. With this proposed rule, the FAA expects the small UAS industry to continue finding new and creative ways for utilizing small UAS, and thereby grow the industry through innovation. The FAA's overall objective in this proposed rule is to ensure safety while encouraging new uses of small UAS in the NAS.

3. Description of the Record-Keeping and Other Compliance

Requirements of the Proposed Rule

The proposed rule would require the manufacturer to declare that a small UAS meets applicable performance-based requirements by using a means of compliance by test, analysis, or inspection, or any combination of these options. A manufacturer could perform any necessary tests contained in the means of compliance in-house or they could rent a testing facility with the necessary equipment to show compliance with the injury limitation based on transfer of kinetic energy upon impact. The manufacturer would certify the results from this means of compliance testing on its Declaration of Compliance to the FAA.

The proposed rule would require manufacturers of small UAS who use a means of compliance the FAA has accepted for Category 2 or Category 3 operations, to make available to the Administrator the Declaration of Compliance and any other document, record, or report that the proposal requires, upon the FAA's request. The proposed rule would provide record retention requirements for manufacturers who submit either a Declaration of Compliance or a means of compliance to the FAA. With today's minimal cost of producing electronic documents and mass storage hardware devices, the FAA expects manufacturers would keep all relevant documents, records, or reports required in an electronic format and properly back up their storage systems. Therefore, this requirement would add minimal to no costs to the manufacturers because manufacturers would already have computer systems, with sufficient memory available, to store and produce the documents this proposal requires.

The proposed rule would require a manufacturer to label a small unmanned aircraft qualified for Category 2 or Category 3 operations with each category for which the small UAS is qualified to operate such that the label is in English, legible, prominent, and affixed onto the small unmanned aircraft by some permanent means. In addition, the FAA proposes requiring remote pilots to ensure their small unmanned aircraft are properly labeled before conducting any operations over people. The FAA believes the cost of adding the additional labeling information for the category for which the small UAS is qualified to operate would be minimal given that UAS typically come with a label containing information such as the name of the manufacturer, serial number, and model name or number. In addition, if the label has worn out due to use or age, the remote pilot could satisfy the proposal by using a permanent marker, or etching the category into the body of the small unmanned aircraft.

The proposed rule would require a small UAS manufacturer to establish and maintain a product support and notification process to notify the public and the FAA of any safety issues that would render the aircraft ineligible for operations over people. The FAA believes manufacturers of small UAS would have such a system already developed and in place to handle their warranties and to inform users of their small UAS about new developments and new products they are bringing to the marketplace. This proposal does not require the owner of a small UAS to send in a warranty card or provide the manufacturer any personal contact information. Therefore, the FAA believes the cost of this requirement would be minimal. The FAA notes a manufacturer could be an individual that modifies a small UAS and then sells it. According to the proposal, this individual would also be required to have a notification and support process in place. The FAA envisions this process would be scaled to the production, so the individual who sells a single aircraft could establish a much smaller scale process. For example, the manufacturer could simply email the owner of the small UAS and advise them of any safety issues. The FAA also believes for a small-scale manufacturer or a modifier, the requirement to maintain a product support and notification process would also result in minimal costs.

4. All Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

The FAA is unaware that the proposed rule will overlap, duplicate or conflict with existing Federal rules.

5. Description and an Estimated Number of Small Entities to Which the Proposed Rule Will Apply

This proposed rule would apply to two separate communities of small entities: Manufacturers of small UAS and entities that operate small UAS. The FAA has not quantified the number of manufacturers that would be subject to the proposed rule because the FAA cannot reasonably predict how the market will develop for individual commercial uses of small UAS. However, one database that the FAA has access to identifies 2,126 manufacturers of UAS worldwide.[106] Out of these 2,126 manufacturers, over 72 percent are foreign entities. Additionally, Association of Unmanned Vehicle Systems International (AUVSI)

[105] 49 U.S.C. 44807(c).

[106] AUVSI Air Platform Database (accessed August 2018).

examined the top 15 platforms used by section 333 exemption holders, and determined that only 3 of the 15 platforms are manufactured by U.S. entities, with over half (8 platforms) manufactured by DJI Industries, a company based in China. It is not known how many of these manufacturers currently build, or will build in the future, small UAS that may fit within the bounds of this rulemaking. The FAA requests comments on the number of U.S. owned and operated small manufacturers of small UAS that would be affected by this proposed rule.

To be eligible for operations over people, a manufacturer must submit a Declaration of Compliance that would generally include the test report that is generated by following an acceptable means of compliance. Based on information from industry, the FAA estimated the one-time cost for developing the means of compliance to be $200,000.[107] The FAA considers this cost as an upper bound; as methods become standardized, the cost will be reduced. To provide flexibility to small entities, this rule proposes several performance-based requirements that would accommodate varying means of compliance. In this manner, the FAA would build flexibility into the regulations, which would adapt to the fast pace of small UAS innovation and development. The FAA requests information and data on the cost of developing varying means of compliance for small manufacturers.

The FAA determines many of the small UAS operations over people or at night will be conducted by small business entities. Based on analysis conducted by AUVSI, over 85 percent of waivers granted have been to small businesses.[108] Therefore, the FAA determines this proposed rule would have a positive significant economic impact on a substantial number of small entities.

6. Description of Significant Regulatory Alternatives Considered for Small Entities

The FAA considered both more and less costly alternatives as part of its NPRM because the RFA requires the agency to consider significant regulatory alternatives that meet the agency's statutory objectives and minimize the costs to small entities. The FAA rejected the costlier alternatives due to policy considerations and the undue burden imposed on small UAS operators. The less costly alternatives and the FAA's reasons for rejecting those alternatives are discussed below. In addition, the FAA discusses performance-based means of compliance that may provide additional flexibility and minimize costs to small entities.

- The FAA considered hands-on remote pilot flight training as part of the requirements for operating a small UAS over people or at night. However, at this time, the FAA does not have enough knowledge or experience with the operation of small UAS on a large scale to assess whether training beyond part 107 requirements is warranted.
- The FAA considered allowing Category 3 operations on a closed- or restricted-access site without requiring notice that the operation was taking place. The FAA rejected this alternative due to the increased severity of an injury resulting from a small unmanned aircraft impacting a person with up to 25 foot-pounds of kinetic energy.
- The FAA considered proposing a Category 4 to include operations in which a small UAS may operate over people, including flights over crowds or dense concentrations of people, if: (1) The manufacturer of the small UAS certifies the aircraft satisfies the same impact energy threshold as small UAS eligible to conduct Category 3 operations; (2) the small UAS complies with industry consensus standards; and (3) the operation is conducted in compliance with a documented risk mitigation plan. The FAA rejected this alternative due to the increased severity of an injury resulting from a small unmanned aircraft impacting a person with up to 25 foot-pounds of kinetic energy.
- The FAA considered incorporating the standards of 14 CFR 23.1401 or 27.1401 (''Anti-collision light system'') for night operations under part 107. Part 107 does not contain aircraft certification rules or standards, and the FAA concludes the reduced risk small UAS operations pose does not warrant application of such standards. In addition, the diverse range of aircraft that may operate under part 107 render prescriptive lighting requirements for all types of operations at night impractical. Prescribing lighting requirements would be overly burdensome for both the FAA and manufacturers of small UAS, because they would be forced to make tradeoffs that affect both the weight of the aircraft and the aircraft's power source and supply.
- The FAA considered the status quo. In other words, requiring those entities that want to perform operations over people or operations at night to go through the process of obtaining a waiver. The FAA rejected this alternative due to the undue burden it would impose on small UAS operators without an expectation of an increased level of safety.

As previously discussed in this section, the FAA considered and incorporated performance-based requirements that would accommodate varying means of compliance and potentially provide flexibility to small manufacturers. However, the FAA did not identify itemized cost data to perform a sensitivity analysis of the costs for varying means of compliance for small manufacturers. Instead, the FAA estimates the cost of developing a means of compliance assuming it would involve the full costs of testing in a research facility. The FAA requests information and data on types of means of compliance that would be flexible and scalable and minimize costs to small manufacturers.

C. International Trade Impact Assessment

The Trade Agreement Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has considered the ongoing work of international organizations and other countries. No international standards currently exist for the types of operations the FAA proposes in this rule. In addition, the FAA's proposed requirements would not create any obstacle to foreign commerce. The FAA will maintain its awareness of other countries' and international organizations' work in developing potential standards relevant to small UAS operations.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently

[107] The FAA received aggregated cost data that included the full rental of a research facility that has a drop tower, the set-up of the facility, testing equipment costs, the cost of small UAS to be tested, and the cost of time experts spend on testing and analysis among other information. The FAA did not receive itemized cost data to perform a sensitivity analysis of the costs for varying means of compliance.

[108] (AUVSI) Association of Unmanned Vehicle Systems International. As of July 31, 2017, 1,074 waivers had been issued of which 85 percent were granted to small entities (entities with less than 10 employees).

uses an inflation-adjusted value of $155.0 million in lieu of $100 million. The assessment may be included in conjunction with other assessments, as it is here.

Although this proposed rule is a significant regulatory action, it does not contain a mandate that would impose costs on the private sector of more than $155 million annually.[109] As a result, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (as implemented by 5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement, unless it displays a currently valid Office of Management and Budget (OMB) control number.

This rule proposes to add a new information collection for the Operation of Small Unmanned Aircraft over People. This information collection includes the estimated burdens for the Declaration of Compliance, Means of Compliance, and the development of remote pilot operating instructions.

This proposed rule also eliminates information collection requirements from the 2016 final rule as a result of changes to the recurrent knowledge testing requirement. In addition, it may reduce the number of waiver applications the FAA receives because under this proposed rule, most operations at night and some operations over people would be permissible in the absence of a waiver.

Below is a discussion of each of these information-collection requirements in detail. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these proposed information collection amendments to OMB for its review.

Summary for Declaration of Compliance and Means of Compliance: The information collection addresses a manufacturer's submission of the Declaration of Compliance and the Means of Compliance to the FAA for the purpose of demonstrating that the small UAS fulfills the applicable standards for Category 2 and Category 3 operations. It also addresses manufacturers' compliance with the record retention requirements associated with submitting justification to establish compliance.

The Declaration of Compliance includes the following information:

- Manufacturer's name, physical address, and email address;
- the small unmanned aircraft system make, model name, and serial number;
- whether the Declaration of Compliance is an initial declaration or an amended declaration, and if amended, the reason for resubmittal;
- A process for notifying customers of conditions that could render the small UAS ineligible for operations over people; and
- certification that the manufacturer has demonstrated that the small unmanned aircraft satisfies the kinetic energy and exposed rotating parts standards through an accepted Means of Compliance.

The Means of Compliance demonstrates through test, analysis, or inspection that the small UAS is eligible for operations pursuant to Category 2 and/or Category 3. The Means of Compliance includes the following information: Detailed description of the means of compliance, and justification (including any substantiating material) showing the means of compliance establishes achievement of or equivalency to the safety level identified.

Use: The FAA uses the Declaration of Compliance and Means of Compliance to either accept or not accept that the manufacturer has demonstrated compliance with the requirements applicable to Category 2 and/or Category 3 operations.

TABLE 7—ANNUAL BURDEN ESTIMATE FOR DECLARATION OF COMPLIANCE AND MEANS OF COMPLIANCE

[In hours]

Year	Initial	Resubmitted	Pages	Hours per page	Hourly burden
1	15	0.75	50	1	787.5
2	15	0.75	50	1	787.5
3	15	0.75	50	1	787.5
Total					2,362.5

The cost for the information collection on an hourly basis is a wage of $72.91, for an annual cost of $57,417 for the small UAS manufacturers to submit their declarations. Over the 3-year analysis period, the total cost is approximately $172,250 in 2016 dollars.

Summary for Remote Pilot Operating Instructions: The information collection addresses the manufacturer's recordkeeping associated with the development and maintenance of remote pilot operating instructions for small UAS operating over people. The remote pilot operating instructions must address, at a minimum:

- A system description that includes the required small UAS components, any system limitations, and the declared category or categories of operation;
- Modifications that will not change the ability of the small UAS to meet the requirements for the category or categories of operation the small UAS is eligible to conduct, and
- Instructions for how to verify and change the mode or configuration of the small UAS, if they are variable.

Use: In order to operate a small UAS safely over people, the remote pilot would be responsible for knowing what category of operations his or her small UAS is eligible to conduct, and what technical and operational limitations apply to the operations. Accordingly, the FAA proposes to require manufacturers to provide remote pilot operating instructions with product-specific information.

[109] The Unfunded Mandates Reform Act of 1995 defines ''Federal private sector mandate'' as ''any provision in legislation, statute, or regulation that . . . would impose an enforceable duty upon the private sector . . . or would reduce or eliminate the amount of authorization of appropriations for Federal financial assistance that will be provided to the private sector for the purposes of ensuring compliance with such duty.'' Public Law 104–4 section 658 (1995).

TABLE 8—3-YEAR BURDEN ESTIMATES FOR REMOTE PILOT OPERATING INSTRUCTIONS

[Hours]

Year	Operating instructions	Pages	Hours per page	Hourly burden
1	15	6	25	150
2	15	6	25	150
3	15	6	25	150
Total				450

The cost per hour for the information collection is a wage of $72.91, for an annual cost of $10,937 for small UAS manufacturers to develop and maintain remote pilot operating instructions. Over the 3-year analysis period, the total cost is approximately $32,810 in 2016 dollars.

Summary for Labeling of Unmanned Aircraft: Given that a small UAS could be qualified to conduct more than one category of operations, the FAA proposes requiring a manufacturer label the small UAS with each category of operations the small UAS is qualified to conduct. For example, a small UAS qualified to conduct Category 2 operations may also be qualified to conduct Category 3 operations. The manufacturer would label such a small UAS with each category, as follows: ''Cat. 2, 3'' or ''Category 2, 3''. The label could be painted onto, etched into, or affixed to the aircraft by some other permanent means.

Use: The proposed labeling requirement would assist the remote pilot to know what category of operations his or her small UAS is eligible to conduct, and what technical and operational limitations apply to the operations. The proposed labeling requirement would also assist the FAA in its oversight role because it provides an efficient means for an inspector to evaluate whether an operation is consistent with the category or categories of operation the small UAS may conduct. Because Category 3 operations would entail unique operating limitations, the label on small unmanned aircraft eligible to conduct Category 3 operations would indicate to the remote pilot that he or she must adhere to the applicable operating limitations.[110]

TABLE 9—3-YEAR BURDEN ESTIMATES FOR LABELING UNMANNED AIRCRAFT

[Hours]

Year	Number of platforms	Hours per redesign	Hourly burden
1	15	2	30
2	15	2	30
3	15	2	30
Total			90

The FAA assumes that a manufacturer would redesign a label already affixed to the aircraft, and that the label redesign and redesign approval would take a maximum of two hours at an hourly wage of $72.91, for an annual cost of $2,187. Over the 3-year analysis period, the total cost is approximately $6,562 in 2016 dollars.

Summary for Replacing Recurrent Knowledge Testing Requirement with Recurrent Training. The FAA is proposing to revise existing information collection 2120–0021, Certification: Pilots and Flight Instructors, to reflect a reduction in the information collection burden as a result of replacing recurrent in-person knowledge testing with recurrent online training.

Following the implementation of part 107, the FAA re-evaluated its testing requirements for remote pilots. The FAA maintains the current initial testing requirement to evaluate a remote pilot's knowledge for operating in the NAS is critical, given the absence of a requirement for a practical test or proficiency course in obtaining a remote pilot certificate. The FAA, however, has concluded that requiring recurrent training in lieu of recurrent knowledge testing will achieve the necessary assurance the FAA seeks with regard to remote pilots' ongoing familiarity with small UAS operations and the provisions of part 107. Recurrent training, which a remote pilot can complete online, presents a less costly option and will achieve a level of assurance of knowledge that is comparable to the assurance a recurrent test provides.

The FAA maintains that completion of training every two years is important in ensuring the remote pilots' familiarity with small UAS operations under part 107. As a result, this proposed rule would replace the recurrent knowledge testing requirement with a requirement to complete an online recurrent training, which the FAA may tailor to address any knowledge areas in which the remote pilot needs improvement. Thus, each remote pilot eligible to take recurrent knowledge training as a result of this proposed rulemaking would no longer be required to take a knowledge test.

Use: A training course affords the FAA the ability to ensure remote pilots are aware of the key requirements that affect them, address new or changed requirements in part 107 as a result of subsequent rulemakings, and highlight the tools and resources available to remote pilots. Such training would

[110] The labeling requirement this rule proposes is not the sole means by which a remote pilot in command will be aware of the operating limitations applicable to Category 3 operations. Remote pilots in command must maintain awareness of updated regulations, as required by proposed §§ 107.73(a) and 107.74(a) in this rule. As a result, initial knowledge testing and recurrent training implemented after the effective date of this proposed rule would include operations over people as a subject area on both the test and training.

ensure remote pilots stay current and aid in their decision-making so they can continue to operate safely within the boundaries part 107 has established. The table below shows the hourly savings in terms of the annual information collection burden.

TABLE 10—3-YEAR BURDEN ESTIMATE—SAVINGS FROM ELIMINATING RECURRENT TESTING

[Hours]

Year	Pages per application	Applicant time (hours)	Low case pages	Low case hours	Base case pages	Base case hours	High case pages	High case hours
1	70	3	915,692	39,244	1,039,015	44,529	2,264,918	97,068
2	70	3	1,673,944	71,740	1,899,440	81,405	4,140,494	177,450
3	70	3	2,164,218	92,752	2,868,812	122,949	8,362,221	358,381
Total	70	3	4,753,854	203,737	5,807,267	248,883	14,767,633	632,899

Rows and Columns may not sum to total due to rounding. Recurrent testing is not required until 2018.

TABLE 11—3-YEAR BURDEN ESTIMATES FOR RELIEF FROM RECURRENT TESTING

[$Millions]

Year	Hourly value of time	Savings ($Millions)—by scenario		
		Low	Base	High
1	$25.40	$1.0	$1.1	$2.5
2	25.40	1.8	2.1	4.5
3	25.40	2.4	3.1	9.1
Total	.....	5.2	6.3	16.1

Rows and Columns may not sum to total due to rounding.

Individuals and organizations may send comments on the information collection requirement to the address listed in the **ADDRESSES** section at the beginning of this preamble by April 15, 2019. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Office Building, Room 10202, 725 17th Street NW, Washington, DC 20053.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this notice of proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6 of FAA Order 1050.1F and involves no extraordinary circumstances.

IX. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism.[111] The agency has determined this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government and therefore would not have federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use.[112] The agency has determined this rule would not be a ''significant energy action'' under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation,[113] promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this proposed rule under the policies and agency responsibilities of Executive Order 13609, and has determined this proposal would have no effect on international regulatory cooperation.

D. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This proposed rule is expected to be an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's economic analysis.

X. Tribal Outreach

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,[114] and FAA Order 1210.20, American Indian

[111] 64 FR 43255 (Aug. 4, 1999).

[112] 66 FR 28355 (May 18, 2001).

[113] 77 FR 26413 (May 1, 2012).

[114] 65 FR 67249 (Nov. 6, 2000).

and Alaska Native Tribal Consultation Policy and Procedures,[115] the FAA ensures that federally recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to affect uniquely or significantly their respective Tribes. At this point, the FAA has not identified any unique or significant effects, environmental or otherwise, on tribes resulting from this proposed rule. As the FAA contemplated in the 2016 final rule, the FAA has conducted outreach to tribes and responded to those tribes seeking information about small UAS operations conducted within their territory.

The FAA continues to evaluate how it might address such concerns within the broader UAS integration effort.[116] In particular, the FAA is currently engaged in steps to fulfill the President's recent direction to the Secretary to establish a pilot program under which State, local, and tribal governments can submit proposals to the Secretary to test and evaluate the integration of civil and public UAS operations into the low-altitude NAS.[117] The pilot program involves cultivating relationships with State, local, and tribal jurisdictions to promote the safe operation of UAS and enable the development of UAS technologies and their use in agriculture, commerce, emergency management, human transportation, and other sectors.

The FAA has also conducted outreach to tribes to ensure they are familiar with the provisions of part 107 and how they might apply in Indian country, and that they are aware of FAA's plans for additional rulemakings to integrate UAS into the NAS. As part of that outreach, the FAA has:

- Provided material on the 2016 final rule to participants at the mid-year conference of the National Congress of American Indians (Spokane, Washington, June 27–30, 2016);
- Presented at a workshop at the National Tribal Transportation Conference (Anaheim, California, October 4, 2016);
- Responded to inquiries from the Shoshone-Bannock Tribes and Muscogee (Creek) Nation regarding use of UAS (September and October 2016);
- Presented information on UAS at a meeting of the Tribal Transportation Self-Governance Program Negotiated Rulemaking Meeting (Shawnee, Oklahoma, October 18, 2016); and
- Provided information to The Choctaw Nation of Oklahoma, which is participating in the UAS Integration Pilot Program.[118] Through this program, the FAA will work with The Choctaw Nation to ensure safe UAS operations for the purposes of agriculture, public safety, and infrastructure inspections. Such operations may include operations over people and operations at night.

The FAA will continue to respond to tribes that express interest in or concerns about UAS operations, and will engage in government-to-government consultation with tribes as appropriate, in accordance with Executive Orders and FAA guidance.

XI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The agency may change this proposal in light of the comments it receives.

B. Proprietary or Confidential Business Information

Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

C. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies;* or
3. Accessing the Government Publishing Office's web page at *https://www.govinfo.gov/.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the internet through the Federal eRulemaking Portal referenced above.

D. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA online, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 107

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Security measures, Signs and symbols, Small unmanned aircraft, Unmanned aircraft.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

[115] FAA Order No. 1210.20 (Jan. 28, 2004), available at *http://www.faa.gov/documentLibrary/media/1210.pdf.*

[116] 81 FR 42064, 42189.

[117] 82 FR 51903 (Nov. 8, 2017); Presidential Memorandum for the Secretary of Transportation (Oct. 25, 2017), available at *https://www.whitehouse.gov/the-press-office/2017/10/25/presidential-memorandum-secretary-transportation.*

[118] Federal Aviation Administration, UAS Integration Pilot Program (May 7, 2018), available at *https://www.faa.gov/uas/programs_partnerships/uas_integration_pilot_program/.* See also

proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 107—SMALL UNMANNED AIRCRAFT SYSTEMS

■ 1. The authority citation for part 107 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40101 note, 40103(b), 44701(a)(5), 46105(c), 46110, 44807.

■ 2. Amend § 107.1 by revising paragraphs (a) and (b)(3) to read as follows:

§ 107.1 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to the registration, airman certification, and operation of civil small unmanned aircraft systems within the United States. This part also applies to the qualification of civil small unmanned aircraft systems to operate over human beings in the United States.

(b) * * *

(3) Any operation that the holder of an exemption under section 333 of Public Law 112–95 or 49 U.S.C. 44807 elects to conduct pursuant to the exemption, unless otherwise specified in the exemption.

■ 3. Amend § 107.3 by adding the definitions of ''Casualty'' and ''Declaration of Compliance'' in alphabetical order to read as follows:

§ 107.3 Definitions.

* * * * *

Casualty means an Abbreviated Injury Scale level 3 or greater injury.

* * * * *

Declaration of Compliance means a record submitted to the FAA that certifies the small unmanned aircraft system conforms to the Category 2 or Category 3 requirements under subpart D of this part.

* * * * *

■ 4. Amend § 107.5 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(4) to read as follows:

§ 107.5 Falsification, reproduction or alteration.

* * * * *

(b) * * *

(2) Denial of a Declaration of Compliance;

(3) Suspension or revocation of any certificate, waiver, or Declaration of Compliance issued or accepted by the Administrator under this part and held by that person; or

(4) A civil penalty.

■ 5. Amend § 107.7 by revising paragraph (a) and adding paragraphs (c) and (d) to read as follows:

§ 107.7 Inspection, testing, and demonstration of compliance.

(a)(1) A remote pilot in command, owner, or person manipulating the flight controls of a small unmanned aircraft system must present his or her remote pilot certificate with a small UAS rating and identification that contains the information listed at § 107.67(b) for inspection upon a request from:

(i) The Administrator;

(ii) An authorized representative of the National Transportation Safety Board;

(iii) Any Federal, State, or local law enforcement officer; or

(iv) An authorized representative of the Transportation Security Administration.

(2) A remote pilot in command, owner, or person manipulating the flight controls of a small unmanned aircraft system must, upon request, make available to the Administrator any document, record, or report required to be kept under the regulations of this chapter.

* * * * *

(c) Any person holding an FAA-accepted Declaration of Compliance under subpart D of this part must, upon request, make available to the Administrator:

(1) The Declaration of Compliance required under subpart D of this part; and

(2) Any other document, record, or report required to be kept under the regulations of this chapter.

(d) Any person holding an FAA-accepted Declaration of Compliance under subpart D of this part must, upon request, allow the Administrator to inspect its facilities, technical data, and any manufactured small UAS and witness any tests necessary to determine compliance with that subpart.

■ 6. Amend § 107.19 by revising paragraph (c) to read as follows:

§ 107.19 Remote pilot in command.

* * * * *

(c) The remote pilot in command must ensure that the small unmanned aircraft will pose no undue hazard to other people, other aircraft, or other property in the event of a loss of control of the small unmanned aircraft for any reason.

* * * * *

■ 7. Amend § 107.29 by revising paragraph (a) to read as follows:

§ 107.29 Operation at night.

(a) No person may operate a small unmanned aircraft system at night unless:

(1) The remote pilot in command of the small unmanned aircraft has completed an initial knowledge test or training, as applicable, under § 107.73 or § 107.74, after [the effective date of a subsequent final rule]; and

(2) The small unmanned aircraft has lighted anti-collision lighting visible for at least 3 statute miles. The remote pilot in command may reduce the intensity of, but may not extinguish, the anti-collision lighting if he or she determines that, because of operating conditions, it would be in the interest of safety to do so.

* * * * *

■ 8. Revise § 107.35 to read as follows:

§ 107.35 Operation of multiple small unmanned aircraft.

A person may not manipulate flight controls or act as a remote pilot in command or visual observer in the operation of more than one unmanned aircraft at the same time.

■ 9. Revise § 107.39 to read as follows:

§ 107.39 Operation over human beings.

No person may operate a small unmanned aircraft over a human being unless:

(a) That human being is directly participating in the operation of the small unmanned aircraft;

(b) That human being is located under a covered structure or inside a stationary vehicle that can provide reasonable protection from a falling small unmanned aircraft; or

(c) The operation meets the requirements of at least one of the operational categories specified in subpart D of this part.

■ 10. Amend § 107.49 by revising paragraphs (d) and (e) and adding paragraph (f) to read as follows:

§ 107.49 Preflight familiarization, inspection, and actions for aircraft operation.

* * * * *

(d) If the small unmanned aircraft is powered, ensure that there is enough available power for the small unmanned aircraft system to operate for the intended operational time;

(e) Ensure that any object attached or carried by the small unmanned aircraft is secure and does not adversely affect the flight characteristics or controllability of the aircraft; and

(f) If the operation will be conducted over human beings under subpart D of this part, ensure that the aircraft meets the requirements of § 107.110, § 107.115(a), or § 107.120(a), as applicable.

■ 11. Amend § 107.61 by revising paragraph (d) to read as follows:

§ 107.61 Eligibility.

* * * * *

(d) Demonstrate aeronautical knowledge by satisfying one of the following conditions, in a manner acceptable to the Administrator:

(1) Pass an initial aeronautical knowledge test covering the areas of knowledge specified in § 107.73; or

(2) If a person holds a pilot certificate (other than a student pilot certificate) issued under part 61 of this chapter and meets the flight review requirements specified in § 61.56, complete training covering the areas of knowledge specified in § 107.74.

■ 12. Revise § 107.65 to read as follows:

§ 107.65 Aeronautical knowledge recency.

A person may not exercise the privileges of a remote pilot in command with small UAS rating unless that person has accomplished the following in a manner acceptable to the Administrator within the previous 24 calendar months:

(a) Passed an initial aeronautical knowledge test covering the areas of knowledge specified in § 107.73;

(b) Completed recurrent training covering the areas of knowledge specified in § 107.73; or

(c) If a person holds a pilot certificate (other than a student pilot certificate) issued under part 61 of this chapter and meets the flight review requirements specified in § 61.56, completed training covering the areas of knowledge specified in § 107.74.

(d) A person who has passed a recurrent aeronautical knowledge test in a manner acceptable to the Administrator or who has satisfied the training requirement of paragraph (c) of this section prior to [the effective date of a subsequent final rule] within the previous 24 calendar months is considered to be in compliance with the requirement of paragraph (b) or (c) of this section, as applicable.

■ 13. Revise § 107.73 to read as follows:

§ 107.73 Knowledge and training.

An initial aeronautical knowledge test and recurrent training covers the following areas of knowledge:

(a) Applicable regulations relating to small unmanned aircraft system rating privileges, limitations, and flight operation;

(b) Airspace classification, operating requirements, and flight restrictions affecting small unmanned aircraft operation;

(c) Aviation weather sources and effects of weather on small unmanned aircraft performance;

(d) Small unmanned aircraft loading;

(e) Emergency procedures;

(f) Crew resource management;

(g) Radio communication procedures;

(h) Determining the performance of the small unmanned aircraft;

(i) Physiological effects of drugs and alcohol;

(j) Aeronautical decision-making and judgment;

(k) Airport operations;

(l) Maintenance and preflight inspection procedures; and

(m) Operation at night.

■ 14. Revise § 107.74 to read as follows:

§ 107.74 Small unmanned aircraft system training.

Training for pilots who hold a pilot certificate (other than a student pilot certificate) issued under part 61 of this chapter and meet the flight review requirements specified in § 61.56 covers the following areas of knowledge:

(a) Applicable regulations relating to small unmanned aircraft system rating privileges, limitations, and flight operation;

(b) Effects of weather on small unmanned aircraft performance;

(c) Small unmanned aircraft loading;

(d) Emergency procedures;

(e) Crew resource management;

(f) Determining the performance of the small unmanned aircraft;

(g) Maintenance and preflight inspection procedures; and

(h) Operation at night.

Subpart D—[Redesignated as Subpart E]

■ 15. Redesignate subpart D as subpart E.

■ 16. Add new subpart D to read as follows:

Subpart D—Operations Over Human Beings

Sec.

107.100 Applicability.
107.105 Prohibition on operations over moving vehicles.
107.108 Limitations on operations over human beings.
107.110 Category 1 operations.
107.115 Category 2 operations.
107.120 Category 3 operations.
107.125 Means of compliance.
107.130 Variable mode and variable configuration of small unmanned aircraft systems.
107.135 Declaration of Compliance.
107.140 Previously manufactured small unmanned aircraft systems.
107.145 Record retention.
107.150 Relabeling by remote pilot in command for Category 2 and 3 operations.

§ 107.100 Applicability.

This subpart prescribes the eligibility standards and operating requirements for small unmanned aircraft systems that may conduct operations over human beings, in addition to those permitted by § 107.39(a) and (b).

§ 107.105 Prohibition on operations over moving vehicles.

No person may operate a small unmanned aircraft over a human being located in a moving vehicle.

§ 107.108 Limitations on operations over human beings.

Except as provided in § 107.39(a) and (b), a remote pilot in command may conduct operations over human beings only as Category 1, 2, or 3 operations authorized by §§ 107.110, 107.115, and 107.120.

§ 107.110 Category 1 operations.

To conduct Category 1 operations, a remote pilot in command must use a small unmanned aircraft that weighs 0.55 pounds or less on takeoff and throughout the duration of each operation under this category, including everything that is on board or otherwise attached to the aircraft.

§ 107.115 Category 2 operations.

(a) *Remote pilot in command requirements.* To conduct Category 2 operations, a remote pilot in command must use a small unmanned aircraft system that is qualified and labeled for Category 2 operations pursuant to paragraph (b) of this section.

(b) *Eligibility.* To be qualified to conduct Category 2 operations, the small unmanned aircraft system must:

(1) Be designed, produced, or modified such that it:

(i) Will not cause injury to a human being that is equivalent to or greater than the severity of injury caused by a transfer of 11 foot-pounds of kinetic energy upon impact from a rigid object;

(ii) Does not contain any exposed rotating parts that could lacerate human skin upon impact with a human being; and

(iii) Does not contain any safety defects identified by the Administrator.

(2) Display a label indicating eligibility to conduct Category 2 operations. The label must be in English and be legible, prominent, and permanently affixed to the small unmanned aircraft.

(3) Have current remote pilot operating instructions that apply to the operation of the small unmanned aircraft system. The person who designed, produced, or modified the small unmanned aircraft system must make available the instructions upon sale, transfer, or use of the aircraft by someone other than the person who designed, produced, or modified the small unmanned aircraft system. Such

instructions must address, at a minimum:

(i) A system description that includes the required small unmanned aircraft system components, any system limitations, and the declared category or categories of operation;

(ii) Modifications that will not change the ability of the small unmanned aircraft system to meet the requirements for the category or categories of operation the small unmanned aircraft system is eligible to conduct; and

(iii) Instructions for how to verify and change the mode or configuration of the small unmanned aircraft system, if they are variable.

(4) Be subject to a product support and notification process. Anyone who designs, produces, or modifies a small unmanned aircraft system under this paragraph (b) must maintain product support and notification procedures to notify the public and the FAA of:

(i) Any defect or condition that causes the small unmanned aircraft system to no longer meet the requirements of this subpart; and

(ii) Any identified safety defect that causes the small unmanned aircraft system to exceed a low probability of casualty.

(5) Operate only after the person who designed, produced, or modified the small unmanned aircraft system has received notification that the FAA has accepted the Declaration of Compliance for that small unmanned aircraft system in accordance with § 107.135.

§ 107.120 Category 3 operations.

(a) *Remote pilot in command requirements.* To conduct Category 3 operations, a remote pilot in command:

(1) Must use a small unmanned aircraft system that is qualified and labeled for Category 3 operations pursuant to paragraph (b) of this section;

(2) Must not operate the small unmanned aircraft over open air assemblies of human beings; and

(3) May only operate the small unmanned aircraft above any human being if the operation meets one of the following conditions:

(i) The operation is within or over a closed- or restricted-access site, and any human being located within the closed- or restricted-access site is on notice that a small unmanned aircraft may fly over them; or

(ii) The small unmanned aircraft does not maintain sustained flight over any human being not directly participating in the operation of the small unmanned aircraft or located under a covered structure or inside a stationary vehicle that can provide reasonable protection from a falling small unmanned aircraft.

(b) *Eligibility.* To be qualified to conduct Category 3 operations, the small unmanned aircraft system must:

(1) Be designed, produced, or modified such that it:

(i) Will not cause injury to a human being that is equivalent to or greater than the severity of the injury caused by a transfer of 25 foot-pounds of kinetic energy upon impact from a rigid object;

(ii) Does not contain any exposed rotating parts that could lacerate human skin upon impact with a human being; and

(iii) Does not contain any safety defects identified by the Administrator.

(2) Display a label indicating eligibility to conduct Category 3 operations. The label must be in English and be legible, prominent, and permanently affixed to the small unmanned aircraft.

(3) Have current remote pilot operating instructions that apply to the operation of the small unmanned aircraft system. The person who designed, produced, or modified the small unmanned aircraft system must make available the instructions upon sale, transfer, or use of the aircraft by someone other than the person who designed, produced, or modified the small unmanned aircraft system. Such instructions must address, at a minimum:

(i) A system description that includes the required small unmanned aircraft system components, any system limitations, and the declared category or categories of operation;

(ii) Modifications that will not change the ability of the small unmanned aircraft system to meet the requirements for the category or categories of operation the small unmanned aircraft system is eligible to conduct; and

(iii) Instructions for how to verify and change the mode or configuration of the small unmanned aircraft system, if they are variable.

(4) Be subject to a product support and notification process. Anyone who designs, produces, or modifies a small unmanned aircraft system under this paragraph (b) must maintain product support and notification procedures to notify the public and the FAA of:

(i) Any defect or condition that causes the small unmanned aircraft system to no longer meet the requirements of this subpart; and

(ii) Any identified safety defect that causes the small unmanned aircraft system to exceed a low probability of fatality.

(5) Operate only after the person who designed, produced, or modified the small unmanned aircraft system has received notification that the FAA has accepted a Declaration of Compliance for that small unmanned aircraft system in accordance with § 107.135.

§ 107.125 Means of compliance.

(a) To meet the requirements of § 107.115(b)(1) for operations in Category 2, or the requirements of § 107.120(b)(1) for operations in Category 3, the means of compliance must consist of test, analysis, or inspection that the Administrator has determined is acceptable. The means of compliance may include consensus standards.

(b) An applicant requesting FAA acceptance of a means of compliance must submit the following information to the FAA in a manner specified by the Administrator:

(1) Detailed description of the means of compliance; and

(2) Justification, including any substantiating material, showing the means of compliance establishes achievement of or equivalency to the safety level identified in §§ 107.115(b)(1) and 107.120(b)(1).

§ 107.130 Variable mode and variable configuration of small unmanned aircraft systems.

A small unmanned aircraft system may be eligible for one or more categories of operation over human beings under this subpart, as long as a remote pilot in command cannot inadvertently switch between modes or configurations.

§ 107.135 Declaration of Compliance.

(a) *Required information.* Prior to declaring a small unmanned aircraft system to be compliant with the requirements of this subpart for Category 2 or 3 operations, an applicant must submit a Declaration of Compliance for acceptance by the FAA, in a manner specified by the Administrator, that includes the following information:

(1) Applicant's name;

(2) Applicant's physical address;

(3) Applicant's email address;

(4) The small unmanned aircraft system make and model name;

(5) The small unmanned aircraft system serial number or range of serial numbers that are the subject of the Declaration of Compliance;

(6) Whether the Declaration of Compliance is an initial declaration or an amended declaration;

(7) If the Declaration of Compliance is an amended declaration, the reason for the re-submittal;

(8) Certification that the applicant:

(i) Has demonstrated that the small unmanned aircraft, or specific

configurations of that aircraft, satisfies § 107.115(b)(1)(i) and (ii), or § 107.120(b)(1)(i) and (ii), or both, through an accepted means of compliance;

(ii) Has satisfied § 107.115(b)(4) or § 107.120(b)(4), or both; and

(iii) Will, upon request, allow the Administrator to inspect its facilities, technical data, and any manufactured small unmanned aircraft system and witness any tests necessary to determine compliance with this subpart; and

(9) Other information as required by the Administrator.

(b) *FAA acceptance.* If the FAA determines the applicant has demonstrated compliance with the requirements of this subpart, it will notify the applicant that it has accepted the Declaration of Compliance. If the FAA determines the applicant has not provided sufficient evidence to demonstrate compliance, the FAA will notify the applicant that it has not accepted the Declaration of Compliance.

(c) *Notification of a safety issue.* Prior to initiating rescission proceedings pursuant to paragraphs (d)(1) through (3) of this section, the FAA will notify the applicant if a safety issue has been identified for the Declaration of Compliance.

(d) *Rescission.* (1) No person may operate a small unmanned aircraft system identified on a Declaration of Compliance that the FAA has rescinded pursuant to this subpart while that Declaration of Compliance is rescinded.

(2) The FAA may rescind a Declaration of Compliance if any of the following conditions occur:

(i) A small unmanned aircraft system for which a Declaration of Compliance was accepted no longer complies with § 107.115(b)(1) or § 107.120(b)(1);

(ii) The FAA finds a Declaration of Compliance is in violation of § 107.5(a); or

(iii) The Administrator determines an emergency exists related to safety in accordance with the authority in 49 U.S.C. 46105.

(3) If a safety issue identified under paragraph (c) of this section has not been resolved, the FAA may rescind the Declaration of Compliance as follows:

(i) The FAA will issue a notice proposing to rescind the Declaration of Compliance. The notice will set forth the agency's basis for the proposed rescission and provide the holder of the Declaration of Compliance with 10 business days from the date of issuance of the proposed notice to submit evidentiary information to refute the proposed notice.

(ii) The holder of the Declaration of Compliance must submit information demonstrating how the small unmanned aircraft system meets the requirements of this subpart within 10 business days from the date of issuance of the proposed notice.

(iii) If the FAA does not receive the information required by paragraph (d)(3)(ii) of this section within 10 business days from the date of the issuance of the proposed notice, the FAA will issue a notice rescinding the Declaration of Compliance.

(4) If the Administrator determines that an emergency exists in accordance with paragraph (d)(2)(iii) of this section, the FAA will exercise its authority under 49 U.S.C. 46105(c) to issue an order rescinding a Declaration of Compliance without initiating the process in paragraph (d)(3) of this section.

(e) *Petition to reconsider the rescission of a Declaration of Compliance.* A person subject to an order of rescission under paragraph (d)(3) of this section may petition the FAA to reconsider the rescission of a Declaration of Compliance by submitting a request to the FAA in a manner specified by the Administrator within 60 days of the date of issuance of the rescission.

(1) A petition to reconsider the rescission of a Declaration of Compliance must demonstrate at least one of the following:

(i) A material fact that was not present in the original response to the notification of the safety issue and an explanation for why it was not present in the original response;

(ii) The FAA made a material factual error in the decision to rescind the Declaration of Compliance; or

(iii) The FAA did not correctly interpret a law, regulation, or precedent.

(2) Upon consideration of the information submitted under paragraph (e)(1) of this section, the FAA will issue a notice either affirming the rescission or withdrawing the rescission.

(f) *Inapplicability of part 13, subpart D, of this chapter.* Title 14 CFR part 13, subpart D, does not apply to the procedures of paragraphs (d) and (e) of this section.

§ 107.140 Previously manufactured small unmanned aircraft systems.

A remote pilot in command may operate a small unmanned aircraft system manufactured prior to [the effective date of a subsequent final rule] over human beings under the following circumstances:

(a) *Category 1 operations.* The small unmanned aircraft weighs 0.55 pounds or less on takeoff, including everything that is on board or otherwise attached to the aircraft; or

(b) *Category 2 and 3 operations.* (1) The FAA has accepted a Declaration of Compliance in accordance with § 107.135; and

(2) The small unmanned aircraft is labeled for the appropriate category of operations in English such that the label is legible, prominent, and permanently affixed to the small unmanned aircraft.

§ 107.145 Record retention.

A person who submits a Declaration of Compliance or means of compliance under this subpart must retain the following substantiating data:

(a)(1) For the Declaration of Compliance, the holder of the Declaration of Compliance must store the detailed description of the means of compliance and justification, including any substantiating material, for two years after the cessation of production of the small unmanned aircraft system to support the Declaration of Compliance; and

(2) Any accompanying data must contain detailed information on the type of means of compliance and the results or justification used to demonstrate the small unmanned aircraft system meets §§ 107.115(b) and 107.120(b), as applicable.

(b)(1) For a means of compliance, the information described in paragraph (a) of this section must be stored for as long as the means of compliance is accepted by the FAA; and

(2) Accompanying data or information must contain:

(i) Test procedures that outline the test methodology, if applicable; and

(ii) Justification, including any substantiating material, showing the means of compliance establishes achievement of or equivalency to the safety level identified in §§ 107.115(b)(1) and 107.120(b)(1), as applicable.

§ 107.150 Relabeling by remote pilot in command for Category 2 and 3 operations.

If a Category 2 or Category 3 label affixed to a small unmanned aircraft is damaged or destroyed such that it is no longer legible, a remote pilot in command must relabel the aircraft in English such that the label is legible, prominent, and will remain on the small unmanned aircraft for the duration of the operation before conducting operations over human beings. The label must correctly identify the category or categories of operation over human beings that the small unmanned aircraft is qualified to conduct in accordance with this subpart.

■ 17. Amend § 107.205 by revising paragraph (b) and adding paragraph (j) to read as follows:

§ 107.205 List of regulations subject to waiver.

* * * * *

(b) Section 107.29(a)(2) and (b)—Anti-collision light required for operations at night and during periods of civil twilight.

* * * * *

(j) Section 107.105—Prohibition on operations over moving vehicles.

Issued under the authority provided by 49 U.S.C. 106(f), 40101 note; and 44807, in Washington, DC on January 29, 2019.

Elaine L. Chao,

Secretary, Department of Transportation.

Daniel K. Elwell,

Acting Administrator, Federal Aviation Administration.

[FR Doc. 2019–00732 Filed 2–12–19; 8:45 am]

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Part III

Department of Energy

10 CFR Parts 430 and 431

Energy Conservation Program for Appliance Standards: Proposed Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 430 and 431

[EERE–2017–BT–STD–0062]

RIN 1904–AD38

Energy Conservation Program for Appliance Standards: Proposed Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy (EERE), Department of Energy.

ACTION: Notice of proposed rulemaking (NOPR) and request for comment.

SUMMARY: The U.S. Department of Energy (''DOE'' or ''the Department'') proposes to update and modernize the Department's current rulemaking methodology titled, ''Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products'' (''Process Rule''). In overview, in this document, DOE is proposing to clarify that the Process Rule applies to the establishment of new or revised energy conservation standards and test procedures for both consumer products and commercial/industrial equipment. This proposed rule would make the specified rulemaking procedures binding on DOE, and it would also revise language in certain provisions to make it consistent with the Energy Policy and Conservation Act of 1975 (''EPCA''), as amended, and other applicable law. It also proposes to expand early opportunities for public input on the Appliance Program's priority setting and rulemaking activities, to define a significant energy savings threshold for updating energy conservation standards, to commit to publishing final test procedures at least 180 days in advance of a standards proposal, and to delineate procedures for rulemaking under the separate direct final rule and negotiated rulemaking authorities, among other issues. DOE may consider additional changes to the Process Rule in a future proceeding. In addition to requesting written comments on its proposal, DOE will also hold a public meeting at DOE Headquarters to discuss this proposal and obtain additional input.

DATES: *Comments:* DOE will accept comments, data, and information regarding this notice of proposed rulemaking before and after the public meeting, but no later than April 15, 2019. See section V, ''Public Participation,'' for details.

Meeting: DOE will hold a public meeting on Thursday, March 21, 2019, from 9 a.m. to 4:30 p.m. The meeting will also be broadcast as a webinar. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW, Washington, DC 20585.

Interested persons are encouraged to submit comments, identified by ''Process Rule NOPR'' and docket number EERE–2017–BT–STD–0062 and/or the regulatory information number (RIN) 1904–AD38. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Process.Rule@ee.doe.gov.* Include ''Process Rule NOPR'' and docket number EERE–2017–BT–STD–0062 and/or RIN number 1904–AD38 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Sofie Miller, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Washington, DC 20585, Room 6A–013, Washington, DC, 20585. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Sofie Miller, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–5000. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefascsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

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

The docket web page can be found at: *https://www.regulations.gov/docket?D=EERE-2017-BT-STD-0062.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V, ''Public Participation,'' for further information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Sofie Miller, Senior Advisor, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–5000. Email: *Process.Rule@ee.doe.gov.*

Francine Pinto, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–7432. Email: *Francine.Pinto@hq.doe.gov.*

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I. Summary of Proposal

DOE generally uses the procedures set forth in its Process Rule (found in 10 CFR part 430, subpart C, appendix A) when prescribing energy conservation standards for both consumer products and commercial equipment pursuant to the Energy Policy and Conservation Act of 1975 (Pub. L. 94–163, codified at 42 U.S.C. 6291, *et seq.*). In this document, DOE is proposing to update and modernize its Process Rule by addressing the following major topics: (1) Emphasizing that the procedures outlined in the Process Rule are binding on the agency; (2) formalizing DOE's past practice of applying the Process Rule to both consumer products and commercial equipment; (3) clarifying the Process Rule's application with regard to equipment covered by ASHRAE Standard 90.1; (4) expanding the Process Rule to test procedure rulemakings, as well as energy conservation standards rulemakings; (5) committing to both an ''early look'' process and other robust methods for early stakeholder input; (6) defining a significant energy savings threshold that must be met before DOE will update an energy conservation standard; (7) clarifying DOE's commitment to publish a test procedure six months before a related standards NOPR; (8) articulating DOE's authority under the Negotiated Rulemaking Act and EPCA's direct final rule (''DFR'') provision, while clarifying that negotiated rulemakings and DFRs are two separate processes with their own sets of requirements; and (9) addressing other miscellaneous issues. DOE welcomes written comments from the public on any subject within the scope of this proposal (including related topics not specifically raised in this NOPR).

DOE continues to contemplate additional topics regarding its process for undertaking appliance standards rulemakings that may lead to additional rulemaking proceedings to update the Process Rule. In particular, DOE continues to think about potential changes to its analytical methodologies and models for assessing the costs and benefits of appliance standards rulemakings.

II. Introduction

A. Authority

In overview, the Department of Energy's Process Rule was developed to guide implementation of the Appliance Standards Program, which is conducted pursuant to Title III, Parts B [1] of the Energy Policy and Conservation Act of 1975 (''EPCA'' or ''the Act''), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), for consumer products, and Part C [2] for certain industrial equipment (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, § 441(a).[3]

Under EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) certification and enforcement procedures. The Federal Trade Commission (''FTC'') is primarily responsible for labeling, and DOE implements the remainder of the program. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product and covered equipment. (42 U.S.C. 6293 and 6314) Manufacturers of covered products and covered equipment must use the prescribed DOE test procedure as the basis for certifying to DOE that their products and equipment comply with the applicable energy conservation standards adopted under EPCA and when making any other representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c), 6295(s) 6314(a), and 6316(a)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. *Id.*

In addition, pursuant to EPCA, any new or amended energy conservation standard for covered products (and at least certain types of equipment) must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 6316(a)) Furthermore, the new or amended standard must result in a significant conservation of energy (42 U.S.C. 6295(o)(3)(B), 6313(a)(6), and 6316(a)), and comply with any other applicable statutory provisions.

B. Background on the Process Rule

DOE conducted a formal effort between 1995 and 1996 to improve the process it follows to develop energy conservation standards for covered appliance products. This effort involved many different stakeholders, including manufacturers, energy-efficiency advocates, trade associations, State agencies, utilities, and other interested parties. The result was the publication of a final rule on July 15, 1996, titled, ''Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products.'' 61 FR 36974. This document was codified at 10 CFR part 430, subpart C, appendix A.[4]

The Process Rule was designed to provide guidance to stakeholders as to how DOE would implement its rulemaking responsibilities under EPCA for the Appliance Program. As part of this enhanced process, supplementing the traditional notice-and-comment rulemaking process under the

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[3] All references to EPCA in this document refer to the statute as amended through the EPS Improvement Act of 2017, Public Law 115–115 (January 12, 2018).

[4] As explained in the final rule for the Process Rule, this rule came within the scope of the Administrative Procedure Act's exemption from notice-and-comment rulemaking for procedural rules at 5 U.S.C. 553(b)(A). 61 FR 36974, 36980 (July 15, 1996). Although DOE's current rulemaking to consider potential revisions to the Process Rule might similarly warrant exemption from notice-and-comment requirements, DOE nonetheless seeks input from the interested public regarding potential avenues to improve DOE's procedures.

Administrative Procedure Act (APA), DOE has invited and promoted extensive stakeholder involvement in its energy conservation standards and test procedure rulemakings. An important legacy of the Process Rule has been both to educate and learn from the many stakeholders who participate in DOE's appliance rulemaking efforts. Some of the successes that have resulted from the Process Rule include: (1) More involvement of a wider variety of stakeholders in DOE's appliance rulemaking process; (2) improved technical analyses in support of the appliance rules due to enhanced input from stakeholders at an early stage of the rulemaking process; (3) improved solutions to issues and problems because of increased stakeholder involvement; and (4) more open dialogue and improved relationships between stakeholders and also between stakeholders and DOE.

While there have been many positive results from the Process Rule, DOE proposes to further improve the Process Rule in this document. These proposals would address: (1) Processes that may no longer track the current legal requirements of EPCA; (2) processes that do not take into account the maturation of DOE's appliance program to the point that modernization is necessary; (3) that DOE has not rigorously followed the Process Rule in many instances; (4) the need for regulatory reform to reduce the costs and burdens of rulemaking; and (5) the need to clarify that the Process Rule applies to commercial/industrial equipment. In evaluating and seeking to expand the positive impacts of the Process Rule, as well as remedying the above-described negative developments, this proposal will address the changed landscape of the rulemaking process under EPCA, and endeavor to modernize the Process Rule.[5]

On December 18, 2017, DOE issued an RFI (December 2017 RFI) to address potential improvements to DOE's Process Rule so that it could to achieve meaningful burden reduction while continuing to achieve the Department's statutory obligations in the development of appliance energy conservation standards and test procedures. 82 FR 59992. Originally, the comment period for this RFI was scheduled to end on February 16, 2018. However, several stakeholders requested a 30-day extension to file comments. (Letter dated January 29, 2018 from Air-Conditioning, Heating, and Refrigeration Institute (''AHRI''), the Association of Home Appliance Manufacturers (''AHAM''), and the National Electrical Manufacturers Association (''NEMA''), to John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Buildings Technologies Program). Consequently, DOE extended the comment period until March 2, 2018. 83 FR 5374 (Feb. 7, 2018). Subsequently, DOE posted a notice on its website on March 2, 2018, which stated that the comment period was further extended until March 5, 2018, due to a brief closure of the Federal government in the Washington DC area.

To explore the issues in the December 2017 RFI, DOE convened a public meeting on January 9, 2018, which was attended by a wide range of stakeholders. The Department also simultaneously hosted a webinar, which was attended by approximately 150 additional persons. At this all-day public meeting, a wide variety of topics were addressed, including, but not limited to: (1) Direct final rules; (2) negotiated rulemaking; (3) elimination of the statutory requirement for an advance notice of proposed rulemaking and alternate means to gather additional information early in the process; (4) application of the process rule to commercial equipment; (5) use of industry standards in DOE test procedures; (6) timing of the issuance of DOE test procedures; (7) certification, compliance and enforcement; (8) improvements to DOE's analyses; and (9) any other issues or topics raised by stakeholders.

Overall, DOE experienced a high level of engagement from stakeholders and the interested public regarding potential changes to the Process Rule.[6] Such comments provided important input to DOE's current proposal to modernize the Process Rule, and the issues raised in those public comments are addressed subsequently in this document. Once finalized, DOE envisions promulgation of a Process Rule that increases transparency and public engagement and achieves meaningful burden reduction, while at the same time continuing to meet the Department's statutory obligations under EPCA.

III. Discussion of Specific Revisions to the Process Rule

A. The Process Rule Will Be Binding on the Department of Energy

In the December 2017 RFI, DOE asked stakeholders whether DOE should make compliance with the Process Rule mandatory. 82 FR 59992, 59997. At the January 9, 2018, Process Rule public meeting, most stakeholders agreed that the Process Rule should be binding on the Department. (AHRI, January 9, 2018 Public Meeting Transcript at pp. 24, 169, 265; AHAM, January 9, 2018 Public Meeting Transcript at pp. 31, 168; Spire, January 9, 2018 Public Meeting Transcript at pp. 54–55; Southern

[5] In November 2010, DOE also issued a statement intended to expedite its rulemaking process. The statement is currently available at *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/changes_standards_process.pdf.* In this proposal, DOE is undertaking a thorough review of its Process Rule to determine the procedures it will follow in considering new or amended energy conservation standard and test procedures. As a result, if adopted, this proposed rule would supersede those portions of the November 2010 statement pertaining to the elimination of these early rulemaking steps.

[6] The following organizations or individuals provided comments in response to the December 18, 2017 RFI (82 FR 59992): ABB; Acuity Brands, Inc. (''Acuity Brands''); American Boiler Manufacturers Association (''ABMA''); American Public Power Association (''APPA''); American Public Gas Association (''APGA''); Joint Commenters of the Appliance Standards Awareness Project (ASAP), Alliance to Save Energy, American Council for an Energy-Efficient Economy (ACEEE), Consumer Federation of America (CFA), National Consumer Law Center (NCLC), Natural Resources Defense Council (NRDC), Northeast Energy Efficiency Partnerships (NEEP), and the Northwest Energy Efficiency Alliance (NEEA) (filing joint and collectively identified as, ''the ASAP Joint Comment''); Atlas Copco North America (''Atlas Copco''); Big Ass Solutions (''BAF''); Bradford White Corporation (''Bradford White''); California Investor Owned Utilities (comprised of Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison) (collectively referred to as ''CA IOUs''); California Energy Commission (''CEC''); CSA America, Inc. (''CSA''); Daikin U.S. Corp. (''Daikin''); Edison Electric Institute (''EEI''); Energy Solutions; George Washington University (''GW''); Mile High Equipment, LLC. (''Ice-O-Matic''); joint comments filed by the Air-Conditioning, Heating, and Refrigeration Institute (''AHRI''), Air Movement and Control Association International Inc. (''AMCA''), American Lighting Association (''ALA''), Association of Home Appliance Manufacturers (''AHAM''), Hearth, Patio & Barbecue Association (''HPBA''), Heating Air-Conditioning & Refrigeration Distributors International (''HARDI''), National Association of Manufacturers (''NAM''), National Electrical Manufacturers Association (''NEMA''), and Plumbing Manufacturers International (''PMI'') (collectively, ''the Joint Commenters''); Lennox International Inc. (''Lennox''); Lochinvar; Lutron Electronics Co., Inc. (''Lutron''); Manufactured Housing Institute (''MHI''); Miles & Stockbridge P.C. (''Miles & Stockbridge''); North American Association of Food Equipment Manufacturers (''NAFEM''); National Consumer Law Center (''NCLA'') and the Consumer Federation of America (''CFA''); National Conference of State Legislatures (''NCSL''); Northeast Energy Efficiency Partnerships (''NEEP''); Nor-Lake, Inc. (''Nor-Lake''); Northwest Power and Conservation Council (''NPCC''); National Propane Gas Association (''NPGA''); Office of Information and Regulatory Affairs (''OIRA''); Plumbing Heating Cooling Contractors Association (''PHCC''); Regal Beloit Corporation (''Regal''); Sierra Club and Earth Justice; Rheem; Southern Company Services Inc. (''Southern Company''); Spire Inc. (''Spire''); Sub Zero Group, Inc. (''Sub Zero''); Schneider Electric; ITW-Food Equipment Group (''Traulsen/Kairak''); United Technologies (''UT-Carrier''); Whirlpool Corporation (''Whirlpool''); Daikin; Westinghouse Lighting; and Chris Soares.

Company, January 9, 2018 Public Meeting Transcript at p. 268; NEMA, January 9, 2018 Public Meeting Transcript at p. 265; AGA, January 9, 2018 Public Meeting Transcript, at p. 37)

One commenter at the January 9, 2018, public meeting recommended that any amended Process Rule retain flexibility for DOE. (ASAP, January 9, 2018 Public Meeting Transcript, at pp. 266–268) Two commenters, Spire and Southern Company, suggested a savings or escape clause, respectively, to address this problem. According to Spire, this would mean that DOE must follow the Process Rule unless there is a conflict with EPCA. (Spire, January 9, 2018, Public Meeting Transcript, at p. 266) Southern Company stated that if it is difficult to follow the Process Rule, the matter can be sent to negotiated rulemaking and the group can decide whether to change the procedure. (Southern Company, January 9, 2018 Public Meeting Transcript, at p. 268)

Commenters who took the position that the Process Rule should be binding on the Department generally argued that the Department should be held accountable for complying with its own procedures so that the public will have confidence in the transparency and fairness of DOE's regulatory process, including the certainty that mandatory application would bring. (Joint Commenters, No. 51 at pp. 2, 19, 32; EEI, No. 72 at p. 2; Atlas Copco North America, No. 54 at p. 7; ALA, No. 55 at p. 2; Lennox, No. 62 at p. 1; PHCC, No. 63 at p. 3; Southern Company, No. 70 at p. 2; Public Power Association, No. 36 at p. 4; NPCC, No. 35 at p. 22; Ice-O-Matic, No. 29 at p. 1; Spire, No. 57 at p. 2; Sub-Zero, No. 43 at p. 4)

Conversely, several commenters expressed that it would be potentially harmful to the Department's Appliance Program if DOE were to eliminate all flexibility in the Process Rule. These commenters supported application of the Process Rule, including its goal, among others, of promoting transparency and early stakeholder engagement, as long as DOE also meets its statutory obligations. (Sierra Club and Earth Justice, No. 66 at p. 2) The California Energy Commission (''CEC'') and Natural Resources Defense Council (''NRDC'') stated that DOE should not be subject to prescriptive requirements that limit its flexibility and restrict its ability to respond to the circumstances of each rulemaking. Such an approach, in CEC's view, would increase DOE's litigation risk. (CEC, No. 53, at p. 8) At the same time, NRDC, along with others, expressed openness to revisions to the Process Rule that would make it clearer or provide greater predictability with respect to how DOE will act in the standards-setting process. (NRDC, No. 74 at p. 3) Other commenters also supported maintaining flexibility in the Process Rule and maintaining it as guidance. (CA IOUs, No. 65 at pp. 3, 5; NEEP, No. 77 at pp. 1, 5; ASAP Joint Comment, No. 75 at p. 9)

DOE acknowledges the important points made by commenters on this issue. In the December 2017 RFI, DOE stated that it has declined to follow the procedures in the Process Rule in a number of cases in the recent past. 82 FR 59992, 59993. And, DOE agrees that substantive improvements must be made in the Process Rule to promote greater transparency, consistency, and meaningful participation in DOE rulemakings.

DOE has carefully considered all the comments on this matter and has determined that requiring mandatory compliance on the part of DOE with its own Process Rule would clearly promote a rulemaking environment that is both predictable and consistent (*i.e.,* one where all stakeholders know what to expect during the rulemaking process). Accordingly, DOE is proposing language for the amended Process Rule to make clear that its provisions are binding on the agency. This approach would promote DOE's efforts to achieve meaningful burden reduction in the context of standards setting and compliance, as well as testing requirements, while continuing to achieve the Department's statutory obligations in the development of appliance standards.

DOE hopes that this approach will promote a rulemaking environment that is open, consistent, and predictable for all stakeholders. Furthermore, DOE anticipates that going forward, the rulemaking process with its binding application on the Department, will result in reduced burden to stakeholders through a more consistent set of procedures.

B. The Process Rule Will Apply to Both Consumer Products and Commercial Equipment

By its terms (and specifically by its title), the current Process Rule is applicable only to consumer products. However, in practice, DOE has routinely followed the procedures set forth in the Process Rule when establishing standards for commercial equipment. In its December 2017 RFI, DOE requested comment as to whether the agency should amend the Process Rule to clarify that it is equally applicable to the consideration of standards for commercial equipment. 82 FR 59992, 59996. At the January 9, 2018, Process Rule public meeting, DOE also asked stakeholders how the agency should treat equipment covered by the American National Standards Institute (''ANSI'')/American Society of Heating, Refrigerating, and Air-Conditioning Engineers (''ASHRAE'')/Illuminating Engineering Society of North America (''IESNA'') Standard 90.1 (''ASHRAE Standard 90.1''), if DOE were to amend the Process Rule to include commercial equipment. DOE pointed out that EPCA provides a separate set of procedural requirements and timelines for ASHRAE equipment that are different than those in the Process Rule. (DOE, January 9, 2018 Public Meeting Transcript at pp. 183–184)

Commenters generally supported the principle that the Process Rule procedures should explicitly apply to both new and amended energy conservation standards for both covered consumer products and industrial and commercial covered equipment, but with modified provisions specific to ASHRAE equipment. (AHRI, January 9, 2018 Public Meeting Transcript, at p. 25; Spire, January 9, 2018 Public Meeting Transcript, at p. 184; EEI January 9, 2018 Public Meeting Transcript, at p. 184; AHAM, January 9, 2018 Public Meeting Transcript, at p. 184; AHRI, January 9, 2018 Public Meeting Transcript, at pp. 184–185; Joint Comment, No. 51 at pp. 2, 32–33; NPCC, No. 35 at pp. 7, 16; Spire, No. 57 at p. 15; PHCC, No. 63 at p. 2; Southern Company, No. 70 at p. 2; APPA, No. 36 at p. 3; Ice-O-Matic, No. 29 at p. 1; Nor-Lake, No. 68 at pp. 1–2; Acuity Brands, No. 46 at p. 4; CA IOUs, No. 65 at p. 5; NAFEM, No. 47 at p. 3; CEC, No. 53 at p. 5; NEEP, No. 77 at p. 3; ASAP Joint Comment, No. 75 at p. 7; Lennox, No. 62 at p. 2, 8)

Some of the commenters expressed the reasons for their support of this principle. For instance, Acuity Brands stated that a consistent approach would ease compliance burdens by applying the same set of rules across the board. (Acuity Brands, No. 46 at p. 4) The North American Association of Food Equipment Manufacturers (''NAFEM'') agreed that a consistent approach reduces administrative burdens and costs. NAFEM also stated that the Process Rule need not be identical as it relates to consumer products and commercial equipment given that there could be differences in the two markets that necessitate differences in the standard-setting process. (NAFEM, No. 47 at p. 3) The Joint Commenters stated that since the procedures for developing energy efficiency standards for both consumer products and commercial

equipment are largely the same, with the exception of ASHRAE equipment, it makes sense to have one set of expectations regardless of whether the regulated product/equipment has residential or commercial applications. (Joint Commenters, No. 51 at p. 33) Spire stated that it sees no legal impediment to extending the requirements of the Process Rule to commercial equipment. (Spire, No. 57 at p. 15)

One commenter, the American Boiler Manufacturers Association (''ABMA''), did not agree that a Process Rule developed for consumer products can be equally applied to commercial equipment. It states that in many sectors, including the boiler industry that it represents, consumer products do not resemble their commercial counterparts in terms of size, complexity, and application, to name just a few distinctions. ABMA stated that this is particularly true for the largest commercial equipment engineered for a specific application that have sales in the single digits annually in some instances. ABMA advocated that there needs to be a way to differentiate between the equipment with a similar name but possessing significant differences in terms of processes and features, including capacity. (ABMA, No. 71 at pp. 2–3)

Overall, DOE agrees with commenters that a modernized and amended Process Rule should apply to both consumer products and industrial and commercial equipment, and that the Process Rule must contain language that clarifies this coverage. Historically, DOE has applied the Process Rule to both consumer and industrial and commercial rules. This proposal would make clear that such practice will continue. To promote a consistent process that reduces the regulatory burden of the rulemaking, DOE proposes to apply the same procedures in the Process Rule to both consumer products and industrial and commercial equipment rulemakings, except as discussed in section III.C for ASHRAE equipment. In response to ABMA, DOE does not see the procedural safeguards of the Process Rule in any way negatively impacting the detailed consideration to be accorded a given type of product or equipment in the context of an individual standards or test procedure rulemaking. On the contrary, DOE has tentatively concluded that formally applying the Process Rule to commercial and industrial equipment will enhance the consideration of such equipment by ensuring that there is proper time and information before the agency prior to promulgation of new or amended regulations.

C. The Application of the Process Rule to ASHRAE Equipment

As noted previously, at the January 9, 2018, Process Rule public meeting, DOE requested comment as to how the agency should treat ASHRAE equipment subject to ASHRAE Standard 90.1, in the event DOE were to amend the Process Rule to formally apply to commercial equipment. In relevant part, EPCA provides that ASHRAE equipment is subject to unique statutory requirements and its own set of timelines. More specifically, pursuant to EPCA's statutory scheme for covered ASHRAE equipment, DOE is required to consider amending the existing Federal energy conservation standards for certain enumerated types of commercial and industrial equipment (generally, commercial water heaters, commercial packaged boilers, commercial air-conditioning and heating equipment, and packaged terminal air conditioners and heat pumps) when ASHRAE Standard 90.1 is amended with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) For each type of equipment, EPCA directs that if ASHRAE Standard 90.1 is amended, DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1 as the uniform national standard for such equipment, unless DOE determines by rule, and supported by clear and convincing evidence, that a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(I)–(II))

Several stakeholders expressed their views as to how DOE should handle ASHRAE equipment. The Joint Commenters stated that ASHRAE equipment occupies a unique place under EPCA. They asserted that the language and intent of EPCA reflects the underlying policy that the stakeholder-driven process of ASHRAE Standard 90.1 is working and that DOE should defer to that process. The Joint Commenters argued that amendments to the Process Rule should set apart ASHRAE equipment and acknowledge the expectation that DOE will normally codify the industry consensus standards adopted in Standard 90.1 as the uniform national standard. Furthermore, they stated that DOE should undertake some form of early stakeholder engagement for ASHRAE equipment. They stated that if ASHRAE Standard 90.1 is amended to increase minimum efficiency requirements for covered equipment, DOE should act promptly to publish a NOPR with the expectation that the applicable ASHRAE Standard 90.1 levels will be adopted as a final rule within 18 months. (Joint Commenters, No. 51 at p. 33)

Lennox stated that the Process Rule should be applied to commercial equipment except when it would conflict with special statutory provisions specific to commercial equipment rulemakings, such as provisions for adopting ASHRAE 90.1 industry standards. For commercial equipment covered by ASHRAE Standard 90.1, Lennox pointed out that DOE must adopt the industry standard unless ''clear and convincing evidence'' dictates otherwise. (42 U.S.C. 6313(a)(6)(A)(ii)) It stated that if DOE simply adopts ASHRAE Standard 90.1 standards, the additional provisions in the Process Rule are not necessary. However, if DOE considers promulgating regulations more stringent than ASHRAE 90.1 standards, Lennox argued that DOE should follow the Process Rule. Moreover, according to Lennox, the Process Rule should clarify the high bar for what constitutes ''clear and convincing evidence'' for promulgating a standard more stringent than ASHRAE Standard 90.1. (Lennox, No. 62 at p. 8) The Joint Commenters agreed with Lennox that an amended Process Rule should develop an interpretation of what the higher bar of ''clear and convincing'' evidence means for the establishment of energy conservation standards. The Joint Commenters stated that in recent years, DOE has published rules that adopt more stringent standards than the national uniform consensus ASHRAE 90.1 energy efficiency standards and has not taken steps to demonstrate that their findings meet a higher threshold of evidentiary proof. They stated that EPCA provides a statutory presumption that standards more stringent than those required by ASHRAE Standard 90.1 are not necessary, and that presumption can be rebutted only on the basis of ''clear and convincing evidence.'' (Joint Commenters, No. 51 at p. 34) (Also see, AHRI, January 9, 2018 Public Meeting Transcript at p. 188, for the proposition that DOE should codify the clear and convincing burden of proof standard for when DOE seeks to go beyond the ASHRAE levels.)

The Joint Commenters also stated that DOE needs evidence to support its assumptions in every case, and it needs even more evidence when the ''clear and convincing'' standard applies. The commenter argued that the ''clear and convincing'' standard is more demanding than the ''reasonable''

standard required for non-ASHRAE rulemakings. The Joint Commenters added that an assumption is not even ''reasonable'' in the absence of any evidence of its validity (*i.e.,* unless it is supported by ''substantial evidence,'' which EPCA requires in the case of standards for consumer products under 42 U.S.C. 6306(b)(2)). The Joint Commenters gave as an example the single package, vertical unit rulemaking in which DOE raised the standard level over the ASHRAE minimums, arguing that if DOE had developed the required evidence, the agency would have reached a different and better result. (Joint Commenters, No. 51 at pp. 34–35)

One commenter (AHRI) stated that to the extent DOE plans on conducting an ASHRAE rulemaking that goes above the ASHRAE Standard 90.1 standards level, the full Process Rule should apply. Also, if DOE is doing a six-year review of ASHRAE standards and DOE is initiating that review, AHRI argued that the full Process Rule should apply. However, if a rule is being conducted based upon and consistent with an ASHRAE change, AHRI suggested that the process should be the same as it is now. (AHRI, January 9, 2018 Public Meeting Transcript at pp. 185–186)

In this proposal, DOE has tentatively determined that the amended Process Rule will contain a new section that clearly delineates the procedure DOE will follow for evaluating amendments to ASHRAE Standard 90.1 and conducting related rulemakings. First, DOE's statutory obligations for ASHRAE equipment will be reiterated in this new section. Through its amended Process Rule, DOE is also announcing its tentative decision that, going forward, DOE anticipates adopting the revised ASHRAE levels as contemplated by EPCA, except in very limited circumstances as discussed below. (42 U.S.C. 6313(a)(6)(A)(ii)(II)) DOE's commitment to adopting the amended ASHRAE Standard 90.1 level(s) as its regular practice will result in reducing the regulatory burden on stakeholders and will promote consistency and simplicity when DOE is addressing ASHRAE equipment.

With respect to DOE's consideration of more-stringent standards than the ASHRAE levels, DOE tentatively takes the position that for DOE to utilize its statutory authority to establish more-stringent standards than the amendments to ASHRAE Standard 90.1 pursuant to 42 U.S.C. 6313(a)(6)(A)(ii)(II), DOE will be required to meet a very high bar to demonstrate the ''clear and convincing evidence'' threshold that is articulated in this latter subsection. When evaluating whether it can proceed with a rulemaking to potentially establish more-stringent standards than those adopted by ASHRAE, DOE will seek, from interested stakeholders and the public, data and information to assist in making this determination, prior to publishing a proposed rule to adopt more stringent standards. Moreover, DOE proposes that clear and convincing evidence would exist only if:

Given the circumstances, facts, and data that exists for a particular ASHRAE amendment, DOE determines there is no substantial doubt that the more stringent standard would result in a significant additional conservation of energy, is technologically feasible and economically justified.

This high bar would mean that only in extraordinary circumstances would DOE conduct a rulemaking to establish more-stringent standards for covered ASHRAE equipment. In the event that DOE determines that such a rule is possible, all of the Process Rule requirements would apply. However, for the typical situation wherein DOE is adopting the ASHRAE Standard 90.1 level(s), DOE would follow the EPCA statutory requirements and not be required to follow additional Process Rule requirements.

Making clear that DOE will adopt the action taken by ASHRAE except in rare circumstances raises the question as to how broadly DOE is triggered by ASHRAE action in amending Standard 90.1. For example, if ASHRAE acts to amend its standard at the equipment class level for air-cooled variable refrigerant flow (VRF) multi-split air conditioners greater than or equal to 65,000 Btu/h and less than 135,000 Btu/h, is DOE triggered to consider amended standards: (1) Only for that specific equipment class that was actually amended in ASHRAE 90.1; (2) for the entire equipment category of VRF equipment, or (3) for the entire covered equipment type of small commercial package air conditioning and heating equipment? EPCA does not specifically define the term ''amended'' in the context of ASHRAE Standard 90.1. Although the statute is not entirely clear on this matter, DOE has maintained a consistent position for over a decade, at least since it interpreted what would constitute an ''amended standard'' in a final rule published in the **Federal Register** on March 7, 2007. 72 FR 10038. In that rule, DOE stated that the statutory triggering event requiring DOE to adopt uniform national standards based on ASHRAE action is for ASHRAE to change a standard for any of the equipment listed in EPCA section 342(a)(6)(A)(i) (42 U.S.C. 6313(a)(6)(A)(i)) by increasing the energy efficiency level for that equipment. *Id.* at 10042. In other words, if the revised ASHRAE Standard 90.1 leaves the standard level unchanged or lowers the standard, as compared to the level specified by the national standard adopted pursuant to EPCA, DOE does not have the authority to conduct a rulemaking to consider a higher standard for that equipment pursuant to 42 U.S.C. 6313(a)(6)(A). DOE subsequently reiterated this position in final rules published in the **Federal Register** on July 22, 2009 (74 FR 36312, 36313), May 16, 2012 (77 FR 28928, 28937), and July 17, 2015 (80 FR 42614, 42617).

In the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012), Congress modified several provisions related to ASHRAE Standard 90.1 equipment. In relevant part, DOE must act whenever ASHRAE Standard 90.1's ''standard level or design requirements under that standard'' are amended. (42 U.S.C. 6313(a)(6)(A)(i)) Furthermore, that statutory amendment required that DOE must conduct an evaluation of each class of covered equipment in ASHRAE Standard 90.1 ''every 6 years.'' (42 U.S.C. 6313(a)(6)(C)(i))

In practice, DOE's review in making this assessment has been strictly limited to the specific standards for the specific equipment for which ASHRAE has made a change (*i.e.,* determined down to the equipment class level). DOE believes that this is the best reading of the statutory provisions discussed previously, because if ASHRAE were to change the standard for a single equipment class, but DOE then considered itself triggered at the equipment category level or equipment type level, the process would arguably no longer comport with the statutory scheme. More specifically, in such cases, DOE would be addressing certain classes of ASHRAE equipment for which standards had not changed, so it would be impossible for DOE to adopt the ASHRAE level as the statute envisions (as it would already be the same as the existing Federal standard). Instead, DOE could only consider adoption of more-stringent standard levels. Such interpretation would arguably run counter to the ''follow ASHRAE'' statutory structure set in place by Congress. Furthermore, Congress specifically and recently added a 6-year-lookback provision for covered ASHRAE equipment at 42 U.S.C. 6313(a)(6)(C)(i), a provision which arguably instructs DOE in terms of how and when to address covered

equipment upon which ASHRAE has not acted in a timely manner. However, DOE believes that ASHRAE not acting to amend Standard 90.1 is tantamount to a decision that the existing standard remain in place. Thus, as required by 42 U.S.C. 6313(a)(6)(C), DOE would need to find clear and convincing evidence, as defined above, to issue a standard more stringent than the existing standard for the product. DOE welcomes comments, data, and information on this topic.

D. Priority Setting

The current Process Rule at 10 CFR part 430, subpart C, Appendix A, section 3(d) outlines DOE's priority-setting analysis, which considers ten factors: (1) Potential energy savings; (2) potential economic benefits; (3) potential environmental or energy security benefits; (4) applicable deadlines for rulemakings; (5) incremental DOE resources required to complete the rulemaking process; (6) other relevant regulatory actions affecting products; (7) stakeholder recommendations; (8) evidence of energy efficiency gains in the market absent new or revised standards; (9) status of required changes to test procedures; and (10) other relevant factors. The current Process Rule requires that the results of this analysis will be used to develop rulemaking priorities and proposed schedules for the development and issuance of all rulemakings which will then be documented and distributed for review and comment. 10 CFR part 430, subpart C, Appendix A, section 3(a). The Process Rule also states that each fall, DOE will issue, simultaneously with the Administration's Regulatory Agenda, a final set of rulemaking priorities, the accompanying analysis, and the schedules for all priority rulemakings that it anticipates within the next two years. *Id.* at section 3(c).

In this document, while DOE intends to continue considering the 10 factors in its priority-setting, DOE proposes to revise the process discussed above. In the past, DOE has not successfully fulfilled its prioritization objectives as outlined in the Process Rule, perhaps in part because DOE determined that the analysis described in the current Process Rule is reflected in the Regulatory Agenda, which is available to the public. In any event, DOE sees value in streamlining and clarifying the reporting of its priority-setting activities in the revised Process Rule. Going forward, DOE is proposing that stakeholders would have the opportunity to provide input on prioritization of rulemakings through a request for comment as DOE begins preparation of its Regulatory Agenda each spring. In particular, DOE would point interested parties to the Regulatory Agenda posted to *www.reginfo.gov* the previous fall and would request input concerning which rulemaking proceedings should be in particular action categories in the spring Regulatory Agenda and the timing of such rulemakings. If stakeholders believe that the Department is pursuing a rule that should not be prioritized, they would have the opportunity to use this mechanism to so inform DOE. If stakeholders believe DOE should act more quickly on another rulemaking they could make that point as well. Through this revised process, DOE has tentatively concluded that increased stakeholder input early in the rulemaking process, combined with the public availability of the Regulatory Agenda, would meet the same objectives as DOE's previous priority-setting analysis.

E. Coverage Determinations

In addition to specifying a list of covered residential and commercial products, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products and industrial/commercial equipment as ''covered'' within the meaning of EPCA. (42 U.S.C. 6292(b); *see also* 42 U.S.C. 6295(l) for consumer products; 42 U.S.C. 6312 for commercial and industrial equipment) This authority allows DOE to consider regulating additional products/equipment that further the goals of EPCA; that is, to conserve energy for the Nation as long as the statutory threshold requirements are met.

If DOE determines to initiate the coverage determination process, it will first publish a notice of proposed determination, limited to the issue of coverage, in which DOE will explain how such products/equipment that it seeks to designate as ''covered'' meet the statutory criteria for coverage and why such coverage is ''necessary or appropriate'' to carry out the purposes of EPCA. (42 U.S.C. 6292(b)(1)) In the case of commercial/industrial equipment, DOE follows the same process, except that the Department need only show the coverage determination is ''necessary'' to carry out the purposes of EPCA. (42 U.S.C. 6312) DOE's authority to add commercial equipment is more limited than its authority to add consumer products because Congress specified the particular types of equipment that could be added. (42 U.S.C. 6311(2)(B)) Stakeholders would then be given 60 days to submit written comments to DOE on the proposed determination notice. Subsequently (and in a change from DOE's past practice), DOE would assess the written comments and then publish its final decision on coverage as a separate notice, an action which would be completed prior to the initiation of any rulemaking for related test procedures or energy conservation standards. If the final decision determines that coverage is warranted, DOE will proceed with its typical rulemaking process for both test procedures and standards, applying the requirements of the Process Rule, as amended. Specifically, DOE would not issue any RFIs, notices of data availability (''NODAs''), or any other mechanism to gather information for the purpose of initiating a rulemaking to establish a test procedure or energy conservation standard for the proposed covered product prior to finalization of the coverage determination. DOE will also finalize coverage for a product at least six months prior to publication of a proposed rule to establish a test procedure. And, DOE will complete the test procedure rulemaking at least six months prior to publication of a proposed energy conservation standard. This timing does not present any legal issue because adding coverage for a product and establishing test procedures and standards is a purely discretionary act without legal deadline.

The Joint Commenters, citing to 42 U.S.C. 6292(b)(1)(A), argued that DOE should exercise its authority to identify new ''covered products'' in a limited fashion, extending only to those products for which EPCA regulation is ''necessary or appropriate'' to the achievement of EPCA's purposes. They further argued that DOE's authority to identify new ''covered products'' is limited to products that consume at least enough energy to satisfy a stated minimum energy consumption criterion. The Joint Commenters urged that coverage determinations be made on a product-specific basis with each new covered product being defined separately with sufficient clarity to ensure that products serving different purposes are not treated as a single covered product. They added that each product should individually satisfy the minimum energy consumption requirement and qualify as a ''necessary or appropriate'' target for regulation. The Joint Commenters advocated that the Process Rule should be amended to require that proposed and final coverage determinations under 42 U.S.C. 6292(b) specifically identify each of the products at issue and provide a separate justification for the coverage of each.

They further added that DOE has failed to satisfy these requirements in the past. Moreover, the Joint Commenters recommended that a final coverage determination be in place before substantive rulemaking on test procedures or energy conservation standards commences so that the public clearly understands which products are covered, thus avoiding unnecessary confusion, wasted resources, and the failure to address critical issues. Lastly, the Joint Commenters suggested that the current Process Rule requires a reopening of comment on the justification for a coverage determination during the first rulemaking in which substantive regulation is imposed and if broader coverage is required, a new coverage determination must be proposed and finalized before initiating a rulemaking to regulate the broader range of products. (Joint Comment, No. 51 at pp. 9–10) Whirlpool and Lutron expressed support for these views. (*See* Whirlpool, No. 76 at p. 1; Lutron, No. 50 at p. 2)

DOE agrees with the points raised by the Joint Commenters, discussed above, that DOE should exercise its authority to identify new ''covered products'' in a limited fashion. To this end, DOE proposes to extend coverage only to: (1) Those consumer products for which EPCA regulation is ''necessary or appropriate'' to the achievement of EPCA's purposes and which meet statutory consumption criterion, and (2) to that commercial/industrial equipment for which EPCA regulation is ''necessary'' to the achievement of EPCA's purposes. DOE agrees that any proposed new covered products/equipment should be narrowly defined with sufficient clarity so that the proposed coverage corresponds to that which is intended.

DOE does not agree with the Joint Commenter's suggestion that all coverage determinations must be reopened as a matter of course in the first substantive rulemaking on the newly covered product/equipment. After completing notice and comment on a proposed coverage determination and issuing a final determination, DOE believes it is appropriate to accord such process finality. However, if during the substantive rulemaking proceeding DOE finds it necessary and appropriate to expand or reduce the scope of coverage, the Department agrees with the Joint Commenter's that a new coverage determination process at that point should be initiated and finalized prior to moving forward with the test procedure or standards rulemaking.

F. Early Stakeholder Input To Determine the Need for Rulemaking

1. Standards

In the December 2017 RFI, DOE sought comment on whether the Process Rule should be revised to eliminate its current provisions related to the publication of an advanced notice of proposed rulemaking (''ANOPR'') because of statutory amendments that eliminated the ANOPR requirement and/or to include additional preliminary rulemaking steps. 82 FR 59992, 59995. DOE received a number of comments regarding both the elimination of the ANOPR and the inclusion of other avenues for early stakeholder input, which are discussed in further detail, along with DOE's response, in the subsections immediately following.

a. Avenues for Early Stakeholder Input: Early Assessment Review

In response to comments discussed below, DOE proposes adding a process for an early assessment review of a potential rule. For example, the Joint Commenters recommended that DOE should adopt ''a quick hard look process'' for use at an early juncture in the rulemaking to determine whether a standard needs to be amended. The Joint Commenters stated that this type of preliminary evaluation procedure would allow DOE to focus its resources on rulemakings offering the potential for significant energy savings. In those instances where opportunities for energy savings are not significant or an amended standard is not technologically feasible or economically justified, DOE could make a determination to not amend standards. The Joint Commenters argued that such an approach would continue to allow DOE to meet its statutory obligations, while focusing the regulatory process on those areas where the most benefit can be obtained and at the same time reducing the burden on stakeholders. As part of this ''quick hard look,'' the Joint Commenters recommended that DOE should publish an RFI seeking information that would assist the Department in determining whether anything has changed (technologically, economically, or otherwise) since the last final rule as would necessitate amended standards. Under this preliminary assessment procedure, the Joint Commenters presume that standards would not need amendment unless DOE or stakeholders identify significant changes since the last rulemaking. (Joint Commenters, No. 51 at pp. 4–6)

In contrast to the Joint Commenters, the Appliance Standards Awareness Project (''ASAP'') Joint Commenters did not support a separate ''quick look'' process to determine whether a full rulemaking is necessary. The ASAP Joint Commenters argued that existing law already provides the necessary framework for DOE to quickly determine, after notice and comment, that no change is warranted for a particular standard. (ASAP Joint Comment, No. 75 at p. 6)

In response to the Joint Comment, DOE agrees generally with the need for an early assessment review at the beginning of the rulemaking process to allow DOE to focus its resources appropriately, and an understanding of any changed circumstances since the last final rule would certainly be relevant to that inquiry. DOE notes that it discusses significant energy savings in detail later in this proposal (see section III.G). An assessment of the potential energy savings at issue would also be an important consideration when evaluating the need for further rulemaking. Thus, DOE is proposing to adopt provisions in the revised Process Rule that would provide for an early assessment review of the suitability of further rulemaking, thereby allowing both the agency and interested stakeholders to conserve and target limited resources so as to achieve the greatest benefit. Therefore, as the first step in any proceeding to consider establishing or amending any energy conservation standard, DOE proposes to publish a notice in the **Federal Register** announcing that DOE is considering initiation of a proceeding, and as part of that notice, DOE would request submission of related comments, including data and information showing whether any new or amended standard is economically justified, technologically feasible or would result in a significant savings of energy. If DOE receives sufficient information suggesting that it could justify a determination that no new or amended standard would meet the applicable statutory criteria, DOE would engage in notice and comment rulemaking to make that determination. If DOE does not receive sufficient information or the information received is inconclusive with regard to the statutory criteria, DOE would undertake the preliminary stages of a rulemaking to issue or amend an energy conservation standard. Beginning such a rulemaking, however, would not preclude DOE from later making a determination that a new or amended energy conservation standard is not economically justified, technologically feasible or would not result in a significant savings of energy.

b. Other Avenues for Early Stakeholder Input

In response to comments discussed below, DOE will continue to seek early stakeholder input after the early assessment review. A number of commenters stressed the importance of early stakeholder input during the rulemaking process. (UT-Carrier, No. 41 at p. 4; Sub Zero, No. 43 at p. 4; Ice-O-Matic, No. 29 at p. 1; NAFEM, No. 47 at p. 2) The California Investor-Owned Utilities (''CA IOUs'') urged that as part of such engagement, DOE should perform testing and research so as to generate publicly-available information to inform the process. (CA IOUs, No. 65 at p. 5) Other commenters touted early stakeholder input as a means of understanding the industry's own efforts to advance energy efficiency. (*See e.g.,* Schneider Electric, No. 69 at p. 2) CEC stated that for newly covered products, a Framework Document is likely appropriate, whereas for previously covered products, a Request for Information would probably be adequate. CEC added that depending on the product, a Preliminary Technical Support Document or Notice of Data Availability should typically precede a NOPR. (CEC, No. 53 at p. 4)

In response to these comments, DOE agrees that early stakeholder input is an important part of the rulemaking process, particularly when it comes to information exchange. In the November 6, 2010, policy statement (*https://www1.eere.energy.gov/buildings/appliance_standards/pdfs/changes_standards_process.pdf*), DOE stated that ''the energy conservation standards rulemaking process typically began with a framework document, followed by a preliminary analysis. Only after these two steps were completed did the Department issue a proposed rule for public comment. While the framework document and preliminary analysis provide useful information, there are more efficient ways of gathering data. Accordingly, in appropriate cases, the Department will gather the needed preliminary data informally and begin the public rulemaking process with the issuance of a proposed rule for public comment.'' DOE now proposes, however, that after conducting the early assessment review process described above, if the Department does not receive sufficient information suggesting that it could justify a determination that no new or amended standard would meet the applicable statutory criteria, or the information received is inconclusive with regard to the statutory criteria, the preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE would undertake would be the framework document and preliminary analysis or an ANOPR. These documents, as opposed to ''informal'' data gathering, would provide the necessary robust analysis to determine whether to move forward with a proposed standard. RFIs and NODAs could be issued, as appropriate, in addition to these analytical documents, and the Department will continue to rely on a variety of notices (including those mentioned by the commenters) to ensure opportunities for public input in the rulemaking process.

c. Elimination of ANOPRs From the Process Rule

A number of commenters spoke specifically about the use of ANOPRs during the rulemaking process, including whether DOE should follow through on removal of that step in the rulemaking process, given the statute's rescission of such requirements. Several commenters did not support the elimination of the ANOPR from the Process Rule, stating that it helps to ensure early stakeholder input in the process. (Bradford White, No. 42 at pp. 1–2; Atlas Copco, No. 54 pp. 7–8; Ice-O-Matic, No. 29 at p. 2; Spire, No. 57 at p. 14; ABMA, No. 71 at p. 2; Lennox, No. 62 at p. 7) Acuity Brands added that ANOPRs can improve the quality of proposed rules/standards, in part by obtaining prompt input on topics such as defining terms and scope and setting criteria for data modeling. Without stakeholder involvement at the front end of the process, the commenter argued that there is a higher risk of proceeding with erroneous assumptions, which could negatively impact the NOPR. As part of the ANOPR (or at a similar preliminary stage), Acuity Brands recommended that DOE should undertake consideration of the effect of any current standards, in order to assess the usefulness, scope, and parameters of a new rulemaking. (Acuity Brands, No. 46 at pp. 3–4) The National Propane Gas Association (''NPGA'') did not favor the elimination of ANOPRs because early stakeholder engagement encourages the exchange of valuable information and transparency. (NPGA, No. 59 at p. 2) In contrast, two commenters supported the elimination of the ANOPR in order to reflect the Congress's change to the statute, reminding that DOE has alternative ways to achieve the same objectives. (Sierra Club and Earth Justice, No. 66 at p. 5; NPCC, No. 35 at p. 7, 15; CEC, No. 53 at p. 4)

Others expressed support for either an ANOPR or a similar method for early stakeholder involvement. (Southern Company, No. 70 at p. 4; APPA, No. 36 at p. 3; EEI, No. 72 at p. 3; ASAP Joint Comment, No. 75 at p. 7; PHCC, No. 63 at p. 2) The Northeast Energy Efficiency Partnerships (''NEEP'') commented that data collection early in the rulemaking process helps to ensure a successful rule in the end. It further stated that DOE has several available options for obtaining advanced information: ANOPRs, Framework Documents, Preliminary Analyses, NODAs, and/or RFIs. Because of the wide breadth of consumer appliances and commercial equipment that DOE regulates, NEEP commented that DOE should select the tool that is most appropriate for a given products/equipment rulemaking. (NEEP, No. 77 at p. 3)

In response to these comments, DOE has tentatively concluded that there are multiple procedures the agency could adopt as part of the revised Process Rule that achieve the aims of early information gathering in the rulemaking process. The ANOPR might be preferable in a given proceeding. Alternatively, an RFI or Notice of Data Availability would allow for early stakeholder input through a request for comments in circumstances where DOE may not have sufficient information to develop an ANOPR. DOE might issue a Framework Document and Preliminary Analysis where DOE received information in response to the early look that might have been inconclusive with regard to the need for a new or amended standard, and DOE seeks additional input to help make that determination. These alternate tools should equally promote transparency in DOE's process and allow for early information exchange. In all cases, however, contrary to DOE's November 2010 policy statement, DOE will provide for some form of preliminary data gathering and public comment process, including either an ANOPR or Framework Document and Preliminary Analysis, prior to issuing a proposed rule.

d. Decision-making Process for Issuing a Determination Not To Amend Current Standards

DOE received a number of comments regarding the potential for DOE's issuance of a determination not to amend a current energy conservation standard. These comments fell within two groups—those that supported the potential for such a determination and those that did not.

Commenters at the January 9, 2018, public meeting supported DOE's review of the suitability of pursuing amended standards for a given type of product or equipment at the start of a rulemaking. In cases where covered products have

undergone multiple amended standards rulemakings to date, these commenters asserted that DOE's analyses have demonstrated diminishing returns that either left little room for technical improvement to move energy efficiency beyond the current minimum efficiency standard or indicated that the highest efficiency models have already achieved a significant share of the market. These commenters added that, in their view, DOE and stakeholders understand that amending the standards for certain products/equipment would be unlikely to result in significant energy savings and present either serious economic or technological obstacles to further improve efficiency. For such products/equipment, these commenters suggested that DOE should exercise the opportunity to issue a determination pursuant to EPCA that the applicable standards will remain unchanged ithout going through the usual costly suite of analyses (*i.e.,* market, manufacturer impact teardown, and LCC analyses) and multiple rounds of amendment proposals and comment periods. In their collective view, the continued application of this approach, is neither required by statute, nor a good use of DOE's resources. AHRI in particular recommended that the Process Rule should specify that the opportunity to issue a notice determining that no new standard is needed will occur early in the rulemaking process so that DOE, industry, and other stakeholders can allocate time and resources to focus on those products/equipment that are the best candidates for improvement based on technological feasibility and economic opportunity. It added that such an approach would need to be designed to meet all statutory timelines and requirements. (AHRI, January 9, 2018, Public Meeting Transcript at pp. 25–27, 182–183, 250; AHAM, January 9, 2018, Public Meeting Transcript at pp. 30–32, 177–179)

Other industry commenters held similar views. The American Public Power Association (''APPA'') supported the inclusion of guidelines regarding the issuance of determinations that no amended standards are warranted, particularly in cases where it would apply to products for which little energy savings would result due to declining shipments. (APPA, No. 36 at p. 4) Ice-O-Matic supported the inclusion of such guidelines and argued in favor of formalizing a process for the immediate assessment of whether an amended standard is required. It argued that many covered products and equipment have undergone multiple rulemakings, and the pace of normal technological development shows a diminishing rate of return with each rulemaking. The company stressed that DOE has the ability under EPCA to allow a standard to remain static after first determining from available data that there will be little return from a future rulemaking. In its view, the current approach of fully reviewing a given standard creates high levels of ''non-valued added work'' for the Department of Energy and stakeholders. (Ice-O-Matic, No. 29 at p. 1)

NEMA commented that the Process Rule must fit within the statutory parameters and take into account DOE's experience with EPCA over the past several decades. (NEMA, January 9, 2018, Public Meeting Transcript at pp. 45–48) In NEMA's view, DOE's Energy Conservation Program has reached in some cases, or is reaching in other cases, a point of maturity for many covered products. (NEMA, January 9, 2018, Public Meeting Transcript at pp. 48–49) The energy savings to date stemming from these standards are very large, and the program, by that metric, has achieved a measure of success. NEMA argued that for a number of regulated products, DOE's rulemaking experience indicates that the limit of efficiency improvements through further rulemaking has occurred or is fast approaching. In NEMA's view, DOE should re-examine its approach used to-date for undertaking rulemakings to amend a given standard for a covered product. (NEMA, January 9, 2018, Public Meeting Transcript at p. 46) According to NEMA, this approach of continuing the pursuit of a full-blown multi-year regulatory process under the Administrative Procedure Act in the face of likely diminishing returns on energy savings is costly for both the government and the stakeholders who participate in DOE's rulemakings. In NEMA's view, if the public is going to continue to invest in this regulatory process, where products have been subject to multiple rulemakings over time, it should be on the basis that there are very significant economic benefits to be realized at a reasonable cost. (NEMA, January 9, 2018, Public Meeting Transcript at pp. 46–47) Accordingly, NEMA suggested that when reviewing whether a covered product is a suitable candidate for amended standards, DOE should inquire whether further efforts at amending the standards are really needed. (*Id.*)

NEMA also commented that when the current Process Rule was first adopted in 1996, DOE had little experience with rulemakings, and part of the intent behind the Process Rule was to find an efficient means forward for gaining that experience. It stated that the Process Rule was aimed at prioritizing regulatory activity in a manner consistent with the statute as written at that point in time, and it relied on scarce appropriated funds that Congress had provided for the program. A modern Process Rule, NEMA argued, needs to fit with both DOE's experience and the statute as it is now written. (NEMA, January 9, 2018, Public Meeting Transcript at p. 48) With a modernized version of the Process Rule, NEMA asserted that DOE should be able to determine very quickly in the next rulemaking cycle for any given covered product or equipment, whether the current situation has changed so significantly as to warrant a different conclusion. (NEMA, January 9, 2018, Public Meeting Transcript at pp. 48–49)

AHRI added that it did not believe that a determination not to amend the current standards for a given product or equipment would require the development of additional criteria beyond those already used by DOE in its analyses. It argued that this assessment should be made pursuant to EPCA and suggested developing a process for doing so. (AHRI, January 9, 2018 Public Meeting Transcript, at p. 250)

Lennox argued that DOE should more actively consider ''no amended standard'' scenarios, and to this end, DOE should apply presumptions against over-regulation as part of this consideration. By having robust presumptions against new or more stringent regulations—for instance, by applying an approach that avoids new efficiency standards where 20 percent or more of consumers would be ''economically harmed''—these presumptions would, in Lennox's view, protect manufacturers from over-regulation. Lennox argued that applying this type of approach would be better than trying to develop a one-size-fits-all approach definition of significant energy savings. (*See* Lennox, No. 17 at pp. 14–15)

Spire argued that the Process Rule should specify appropriate decision criteria to preclude the adoption of standards that impose net costs on too many purchasers or that are overly regressive for which average payback periods are unreasonably long and that would have excessive adverse impacts on manufacturers. (Spire, No. 57 at p. 22) Spire added that DOE should be required to provide more than '''substantial evidence'' in support of a proposed standard, particularly in those instances where a ''clear and convincing'' standard ''is required by anyone attempting to refute EERE's findings.'' *Id.* In its opinion, DOE and

interested parties with a dissenting view of a proposed standard should share the same evidentiary burden. (*Id.*)

NAFEM also argued in favor of applying a ''no amended standards'' determination. It asserted that because certain products have gone through multiple rounds of standards rulemaking, improvements in energy savings are becoming harder to obtain at costs the market is able to bear. In its view, regulations are outpacing product and equipment design and life-cycles, and the data about the real world outcomes of the last round of rulemaking are not available by the time the next rulemaking starts. NAFEM stated that EPCA allows for a determination that no new standards are needed and that DOE needs to consider taking this route in appropriate cases. (NAFEM, No. 47 at pp. 4–5)

EEI and Southern Company indicated that with some products there is little margin for improvement, so for these products, it makes no sense to invest resources for only limited further gain in energy savings. (EEI, January 9, 2018, Public Meeting Transcript at pp. 251–252; Southern Company, January 9, 2018 Public Meeting Transcript at p. 253)

With respect to the contours of a possible approach that DOE could follow, NEMA referred to the Direct Heating Equipment final rule as an instance providing lessons for other future rulemaking proceedings. In that case, DOE determined early on not to amend the energy conservation standard by comparing the current market for the covered product against the market that it evaluated six years earlier. NEMA argued that section 325(m) (42 U.S.C. 6295(m)) provides the opportunity to quickly look and determine early on whether standards need further amending. (NEMA, January 9, 2018, Public Meeting Transcript at pp. 49–50) In NEMA's view, a modernized version of the Process Rule should invite public comment at the outset of every rulemaking proceeding examining a given energy conservation standard as to whether DOE should: (1) Amend that standard after accounting for what has been accomplished with that particular product/equipment since the previous rulemaking and (2) discuss any changes (technological or otherwise) that have occurred since that time. It further asserted that DOE's modernized Process Rule could also inquire as to whether the prior rulemaking contained any erroneous conclusions or assumptions. Additionally, NEMA stated that DOE should focus on asking whether there are opportunities for increasing deployment by customers and users of energy-consuming products of the most efficient set of already efficient products that remain in the marketplace (instead of establishing new minimum energy conservation standards for a given covered product where the regulatory limit has effectively been reached). NEMA mentioned that both the current Process Rule and Executive Orders encourage consideration of non-regulatory approaches to achieving statutory goals—and where the EPCA program has reached maturity, other approaches may offer better ways of achieving incremental, permanent energy savings over time. (NEMA, January 9, 2018, Public Meeting Transcript at pp. 50–52)

Acuity Brands also suggested that DOE should develop a ''quick look'' process before engaging in ''serial'' rulemakings for covered products in order to assess early on whether new, higher energy conservation standards are warranted. In its view, such early determinations will save time and resources by avoiding standards updates that would not produce significant energy savings. It added that adopting such an approach would focus DOE's process on ensuring that proposed standards offer actual utility and value to consumers and towards DOE's energy efficiency goals, in part by accounting for technological advancements, changes in marketplace demand, and other real-world dynamics. (Acuity Brands, No. 46 at p. 8)

In contrast, the Northwest Power and Conservation Council (''NPCC'') expressed the view that EPCA already provides DOE with more than sufficient guidance and flexibility to make a ''no new standards'' determinations without needing to add criteria to the Process Rule. (NPCC, No. 35 at p. 21) NEEP articulated a similar view, asserting that there would be no benefit to adding criteria to the Process Rule for reaching no amended standards determinations. (NEEP, No. 77 at p. 5) The CEC also stated that the statutory criteria in EPCA are already adequate and allow for a determination of ''no amended standards.'' It did not, however, object to DOE revising the Process Rule to conform to EPCA. (CEC, No. 53 at p. 7) The CA IOUs acknowledged that EPCA allows for a ''no new standards'' determination, but they asserted that DOE would need to go through the complete rulemaking process to determine the impact of updated standards. Consequently, they opposed the suggestion that a no new standards determination could be made through a truncated (*i.e.,* abbreviated or quick) process. (CA IOUs, No. 65 at p. 9)

While DOE considers four factors in screening energy conservation standard design options, Nor-Lake pointed out that DOE does not consider the economic impact to manufacturers from revising a standard until after a proposed standard has been selected. In its view, the Process Rule should also gauge the economic impact to manufacturers during the ''screening'' phase; otherwise, DOE may only be left with options that all have economically detrimental impacts on manufacturers, often with only minimal energy conservation results. Accordingly, Nor-Lake argued that the inclusion of this evaluation at the earliest stage of the rulemaking process (*i.e.,* screening analysis) may save many unnecessary steps in the protracted regulatory process. (Nor-Lake, No. 68 at pp. 2–3)

After careful consideration, DOE responds to these comments as follows. In those instances where the early hard look either suggested that a new or amended energy conservation standard might be justified or in which the information was inconclusive on this point, DOE has tentatively decided to develop a process by which it will examine the potential costs and benefits of a new standard that will enable it to more expeditiously review and determine whether to amend a given energy conservation standard. The process would apply both to instances where DOE is establishing a new standard and in cases where DOE is weighing whether to amend an already-existing standard. Performing this task in an expeditious manner—*i.e.,* something short of initiating the usual three-year process involved in proposing and finalizing a new standard—is consistent with the statute (*see* 42 U.S.C. 6295(m) (providing that the Secretary shall publish either a notice of determination that standards for a product do not need to be amended or a proposal with new standards). In determining whether to move forward with a given standards rulemaking, DOE intends to address a series of issues that, while more expeditious than a complete rulemaking analysis, will nonetheless be supported by a thorough analysis to ensure that DOE proceeds with only those rulemakings that are likely to yield a significant conservation of energy and be technologically feasible and economically justified. That process would consider a variety of factors, such as whether there are sufficiently developed, cost-effective technological improvements that would allow a given product to achieve an enhanced level of efficiency. The level of improvement under consideration would need to be

consistent with the threshold for significant energy conservation, as discussed elsewhere in this document. In evaluating the prospects of proposing a new standard—or in determining that no new standard is needed—DOE would first look to the projected energy savings that are likely to result using available information solicited from the public through an ANOPR, preliminary analysis, RFI or NODA, as appropriate. DOE would then compare these projected savings against the technological feasibility of, and likely costs necessary to meet, the amended standards needed to achieve these energy savings. DOE disagrees with commenters who insist DOE must always go through the full analysis, because if potential amended standards can be shown to be lacking in terms of significant energy savings, technological feasibility, or economic justification, DOE cannot adopt them regardless of whether DOE makes such determination at an early stage or upon completion of its full suite of analyses.

In the Department's view, applying this new approach would enable DOE to more readily ascertain whether the expenditure on a rulemaking of its limited resources and those of interested parties is merited for a given regulated product or equipment. DOE believes that this proposed approach, if adopted, would enable it to focus its efforts in the most efficient manner possible, while satisfying its legal obligations.

DOE seeks comment on its initial decision-making process for determining whether to proceed with a standard rulemaking, including what specific criteria, factors, or circumstances it should apply when conducting this proposed approach.

2. Test Procedures

As with the early stakeholder input process for energy conservation standards, DOE believes that early stakeholder input is also very important during test procedure rulemakings. Consequently, DOE proposes to publish a notice in the **Federal Register** announcing whenever DOE is considering initiation of a rulemaking for new or revised test procedures. Particularly when considering amended test procedures, DOE would follow an early assessment process similar to that described in the preceding sections discussing DOE's consideration of new or amended energy conservation standards. As part of such notice, DOE would request submission of related comments, including data and information substantively showing that an amended test procedure rule is not necessary at that time and that DOE should not proceed with the rulemaking. DOE would review these comments and, subject to its statutory obligations, determine whether it agrees with the submitted information. If DOE agrees that the test procedure is not justified at that time, it would not pursue the rulemaking and would publish a notice to that effect.

However, these documents would offer stakeholders the chance to provide DOE with feedback on such test procedures, including information about industry-based test procedures that may meet the same need as those proposed by DOE.

G. Significant Savings of Energy Threshold

DOE received numerous comments regarding whether it should determine or otherwise apply a threshold with respect to whether the projected energy savings for a given standard would be significant for purposes of satisfying the statutory requirements under EPCA. (*See* 42 U.S.C. 6295(o)(3)(B) (providing, among other things, that the Secretary may not prescribe an amended or new standard that ''will not result in significant conservation of energy'')) Applying such a threshold would determine whether DOE proceeds forward with a rulemaking to amend or establish energy conservation standards for a given covered product or covered equipment. Comments are discussed immediately below, followed by DOE's response.

A number of industry commenters suggested during the January 9, 2018, public meeting that DOE should determine an appropriate threshold of what constitutes significant energy savings. AHRI, for example, indicated that using a reasonable threshold for energy savings would permit DOE and industry to allocate resources to improve technologies that will have the greatest impact. (AHRI, January 9, 2018 Public Meeting Transcript at pp. 28–29, 264; AHAM, January 9, 2018 Public Meeting Transcript at p. 32; Spire, January 9, 2018 Public Meeting Transcript at 261)

Interested parties who submitted written comments also indicated that DOE should focus on standards rulemakings that produce significant energy savings. In that vein, they suggested that DOE should take steps to define a threshold level for significant energy savings, which some argued would help avoid producing regulations yielding a small reduction in energy usage but requiring a significant expenditure of resources to meet and resulting in higher product and equipment prices for consumers. (*See* Ice-O-Matic, No. 29 at p. 2; Nor-Lake, No. 68 at p. 2; Lutron, No. 50 at p. 2; ABMA, No. 71 at p. 4; and Whirlpool, No. 76 at p. 1) Ice-O-Matic argued that DOE has conducted rulemakings in the past producing ''a very small total energy reduction'' while requiring manufacturers and stakeholders to expend many months and years of work for a very small total payback, thereby ''resulting in negative impacts on consumers due to higher product and equipment prices.'' (Ice-O-Matic, No. 29 at p. 2) ABMA, which focused its attention on issues related to boilers, supported the use of a baseline for significant energy savings, particularly since, in its view, current boiler designs may be close to the point of diminishing returns with respect to improved efficiency for this product. (ABMA, No. 71 at p. 4)

In ascertaining what constitutes ''significant'' energy savings, Nor-Lake urged DOE to solicit comments from stakeholders and suggested that DOE should follow a number of steps. (Nor-Lake, No. 68 at p. 2) First, it suggested that DOE should only promulgate an amended energy conservation standard if it will result in ''significant'' energy savings. Nor-Lake criticized DOE's approach to date, arguing that the agency has rarely determined that incremental energy savings were not significant—including cases where the projected incremental savings amounted to less than a 1 percent gain in efficiency. It also stated that there is currently no definition for the term ''significant'' as it relates to energy savings. Second, it suggested that DOE should more rigorously examine whether an existing (or proposed) standard imposes ''significant'' costs on manufacturers and solicit comments on how to define ''significant'' manufacturer costs and other impacts. The company pointed to DOE rulemakings and Office of Hearings and Appeals orders that appear to endorse, or at least accept, that a 10-percent to 20-percent impact on earnings is not significant to a manufacturer, a stance with which the commenter appeared to disagree. Third, it suggested that DOE should evaluate the economic impact of proposed energy conservation standards on manufacturers earlier in the process than it currently does under the Process Rule. Nor-Lake also suggested that DOE should articulate criteria, whether by rule or through guidance, for issuing a ''no amended standard determination,'' which would be justified when the energy savings from an incremental increase in the energy conservation standard for a given product would not

result in significant energy savings and/or when the economic impact on manufacturers from a revised standard would be significant, in isolation or relative to the energy savings to be gained. (Nor-Lake, No. 68 at pp. 2–3)

Lutron asserted that setting a threshold for ''significant conservation of energy'' in the Process Rule is needed to plan for future rulemakings and to add clarity to those rulemakings. By establishing a threshold for this term, it argued that DOE can limit the variability in how this term has been applied, which would reduce the overall burden on regulated industries. The company, citing to a recommendation from the Joint Commenters, suggested a threshold of ''one quad (or equivalent amount of energy savings in kWh) saved over 30 years'' be used. (Lutron, No. 50 at p. 2) [7] (*See also* APPA, No. 36 at p. 4 (suggesting that DOE should apply criteria for energy savings such as a threshold difference of under 2–4 percent between the standard under consideration and max-tech or savings over a 30-year period of less than 0.2 quads) *and* Sullivan-Palatek, No. 64 at p. 1 (criticizing DOE's recent rulemaking efforts on compressors, commercial packaged boilers, and pumps, which it asserted provided energy savings of 0.6 percent, 0.6 percent, and 1.0 percent, respectively))

Other commenters, however, asserted that such an approach was unnecessary or flat-out opposed it. (NPCC, No. 22, at p. 9; CEC, No. 53 at p. 8; NRDC, No. 74 at p. 3; NEEP, No. 77 at p. 5) In Joint Comments filed by ASAP, those groups stated that DOE must comply with the meaning provided by the U.S. Court of Appeals for the District of Columbia in *NRDC* v. *Herrington* for ''significant'' energy savings. (ASAP Joint Comment, No. 75 at pp. 6, 8) This position was also supported by NRDC. (*See* NRDC, No. 74, at p. 1) The CEC added that if DOE were to decide that a baseline for significant energy savings was necessary, the determination of that baseline would need to be done on a case-by-case basis and require updating to reflect market changes for the product at issue, as well as studies of the existing product stock and specific sales data. (CEC, No. 53 at p. 8) NEEP asserted that there is no benefit in adding criteria for considering the establishment of a baseline for energy savings with respect to qualifying for a ''not significant'' determination. It emphasized that DOE should adhere to the definition of ''significant'' laid out in *NRDC* v. *Herrington.* (NEEP, No. 77 at p. 5)

Separately, the CA IOUs suggested that DOE should continue reviewing standards, even in cases where several rounds of rulemaking have already been conducted, because the potential savings from an updated standard which were determined not to be significant in one round of rulemaking may become significant in a later round of rulemaking due to technological innovation. (CA IOUs, No. 65 at p. 8) They also urged DOE not to adopt a no-standard standard since such an approach would prevent individual States from adopting their own levels. In their view, such an approach can prevent significant, cost-effective energy savings from being realized. (*Id.* at p. 9)

In response to these comments, DOE has undertaken a review of how it applies the concept of ''significant conservation of energy'' in its rulemaking process, including how it has interpreted the court's mandate in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355 (DC Cir. 1985) (hereinafter, ''*NRDC* v. *Herrington*'', the ''*Herrington* case'' or ''*Herrington*''). The following discussion reflects DOE's understanding of that term in light of the court case, a response to comments on this issue, and DOE's proposed approach moving forward.

EPCA provides that the Secretary of Energy may not prescribe an amended or new energy conservation standard if the Secretary determines that such standard will not result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B); 42 U.S.C. 6313(a)(6)(A)(ii)(II); 42 U.S.C. 6316(a)) A determination of significant energy savings is made for each type of covered product or covered equipment when conducting an energy conservation standards rulemaking. Congress did not define the statutory term ''significant conservation of energy'' (nor has DOE done so in regulation), but the United States Court of Appeals for the District of Columbia Circuit (''D.C. Circuit'') added a judicial gloss to the understanding of that term in *NRDC* v. *Herrington.* In *Herrington,* the court held that it was unlikely that Congress intended for DOE to pass up a ''cost-free chance to save energy unless the amount of energy saved was genuinely trivial,'' but stressed that it was not dictating any specific definition of significance to DOE with respect to the application of this term. *Id.* at 1373. With this decision in mind, DOE conducted numerous rulemakings for a variety of covered products and equipment that yielded a range of energy savings (typically quantified in terms of the number of quadrillion British thermal units or ''quads'' of energy saved) projected over a 30-year period.

In further examining the *Herrington* decision, however, DOE has tentatively concluded that the court's opinion affords DOE a degree of latitude with respect to determining whether a given level of energy savings constitutes ''significant'' energy savings for purposes of satisfying the requirements under EPCA. Specifically, in DOE's view, the agency may, consistent with the *Herrington* decision, apply a specific numeric and/or percentage threshold rather than the more general conceptual approach it has applied in years past when considering potential new or amended energy conservation standards authorized under EPCA. Such threshold may be determined in absolute terms (*i.e.,* setting a uniform level of significance for each product or equipment type—a total quads saved threshold), in relative terms (*i.e.,* setting a level of significance based on a percentage of energy use), or a combination of both. DOE is considering applying such a threshold to ensure that limited agency resources are devoted to the analysis of those standards rulemakings that are most likely to yield substantial benefits to consumers and the Nation. DOE is concerned with the direct economic impacts that are likely to flow from imposing standards that are projected to yield relatively lower energy savings—standards that may produce little in overall benefits in energy and cost savings for consumers when compared to the costs related to the manufacture and purchase of products and equipment meeting these kinds of standards. This approach gives effect to the *Herrington* court's reference to not forego energy savings that are ''cost-free.'' However, this approach would also limit the first-cost impacts to consumers to those instances where a given rulemaking is expected to generate significant energy savings and other substantial benefits.

In the aftermath of *Herrington,* DOE largely focused on the court's ''genuinely trivial'' language, without accounting for the fact that this language was in reference to ''cost-free'' standards when determining the significance of potential energy savings. This approach resulted in a low bar for setting standards.[8] However, in examining

[7] Although Lutron referenced the submission from the Joint Commenters with respect to the one quad threshold, that comment contained no reference to, or discussion on, that particular issue.

[8] The language contained in DOE's 1989 final rule establishing energy conservation standards for refrigerators and small gas furnaces is illustrative of the agency's understanding of how it was to determine ''significant energy savings'' in the post-

DOE's regulatory history post-*Herrington* through July 10, 2017 (*i.e.,* publication of the final rule for walk-in coolers and freezers—see 82 FR 31808), DOE set standards for covered products and equipment a total of 57 times (excluding instances where DOE set no-standard standards or adopted the standard levels from ASHRAE Standard 90.1). This figure also reflects, in certain cases, the same products or equipment being regulated more than once. Of that total, 23 of those rulemakings adopted standards that DOE projected would achieve less than 0.50 quad of energy savings over the standard 30-year period that DOE uses when analyzing the impacts of its standards (which yielded a total of 4.24 quads in energy savings); in contrast, the remaining 34 rulemakings each resulted in over 0.50 quad of energy savings over the same period (for a total of 109 quads in energy savings).[9] These figures suggest that instituting an appropriate threshold for energy savings may significantly reduce the burdens of regulation without significantly reducing energy savings.

In this proceeding, DOE is seeking a middle ground with regard to what constitutes a significant savings of energy to help improve both the predictability and transparency of its rulemaking process when setting standards for the various products and equipment it regulates. Looking to the statute, the *Herrington* court discussed DOE's authority to prescribe a discretionary standard for an appliance if, among other criteria, the national energy consumption of the appliance exceeds 0.014335 quads per year, which corresponds to 1.449 quads of source energy over 30 years. *Herrington* at 1374. The court suggested that a threshold that exceeded this value ''is inconsistent with the congressional decision to authorize discretionary standards for [these] appliances.'' *Id.* at 1375–76. However, the court acknowledged that DOE may set energy savings thresholds so long as the levels ''show some awareness of the range of energy savings congress thought worth pursuing.'' *Id.* at 1372. Thus, DOE has some latitude when determining significant energy savings. In this regard, one factor of particular relevance is the fact that DOE has completed multiple cycles of standards rulemakings for those products and equipment for which Congress has mandated standards since the *Herrington* decision. With now decades of completed rulemakings that have steadily increased the stringency of the energy conservation standards for a wide variety of products and equipment, evaluating the significance of the energy savings produced by a given standard—along with the likelihood of additional energy efficiency improvements (*i.e.,* the prospect for diminishing returns) and the likely increasing cost of additional efficiency gains—must be viewed against that backdrop.

After careful consideration, DOE has tentatively decided to apply a threshold-based analysis that, in DOE's view, is both comprehensive and workable while remaining cognizant of the goals and requirements of EPCA. This ''hybrid'' approach would examine energy savings through the twin lenses of the total amount of projected energy savings and the relative percentage increase in efficiency/decrease in energy usage that could be obtained from setting or amending standards for a given product/equipment.

Under the first step of this approach, the projected energy savings from a potential maximum technologically feasible (''max-tech'') standard would be evaluated against a given numerical threshold. This initial step would be performed to ascertain whether a potential standard satisfies 42 U.S.C. 6295(o)(3)(B) to ensure that DOE avoids setting a standard that ''will not result in significant conservation of energy.'' If the projected max-tech energy savings does not meet or exceed this numerical threshold (with any lower level expected to achieve even less energy savings), those max-tech savings would then be compared to the total energy usage of the product/equipment to calculate a potential percentage improvement in energy efficiency/reduction in energy usage. If this comparison does not yield an energy savings improvement of a given percentage, the analysis would end, and DOE would determine that no significant energy savings would likely result from setting new or amended standards. This step would ensure promulgation of those standards most likely to confer substantial benefits to consumers and the Nation by eliminating from further consideration those potential standards that are projected to result in low energy savings.

If either one of these thresholds is reached, DOE would then conduct analyses to ascertain whether a standard can be prescribed that produces the maximum improvement in energy efficiency that is both technologically feasible and economically justified (and still constitutes significant energy savings at the level determined to be economically justified). *See* 42 U.S.C. 6295(o)(2)(A). Because technological feasibility is already determined through the max-tech analysis, DOE would then focus on performing an economic justification analysis under 42 U.S.C. 6295(o)(2)(B)(i).

In performing this analysis, DOE would consider the total amount of energy savings at issue at each trial standard level (''TSL''). Assuming that DOE uses a minimum numerical threshold and a separate percentage threshold, the projected savings for any given TSL would be measured against these two thresholds. DOE would perform its economic analysis to determine whether an economically justified level (producing the maximum amount of energy savings possible) can be reached that meets or exceeds either of these thresholds. The analysis would proceed to compare that projected savings against the amount that the examined product/equipment consumes at each TSL.

In DOE's view, this approach would enable the agency to more readily ascertain whether pursuing a standards rulemaking for a given product/equipment would yield energy savings that the Secretary would consider significant under EPCA. It would also provide the public with greater transparency and predictability regarding how DOE's analytical process would work with respect to the setting of standards through the use of these minimum energy savings thresholds and potentially allow industry to improve its product planning. Further, DOE believes that following this approach would encourage the development of gradual efficiency improvements independent of mandatory regulatory requirements and help focus utility and energy efficiency advocacy efforts on development of

Herrington environment. Specifically, that rule's preamble stated:

Under section 325(l)(3)(B) of the Act, the Department is prohibited from adopting a standard for a product if that standard would not result in ''significant'' energy savings. While the term 'significant' has never been defined in the Act, the Department believes that a standard level option need not meet a threshold level of energy savings to be considered a ''significant'' saver of energy. The U.S. Court of Appeals, *NRDC* v. *Herrington,* 768 F.2d 1355 (DC Cir. 1985), concluded that Congressional intent in using the word ''significant'' was to mean ''non-trivial.'' *Id.* at 1373. Thus, for this rulemaking, DOE believes that each candidate standard considered results in significant energy savings.

54 FR 47916, 47920 (Nov. 17, 1989).

[9] These totals were drawn from DOE's analysis of rulemakings done since the inception of the Appliance Standards Program. It is noted that these values reflect: (1) The lower end of any range of energy savings reported in a final rule, and (2) the reported values for analytical periods less than 30 years (*i.e.,* without extrapolation of those values to 30 years). Nonetheless, in DOE's view, these totals should be sufficient to represent the trends under discussion vis-à-vis DOE's energy conservation standards rulemakings.

standards that generate greater energy savings and that yield more meaningful impacts through fewer regulatory actions.[10]

Based on an examination of all past DOE standards rulemakings, DOE is considering using a quad threshold value (over a 30-year period) of 0.5 quad and a percentage threshold value of 10 percent. DOE requests comments, information, and data regarding whether these values represent an appropriate threshold for determining significant energy savings.

To aid in understanding the energy conservation standards rulemaking process envisioned by DOE, the below chart is included to visualize DOE's decision-making approach.

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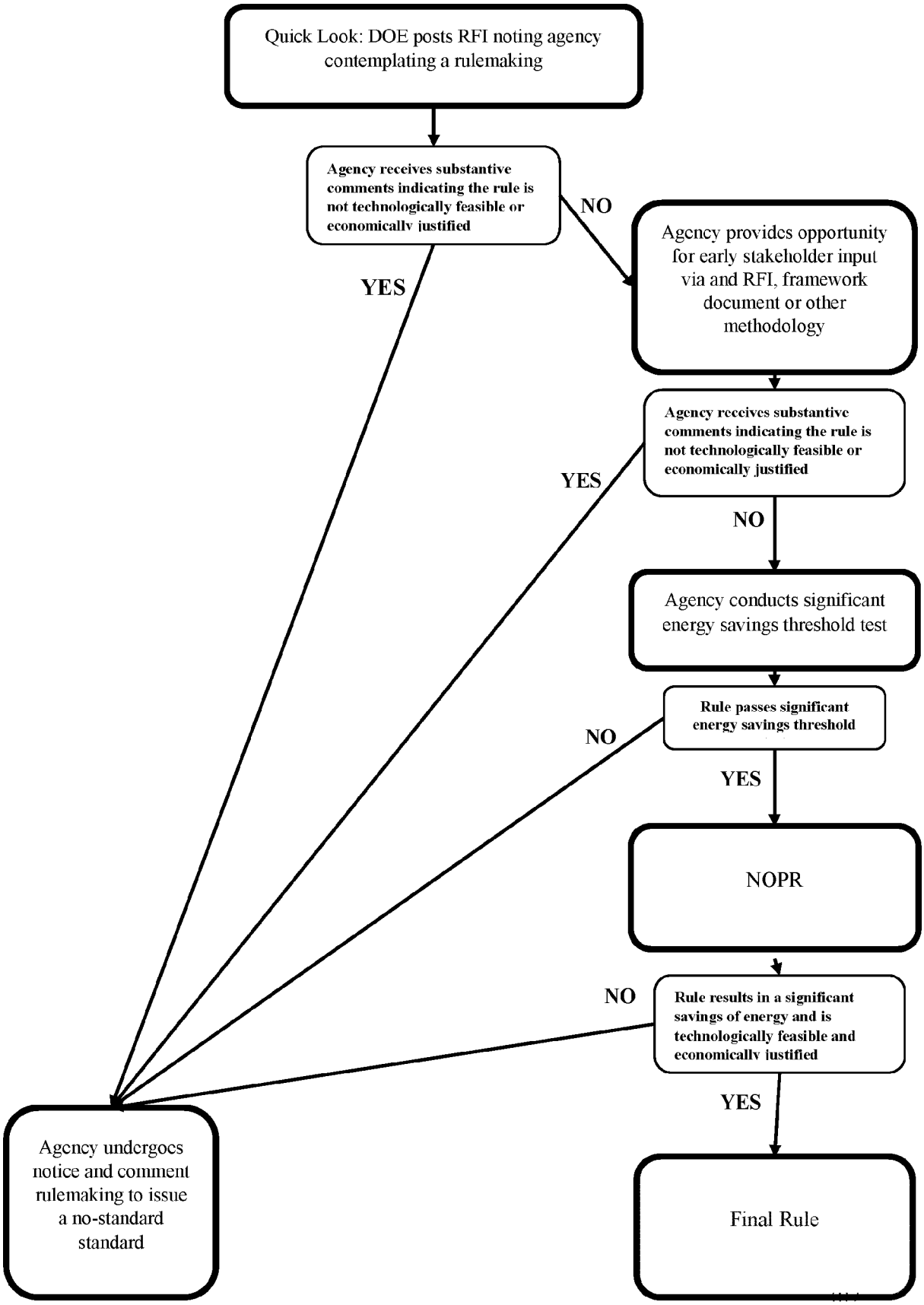
[10] While this discussion does not delve into the details of how the max-tech and economic justification analyses are performed, there are a number of variables that may come into play depending on the product/equipment at issue that may not be readily apparent during the max-tech analysis but appear in the more comprehensive economic justification analysis. For example, fuel-switching (*e.g.,* in the context of furnaces) may affect the projected energy savings from a standard and result in lower than expected savings when performing the relevant economic analysis. Similarly, there may be cases where technology-switching may occur that could impact the analysis. Also, depending on the pricing impacts of adopting more stringent efficiency standards, the projected savings may be less if potential purchasers of the more efficient product opt to repair their current product, rather than replace it.


Quick Look: DOE posts RFI noting agency contemplating a rulemaking
Agency receives substantive comments indicating the rule is not technologically feasible or economically justified
NO
YES
Agency provides opportunity for early stakeholder input via and RFI, framework document or other methodology
Agency receives substantive comments indicating the rule is not technologically feasible or economically justified
YES
NO
Agency conducts significant energy savings threshold test
Rule passes significant energy savings threshold
NO
YES
NOPR
NO
Rule results in a significant savings of energy and is technologically feasible and economically justified
YES
Agency undergoes notice and comment rulemaking to issue a no-standard standard
Final Rule

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H. Finalization of Test Procedures Prior to Issuance of a Standards NOPR

Currently, the Process Rule states that DOE will propose any modifications to a test procedure prior to issuing an ANOPR for energy conservation standards and finalize those modifications prior to issuing a NOPR for energy conservation standards. However, DOE has deviated from this schedule in the past and conducted test procedure and standards rulemakings concurrently. DOE recognizes that a finalized test procedure allows interested parties to provide more effective comments on proposed standards. Further, if the test procedure is finalized sufficiently in advance of the issuance of proposed standards, manufacturers will have experience using the new test procedure, which may provide additional insights into the proposed standards. As a result, DOE proposes to require that test procedures used to evaluate new or amended standards will be finalized at least 180 days before publication of a NOPR proposing new or amended standards.

Commenters were in general agreement that test procedures should be finalized before DOE proposes new or amended standards. For example, Acuity Brands stated that manufacturers need time to develop baseline data using the finalized test procedure before evaluating the proposed efficiency levels. (Acuity Brands, No. 46 at pp. 4–5) Similarly, the ASAP Joint Commenters expressed support for finalizing test procedures prior to DOE proposing new or amended standards ''because it allows manufacturers and other stakeholders to better assess the effects of proposed standard levels.'' (ASAP Joint Commenters, No. 75 at p. 5)

Commenters also provided more specific suggestions regarding the timing of test procedure and standards rulemakings. For instance, UT-Carrier stated that an ''[e]nergy conservation standard rulemaking should only be initiated 3–6 months after the related test procedure is finalized and is published in the **Federal Register**.'' (UT-Carrier, No. 41 at p. 2) Big Ass Fans (''BAF'') recommended that new test procedures be finalized 6 to 18 months before DOE proposes a new energy conservation standard. (BAF, No. 73 at p. 2) The Joint Commenters recommended that test procedure amendments be finalized 6 months before initiating a standards rulemaking and that test procedures for newly covered products be finalized 1 year before initiating a standards rulemaking. (Joint Commenters, No. 51 at p. 19) Several other commenters simply stated that test procedures should be finalized prior to DOE initiating a rulemaking to propose new or amended standards. (*See, e.g.,* Bradford White, No.42 at p. 2; ABMA, No. 71 at p. 3)

As stated previously, DOE is proposing that test procedures used to evaluate proposed standards be finalized at least 180 days prior to publication of a NOPR proposing new or amended standards. DOE believes that 180 days provides interested parties with sufficient time to evaluate the new or amended test procedure. DOE seeks comment on the appropriateness of this 180-day period.

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I. Adoption of Industry Standards

The current Process Rule does not discuss the verbatim adoption of industry standards as DOE test procedures. That being said, DOE is obligated to adopt industry standards in certain cases. For example, under EPCA, DOE is required to use industry standards developed or recognized by ASHRAE for several categories of covered equipment. (42 U.S.C. 6314(a)(4)(A)) Additionally, if these industry standards are amended, EPCA requires that DOE amend its test procedures as necessary to be consistent with the amended industry standard unless it determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that the amended test procedure would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, and estimated operating costs of that equipment during a representative average use cycle. (42 U.S.C. 6314(a)(2), (3) and (4)(B)) As for covered products and equipment where use of an industry standard is not mandated by EPCA, DOE still routinely adopts industry standards as DOE test procedures. In many cases, aspects of these industry standards are modified by DOE upon incorporation into the DOE test procedure. DOE recognizes that modifications to these standards impose a burden on industry.

For instance, manufacturers will face increased costs if the DOE modifications require different testing equipment or facilities.

Some commenters urged DOE to adopt industry standards without modification. For example, Sub Zero stated that industry is best positioned to develop tests that accurately, fairly, and consistently measure energy, and modifications to industry test procedures are costly, unnecessary, and duplicative. (Sub Zero, No. 43 at p. 3) Similarly, the Joint Commenters stated that DOE modifications to industry standards frequently have little impact on test results, but significantly increase the testing burden on manufacturers. (Joint Commenters, No. 51 at p. 21) The Joint Commenters also stated that DOE should only modify industry standards in narrow circumstances, supported by clear and convincing evidence. (*Id.*)

Other commenters supported the adoption of industry standards under certain conditions. For instance, Nor-Lake stated that industry standards should only be adopted without modification if there is unanimous agreement among DOE, manufacturers, and other stakeholders. (Nor-Lake, No. 68 at p. 3)

Finally, some commenters opposed adding language to the Process Rule that would require DOE to adopt industry standards without modification. For example, the CA IOUs stated that industry standards may serve as a useful starting point for a DOE test procedure, but they are not typically developed with DOE's energy efficiency metrics and CCE requirements in mind. And, as such, DOE should not amend the Process rule to specify the use of industry standards without modification. (CA IOUs, No. 65 at p. 5) Similarly, NPCC stated that adopting industry standards without modifications would rarely satisfy EPCA requirements. Correspondingly, NPCC stated that DOE should not amend the Process Rule to specify the use of industry standards without modification. (NPCC, No. 35 at pp. 8, 16)

In recognition of the costs discussed by commenters that are imposed by DOE's adoption of changes to industry test methods, DOE proposes to amend the Process Rule to require adoption, without modification, of industry standards as test procedures for covered products and equipment unless such standards would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, and estimated operating costs of that equipment during a representative average use cycle. DOE seeks comment on this proposal. Further, given DOE's past adoption of test procedures that did vary from the industry test, DOE seeks comment on whether, if DOE were to adopt this proposal, there are existing test procedures that should be modified to conform to the existing industry test method.

J. Direct Final Rules

The Energy Independence Security Act of 2007 (''EISA 2007'') (Pub. L. 110–140) amended EPCA, in relevant part, to grant DOE authority to issue a ''direct final rule'' (*i.e.* DFR) to establish energy conservation standards. As amended, EPCA establishes requirements for when DOE uses this type of rulemaking proceeding for the issuance of certain actions. Specifically, DOE may issue a DFR adopting energy conservation standards for a covered product or equipment upon receipt of a joint proposal from a group of ''interested persons that are fairly representative of relevant points of view,'' provided DOE determines the energy conservation standards recommended in the joint proposal conform with the requirements of 42 U.S.C. 6295(o) or section 342(a)(6)(B) as applicable. (42 U.S.C. 6295(p)(4)(A))

In the December 2017 RFI, DOE requested feedback as to whether it should amend the Process Rule to include provisions related to the use of DFRs. 82 FR 59992, 59993 (Dec. 18, 2017). Most responders supported both the use of the DFR process in developing rules and addressing the DFR provision in the Process Rule. A more detailed discussion of these DFR-related comments follows, along with DOE's response.

Some commenters supported DFRs as an alternative to negotiated rulemaking, while others stated conversely that DFRs should only be issued in the context of negotiated rulemaking, led by an Appliance Standards and Rulemaking Federal Advisory Committee (''ASRAC'') subcommittee. The CEC stated that DFRs should remain available as an option for finalizing standards developed in either ASRAC negotiations or in non-ASRAC negotiations. (CEC, No. 53 at p. 2) Lennox supported the use of DFRs and suggested that identifying DFRs as an alternative to consensus rulemaking outlined in the current Process Rule would be helpful. (Lennox, No. 62 at p. 3) EEI stated that DFRs that have not been the result of negotiated rulemakings should be part of the final Process Rule. However, EEI stressed that DOE should have a preference for conducting notice and comment rulemaking, and the use of DFR's should be limited in practice. (EEI, No. 72 at p. 2). The National Consumer Law Center (''NCLC'') supported the DFR process when it can be used to speed up the rulemaking process, reduce unnecessary time and expense for all parties, reduce the likelihood of contentious hearings and litigation, and lead to results that maximize the satisfaction of all parties. (National Consumer Law Center, January 9, 2018 Public Meeting Transcript at pp. 22)

The APPA expressed its opinion that DOE should not issue DFRs outside of negotiated rulemakings. (APPA, No. 36 at p. 2) The NPCC supports the continued use of DFRs coupled with the ASRAC negotiated rulemaking process. (NPCC, No. 35 at pp. 7, 10) Southern Company stated that it is unrealistic to expect that an energy or water standard which is not part of a negotiated rulemaking would be adopted using this process. (Southern Company, No. 70 at p. 3). NEMA suggested that the DFR and the negotiated rulemaking process should be treated as two separate processes. (NEMA, January 9, 2018 Public Meeting Transcript at pp. 78–79)

In response to these comments, DOE notes that DFRs are intended to be a process that is distinct from that outlined under the Negotiated Rulemaking Act, although in the recent past, the Department has sometimes conflated the two. The Negotiated Rulemaking Act clearly contemplates that the outcome of the negotiation process will be a proposed rule. *See* 5 U.S.C. 563. In contrast, the purpose of the DFR provision in EPCA is to allow the Secretary to adopt a final rule without first utilizing the normal notice and comment process. Thus, although negotiated rules and direct final rules are both valuable tools, they represent two distinct administrative processes. Going forward, DOE intends to treat them as the two separate processes that they are, and consequently, DOE proposes to codify this distinction in the revised Process Rule.

A number of commenters stated that DOE should clarify the DFR provision in the Process Rule. (*See e.g.,* Rheem, January 9, 2018 Public Meeting Transcript at pp. 76–77) The ALA recommended that DOE set forth the specific conditions DOE would need in order to consider a joint proposal under the DFR authority in EPCA. (ALA, No. 55 at p. 2) The CEC stated that in its amended Process Rule, DOE should provide additional guidance—but not strict prescriptive criteria—describing the minimum parameters a consensus proposal must meet in order to be a candidate for a DFR. (CEC, No. 53 at p.

2) In response, DOE agrees with these comments and is providing clarification in this proposed rule about its DFR authority and the conditions a submitted joint proposal must meet in order for DOE to consider publication, as explained in further detail subsequently.

Two commenters expressed concerns about potential negative outcomes that might result from potential changes to the current DFR process. NEEP stated that adding unnecessary provisions to the Process Rule could result in a more cumbersome procedure and a less effective DFR outcome. (NEEP, No. 77 at p. 2) NPCC conceded that the DFR procedures can always be improved, but it urged caution so as not to lose any of the value that is gained from the DFR process. NPCC stated that the procedures as developed are generally effective, efficient, and transparent; they also offer great opportunity for involvement by, and generally have the support of, industry, States, efficiency advocates, and others. (NPCC, No. 35 at pp. 7, 10) In response, DOE notes that in providing clarification as to its expectations for DFR submittals, it aims to improve, rather than hinder, the DFR process.

Some commenters offered their concerns about the use of DFRs. For example, Spire argued that DFRs should only be utilized in non-controversial efficiency rules where prior notice and comment procedures serve no useful purpose. (Spire, January 9, 2018 Public Meeting Transcript at pp. 70–72) The NPGA stated that DOE should not rely on DFRs because they fail to uphold the spirit of open dialogue with the public called for under EPCA and the APA. (NPGA, No. 59 at p. 2) In response, DOE notes that the purpose of addressing the DFR provision in this proposed rule is to, in part, ensure open dialogue with stakeholders and to limit controversy. The Department does not agree that the DFR mechanism is somehow unsuitable for complex or controversial cases; on the contrary, the DFR may be beneficial in those instances due to early and broad stakeholder involvement.

In light of the comments described above, as part of this proposed rule, DOE is: (1) Clarifying its authority under the DFR provision found at 42 U.S.C. 6295(p)(4); (2) providing guidance as to DOE's interpretation of ''fairly representative,'' and (3) explaining DOE's obligations upon receipt of an adverse comment. In this way, DOE hopes to improve the transparency, consistency, and inclusiveness of its existing DFR process.

1. DOE's Authority Under the DFR Provision

The DFR provision is found in EPCA at 42 U.S.C. 6295(p), the heading and introduction of which state: ''Procedure for prescribing new or amended standards. Any new or amended energy conservation standard shall be prescribed in accordance with the following procedure.'' Given this description, DOE believes that 42 U.S.C. 6295(p)(4) must be understood as procedural; that is, the provision is not a substantive grant of rulemaking authority but rather outlines a process DOE must follow when issuing a DFR. Supporting this view is the fact that subparagraphs (p)(1) and (p)(2) are merely procedural provisions. That is, subparagraphs (p)(1) and (p)(2) outline the process the Secretary must follow to propose and finalize a standard using the ''normal'' rulemaking approach. However, neither of those subparagraphs is an independent grant of rulemaking authority. Both are meaningless unless a separate provision of EPCA authorizes issuance of a rule to establish a new or amend an existing energy conservation standard. Thus, subparagraphs (p)(1) and (p)(2) could not be interpreted as granting DOE separate and independent standard issuing authority. When read in context with the rest of the subsection, 42 U.S.C. 6295(p)(4) likewise must be read as procedural, *i.e.,* not a separate and independent grant of rulemaking authority. Under this interpretation, DOE must rely on authority provided by other sections of EPCA.

As the DFR provision is not a separate grant of authority, any standard issued must comply with the provisions of the EPCA subsection under which the rule was authorized. For example, if the DFR were a recommendation that DOE amend the standards for metal halide lamp fixtures under 42 U.S.C. 6295(hh)(3)(A), which requires that not later than January 1, 2019, the Secretary shall publish a final rule to determine whether the standards then in effect for metal halide lamp fixtures should be amended, the standards must comply with 42 U.S.C. 6295(hh)(3)(B), which requires that any amended standards apply to products manufactured after January 1, 2022, along with all other applicable parts of EPCA. DOE will not accept or issue as a DFR a submitted joint proposal that does not comply with all pertinent parts of EPCA, including those product specific requirements included in the provision that authorizes issuance of the standard.

2. Interested Persons Fairly Representative of Relevant Points of View

In the December 2017 RFI, DOE requested comment on when a joint statement with recommendations related to an energy or water conservation standard would be deemed to have been submitted by ''interested persons that are fairly representative of relevant points of view,'' thereby permitting use of the DFR mechanism. 82 FR 59992, 59993–59994. A number of commenters provided feedback on this issue.

Several commenters recommended that DOE should do its best to be as inclusive as possible in identifying fairly representative points of view, but they recognized that fairly representative does not mean ''all.'' For example, the Joint Commenters stated that ''fairly'' cannot practically mean ''every point of view;'' otherwise, there would be no need to seek public comment on the proposed standard as required by EPCA in 42 U.S.C. 6295(p)(4)(B). According to the Joint Commenters, the Secretary can make an initial determination of how ''fairly'' the group represents the relevant points of view based on the identity of the persons submitting the Joint Statement, and can reassess that initial determination after the public comment period has expired. (Joint Commenters, No. 51 at pp. 17–18)

The ALA stated that the DOE should develop a more substantive definition of ''fairly representative'' in the Process Rule, but the ALA also suggested that because each product and market is unique, the definition should be flexible. The ALA further stated that any joint proposal should include, at a minimum, representative stakeholders from industry/manufacturers, along with energy-efficiency advocates and States. (ALA, No. 55 at p. 2) Southern Company commented that the group should also include, distributors, utilities, consumer groups, and any other groups that might be relevant for that specific rulemaking. (Southern Company, No. 70 at p. 3) The CEC stated that it may be appropriate to identify constituents whose points of view should always be included in order for a proposal to be considered representative but that an extreme definition of ''fairly representative,'' such as consideration of ''all'' relevant points of view would create an insurmountable hurdle. (CEC, No. 53 at p. 3) In contrast, Spire asserted that the term should be interpreted to mean ''all known relevant points of view.'' (Spire, No. 57 at pp. 9–10) Spire, NEEP and EEI

argued that the outcome of the residential furnaces DFR rulemaking made clear that there must be an intentionally inclusive group negotiating a DFR. (NEEP, No. 77 at p. 2; Spire, No. 57 at pp. 9–10; EEI, January 9, 2018 Public Meeting Transcript at p. 64) EEI added its concern about how stakeholders who are not included in the DFR process do not see the rule until it is published in the **Federal Register**, and as a result, they are excluded from any preliminary input. EEI suggested that a possible solution would be for DOE to announce the negotiations and welcome other parties to join in the process. (EEI, January 9, 2018 Public Meeting Transcript at p. 64) The American Gas Association (''AGA'') stated that the DFR should only be used where a consensus has been developed among all affected parties. (AGA, January 9, 2018 Public Meeting Transcript, at pp. 36)

A few commenters argued against changing the existing definition of ''fairly representative.'' (*See e.g.,* Lennox, No. 35 at p. 3) The NPCC asserted that any joint proposal developed under the Negotiated Rulemaking Act meets the definition of ''fairly representative.'' NPCC further stated that if a DFR is not developed under the Negotiated Rulemaking Act, then DOE should consult with ASRAC to determine if a recommendation was submitted by interested persons that are fairly representative of relevant points of view. (NPCC, No. 35 at p. 12)

The NPGA stated its opposition to DFRs and asserted that it would not be beneficial for DOE to define ''fairly representative.'' NPGA further stated that in trying to define this term, DOE would either intentionally or inadvertently exclude certain stakeholders from the DFR rulemaking process. (NPGA, No. 59 at p. 2)

In response to these comments, DOE agrees that the rulemaking process must be as inclusive as possible, even though it cannot reasonably be expected to encompass every possible viewpoint. DOE notes that at a minimum, ''fairly representative of relevant points of view'' must include larger concerns and small businesses in the regulated industry/manufacturer community, energy advocates, energy utilities, as appropriate, consumers, and States. However, DOE also believes that it will be necessary to evaluate the meaning of ''fairly representative'' on a case-by-case basis, subject to the circumstances of a particular rulemaking, to determine additional parties that must be part of a joint statement in order to be ''fairly representative of relevant points of view.'' DOE notes that it cannot be a member of a group that submits a joint statement to be issued as a DFR.

In order to assist DOE in making this case-by-case determination, upon receipt of a joint statement recommending energy conservation standards, DOE will publish in the **Federal Register** that statement, as submitted to DOE, in order to obtain feedback as to whether the joint statement was submitted by a group that is fairly representative of relevant points of view. The comment period would occur during the time DOE analyzes the submission for other legal and analytical issues and considers preparation of a rulemaking document. (DOE notes that such preliminary comment period would not diminish or eliminate the statutory comment period(s) associated with publication of a subsequent DFR and/or NOPR.) Therefore, if any substantive concerns are raised about parties not included during the negotiation of the consensus agreement, DOE can make the appropriate decision as to whether the rule can move forward as a DFR. If DOE determines that the rule does not meet the requirements for publication as a direct final rule, DOE will consider whether any further rulemaking activity is appropriate, consistent with the procedures for the regular rulemaking process.

DOE appreciates the comments received in response to the RFI and considered in the development of this proposal. DOE continues to seek comment on what it means for a statement to be submitted by interested persons that are ''fairly representative of relevant points of view.'' DOE continues to seek comment on what constitutes a relevant point of view for purposes of using the EPCA authority in 42 U.S.C. 6295(p)(4) to issue a DFR. More generally, DOE seeks further comment on the strengths and weaknesses of using the DFR process to promulgate energy conservation standards.

3. Adverse Comments

Simultaneous with the issuance of a DFR, DOE must also issue a notice of proposed rulemaking (''NOPR'') containing the same energy conservation standards as in the DFR. Following publication of the DFR, DOE must solicit public comment for a period of at least 110 days; then, not later than120 days after issuance of the DFR, the Secretary must determine whether any adverse comments ''may provide a reasonable basis for withdrawing the direct final rule,'' based on the rulemaking record. (42 U.S.C. 6295(p)(4)(B),(C)(i)) In the December 2017 RFI, DOE solicited comment on the nature and extent of ''adverse comments'' that may provide the Secretary with a reasonable basis for withdrawing the DFR, leading to further rulemaking under the accompanying NOPR. 82 FR 59992, 59994.

Currently, to determine whether a comment is sufficiently ''adverse'' so as to provide a reasonable basis for withdrawal of the direct final rule, DOE weighs the substance of any adverse comment received against the anticipated benefits of the consensus agreement and the likelihood that further consideration of the comment would change the result of the rulemaking (referred to as the ''balancing test''). This approach was outlined in recent DOE rulemakings, such as DOE's final rule for energy conservation standards for dishwashers. 77 FR 59712, 59714 (Oct. 1, 2012).

A number of commenters supported DOE's current balancing test. (*See e.g.,* Southern Company, No. 70 at 3; NPCC, No. 35 at 11; CA IOUs, No. 65 at p. 4) Some of these commenters further noted that in order to result in the withdrawal of a DFR, adverse comments should be substantive, accompanied by supporting data, and further consideration of the issues raised through the normal notice and comment process could materially affect the outcome of the particular DFR. (Lennox No. 35 at p. 4) The Joint Commenters agreed that the determination to withdraw a DFR should be based on substance and quality, not the quantity of the adverse comments. (Joint Commenters, No. 51 at pp. 16–17) The CA IOUs stated that DOE should maintain the flexibility to modify its analysis or decision so that such comments do not become a tactic to delay the rulemaking. Both Lennox and the CA IOUs argued that if the negative commenters had the opportunity to provide such comments earlier in the rulemaking process, DOE should not be required to modify the analysis or decision. (CA IOUs, No. 65 at p. 4; Lennox No. 35 at p. 4)

While the Joint Commenters supported the concept of the balancing test, they noted that the determining factor is not the anticipated benefits of the consensus agreement against which these adverse comments must be measured, but whether the adverse comments merit concluding that the Joint Statement is not in accordance with 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B) of EPCA. (Joint Commenters, No. 51 at p. 17)

Both Spire and GW expressed concern that the balancing test excludes the opinions of some stakeholders directly affected by a DFR because DOE does not sufficiently take into account adverse comments. (GW, No. 48 at p. 4; Spire,

No. 57 at pp. 9–10) GW pointed out that DOE has rarely, if ever, deviated from a DFR, even when it received adverse comments. (GW, No. 48 at p. 5) Spire further raised specific criticisms in the context of prior rulemakings with respect to the treatment of adverse comments. (Spire, No. 57 at pp. 9–10) EEI stated that the DFR process is worrisome because parties that were not involved in negotiation do not know what issues were raised or addressed during negotiations, and can only supply input once the DFR has been submitted. EEI further argued that quantity, as well as quality and substance of comments, should be taken into account. (EEI, January 9, 2018 Public Meeting Transcript at p. 87)

ABMA suggested that DOE should mirror EPA's treatment of adverse comments to a DFR, whereby a single adverse comment is sufficient to send the rule to notice and comment rulemaking. (ABMA, No. 71 at p. 2) Spire stated that if an interested party goes through the trouble of commenting, then that comment should be considered relevant, and the rule should undergo notice and comment. (Spire, January 9, 2018 Public Meeting Transcript at p. 117)

In response, given the concerns expressed regarding DFRs, DOE plans to move away from the previously announced balancing test. As suggested by commenters, DOE will look not at the quantity of comments received but rather at the substance of the adverse comment, though one comment may present an argument that could lead DOE to conclude that it is an adverse comment providing a basis for withdrawal of the DFR. Moreover, in contrast to previous policy, DOE may take into account, as adverse, comments even if the issue was brought up previously during DOE-initiated discussions (*e.g.* publication of a framework or RFI document) that preceded submission of a joint statement, if the Department concludes that the comment merits further consideration. In short, if DOE determines that one or more substantive comments objecting to the final rule provides a sufficient reason to withdraw the DFR, DOE will do so, and instead proceed with the published NOPR (which could include withdrawal of that NOPR, as appropriate).

K. Negotiated Rulemaking

1. Utilizing the Negotiated Rulemaking Process, Including the Establishment of the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC)

Negotiated rulemaking is a process by which an agency attempts to develop a consensus proposal for regulation in consultation with interested parties, thereby addressing salient comments from stakeholders before issuing a proposed rule.[11] Consequently, when done properly, negotiated rulemaking can yield better decisions, while conserving time and resources of both the agency and interested parties. Negotiated rulemaking is a topic not directly addressed by the current Process Rule. However, the Process Rule does recognize the value and encourage submission of joint stakeholder recommendations.

To facilitate potential negotiated rulemakings, DOE established the Appliance Standards and Rulemaking Federal Advisory Committee (*i.e.* ASRAC) so as to comply with the Federal Advisory Committee Act (''FACA''), Public Law 92–463 (1972) (codified at 5 U.S.C. App. 2).

As part of the DOE process, working groups have been established as subcommittees of ASRAC, from time to time, for specific products, and one member from the ASRAC committee attends and participates in the meetings of a specific working group. Ultimately, the working group reports to ASRAC, and ASRAC itself votes on whether to make a recommendation to DOE to adopt a consensus agreement.

The negotiated rulemaking process allows real-time adjustments to the analyses as the working group is considering them. Furthermore, it allows parties with differing viewpoints and objectives to negotiate face-to-face regarding the terms of a potential standard. Additionally, it encourages manufacturers in a more direct manner to provide data for the analyses, thereby helping to better account for manufacturer concerns.

In the December 2017 RFI, DOE asked a number of questions related to negotiated rulemaking, including whether the Process Rule should be amended to provide for the use of negotiated rulemaking in appropriate cases. DOE opened up the issue broadly to seek comments on matters related to negotiated rulemaking, including how DOE can improve its current process in a manner consistent with the Negotiated Rulemaking Act (''NRA''). (5 U.S.C. 561–570a) Specifically, DOE asked whether the Process Rule should provide for the use of a convener or facilitator for each negotiated rulemaking. DOE also asked about measures to ensure that a negotiated rulemaking consider all reasonable alternatives, including the option of not amending/issuing standards or alternatives that would affect different stakeholders differently. Finally, DOE requested comments on the use of a direct final rule mechanism at the conclusion to a negotiated rulemaking. 82 FR 59992, 59995.

DOE received a number of comments from interested stakeholders regarding DOE's use of negotiated rulemaking, most of whom supported inclusion of such mechanism in the Process Rule (either explicitly or implicitly through positive statements regarding negotiated rulemaking). Commenters addressed negotiated rulemaking generally and also specifically regarding its implementation in the DOE context.

2. Inclusion of Negotiated Rulemaking in the Process Rule

As noted above, the majority of commenters supported DOE's use of negotiated rulemakings in appropriate cases and either explicitly called for, or voiced no objection to, its inclusion in the Process Rule. (Bradford White, No. 42 at p. 1; HARDI, No. 56 at p. 3; Lennox, No. 62 at p. 5; NPCC, No. 35 at pp. 7, 12–13; Nor-Lake, No. 68 at p. 4; Spire, No. 57 at p. 13; Acuity Brands, No. 46 at p. 3; EEI, No. 72 at p. 3; ABMA, No. 71 at p. 2; NEMA, January 9, 2018 Public Meeting Transcript, at pp. 78–79; AGA, January 9, 2018 Public Meeting Transcript, at p. 36; NPCC, January 9, 2018 Public Meeting Transcript, at pp. 57–58; Southern Company, January 9, 2018 Public Meeting Transcript, at p. 123; Lennox, January 9, 2018 Public Meeting Transcript, at pp. 124, 133–134; Daikin, January 9, 2018 Public Meeting Transcript, at p. 124; AHRI, January 9, 2018 Public Meeting Transcript, at p. 125; AHAM, January 9, 2018 Public Meeting Transcript, at p. 126; NEMA, January 9, 2018 Public Meeting Transcript, at p. 127) A number of commenters stated that negotiated rulemaking should be the preferred option. (Lennox, No. 62 at p. 5; NPCC, No. 35 at pp. 7, 12–13; ABMA, No. 71 at p. 2; Daikin, January 9, 2018 Public Meeting Transcript, at 124; AHRI, January 9, 2018 Public Meeting Transcript, at p. 125; AHAM, January 9, 2018 Public Meeting Transcript, at p. 126; NEMA, January 9, 2018 Public

[11] This process is conducted in accordance with the requirements of the Negotiated Rulemaking Act (''NRA''), Public Law 104–320 (5 U.S.C. 561–570).

Meeting Transcript, at p. 127) However, commenters generally recognized that negotiated rulemaking may not be appropriate in each and every case, suggesting that its use should be encouraged, but not required. (NPCC, No. 35 at pp. 7, 12–13; CA IOUs, No. 65 at p. 5; AHRI, January 9, 2018 Public Meeting Transcript, at p. 125) Some commenters clarified that negotiated rulemaking should not become the norm or be used in every case. (Southern Company, January 9, 2018 Public Meeting Transcript, at p. 123; Lennox, January 9, 2018 Public Meeting Transcript, at p. 124) Echoing this sentiment, Spire cautioned that not all rules can be negotiated, given that it is a very labor-intensive process which requires the right representation. (Spire, January 9, 2018 Public Meeting Transcript, at pp. 128–130)

After carefully considering the comments, DOE has tentatively decided that negotiated rulemaking can be beneficial in the context of the Appliance Standards Program in appropriate circumstances, and accordingly, the Department proposes to include a section on negotiated rulemaking in the updated Process Rule. DOE agrees that the appropriateness of a negotiated rulemaking for any given rulemaking should be determined on a case-by-case basis. When approached by one or more stakeholders or on its own initiative, DOE will use a convener to ascertain, in consultation with relevant stakeholders, whether review for a given product or equipment type would be conducive to negotiated rulemaking, with the agency evaluating the convener's recommendation before reaching a decision on such matter.

A number of commenters expressed general support for continuing the current negotiated rulemaking process through the ASRAC. (HARDI, No. 56 at p. 3; Lennox, No. 62 at p. 5; NPCC, No. 35 at pp. 7, 12–13; NEMA, January 9, 2018 Public Meeting Transcript, at pp. 78–79) According to the NPCC, the ASRAC process has generally resulted in successful and relatively uncontested rules because the appropriate parties have participated, there is transparency, and the parties have had a chance to interact with both DOE and its technical consultants who are performing the necessary supporting analytical work. (NPCC, January 9, 2018 Public Meeting Transcript, at pp. 57–58) Lennox suggested that DOE should explore the feasibility of negotiated rulemaking for all major rulemakings (especially ones with some degree of complexity), including DOE outreach to determine whether there is a reasonable likelihood that the requisite consensus can be reached among core stakeholders (including manufacturers of the product subject to regulation, States, and efficiency advocates). (Lennox, No. 62 at p. 5; Lennox, January 9, 2018 Public Meeting Transcript, at p. 124) NEMA added that consideration should be given to amending the Process Rule so as to incorporate the potential for a statutorily-compliant DFR proposal emerging from the ASRAC negotiated rulemaking process. (NEMA, January 9, 2018 Public Meeting Transcript, at p. 80) The Plumbing Heating Cooling Contractors Association (''PHCC'') and the CEC also stated that DFRs could be the natural outcome of a successful negotiated rulemaking, thereby allowing DOE to proceed expeditiously to a final rule. (PHCC, No. 63 at pp. 1–2; CEC, No. 53 at p. 4) The Joint Commenters similarly pointed to DFRs as an important aspect of negotiated rulemaking, and it stated that if the Process Rule is amended to address DFRs, it should acknowledge DFRs in the context of both ASRAC working groups and other parties engaged in informal negotiations. (Joint Commenters, No. 51 at p. 14; Whirlpool, No. 76, was a signatory to the Joint Commenters submission and indicated its support on these issues.)

DOE agrees with the commenters that the ASRAC has provided a workable and effective forum for conducting negotiated rulemakings, with working groups making a recommendation to ASRAC and ASRAC in turn making a recommendation to DOE for its ultimate decision. As stated previously, DOE plans to consider the use of negotiated rulemaking in appropriate cases. However, in a break from its previous practice, DOE intends to separate DFRs and negotiated rulemakings, with the latter leading to a notice of proposed rulemaking in all cases. The NRA contemplates that the committee will transmit to the agency a report containing a proposed rule (or more applicable in DOE's use of the process, a term sheet specifying the potential standard levels to be incorporated into a proposed rule). Accordingly, DOE is modifying its process for negotiated rulemaking so as to be more fully consistent with the statute. (See the DFR section of this proposal for a more complete discussion of direct final rules.)

Commenters also saw a number of benefits associated with negotiated rulemaking. Daikin opined that negotiated rulemakings result in substantively better rules. (Daikin, January 9, 2018 Public Meeting Transcript, at pp. 124–125) Nor-Lake commented that negotiated rulemaking has the potential to streamline the rulemaking process. (Nor-Lake, No. 68 at p. 4) AHRI stated that negotiated rulemaking promotes greater transparency (in terms of both data and assumptions) and more stakeholder engagement. (AHRI, January 9, 2018 Public Meeting Transcript, at pp. 125–126; NEMA, January 9, 2018 Public Meeting Transcript, at p. 139) The CEC stated that negotiated rulemakings are a valuable process for appropriate products, because they allow for more direct engagement between interested parties, more rapid feedback from participants, and often proceed in a more expeditious manner than a notice and comment rulemaking. (CEC, No. 53 at p. 5) Acuity Brands suggested that like DFRs, negotiated rulemakings have the potential to reduce regulatory burdens, but they have the added benefit of including a broader set of stakeholders (including the DOE) from the start of the process. (Acuity Brands, No. 46 at p. 3) The CA IOUs and NCLC and the Consumer Federation of America (''CFA'') stated that negotiated rulemakings can help streamline DOE rulemaking process in certain circumstances, thereby saving time and resources and allowing consumers to realize benefits sooner. (CA IOUs, No. 65 at p. 4; NCLC and CFA, No. 52 at p. 4) NCLC and CFA also commented that a successful negotiated rulemaking which reflects the interests of relevant stakeholders can reduce the likelihood of contentious hearings and litigation. (NCLC and CFA, No. 52 at p. 4)

Even among those commenters who supported DOE's use of negotiated rulemaking and its inclusion in the Process Rule, there were some cautionary statements to ensure its proper application. ABMA and AGA cautioned that DOE must be certain that all stakeholders covering the full breadth of the marketplace are included in the process (ABMA, No. 71 at p. 2; AGA, January 9, 2018 Public Meeting Transcript, at p. 36), and Schneider Electric added that DOE should engage in a dialogue with industry before starting a rulemaking. (Schneider Electric, No. 69 at pp. 2–3) Spire emphasized the need for ensuring that negotiated rulemakings are conducted transparently and impartially and that ''short shrift'' is not given to any valid stakeholder—particularly those who provide ''substantive and legitimate documentation to support their comments.'' It also urged that ASRAC ''should remain an advisory committee to EERE only'' and should be required to meet the Process Rule and any data quality and FACA requirements. (Spire,

No. 57 at p. 13) EEI recommended that DOE allow extra time for stakeholders that are not part of the negotiation committee to provide input at committee meetings in order to allow for potentially adversely impacted parties to air concerns as part of the committee process. It also recommended that DOE create specific provisions allowing end-use consumers to participate in negotiated rulemakings for products being regulated for the first time, especially to get their perspective on which types of efficiency metrics can be most useful for actual end-users. (EEI, No. 72 at p. 3) Finally, EEI commented that first-time regulated products might be more amenable to traditional, notice-and-comment rulemaking, particularly given the resource-intensive nature of negotiated rulemakings (*e.g.,* potential for significant travel). (EEI, January 9, 2018 Public Meeting Transcript, at p. 130)

Other commenters were more ambivalent about the use of negotiated rulemaking and/or the need to directly address it in the Process Rule. GW stated that although negotiated rulemaking can be an effective tool for expeditious rulemaking, it has procedural and analytical drawbacks the Department should consider before codifying it into the Process Rule. On this point, GW argued that negotiated rulemakings lead to decisions being made based on consensus rather than net welfare optimization. Second, interested parties may reach a policy conclusion well before a benefit-cost analysis can suggest an approach that would maximize net societal benefits. Third, there is a risk that comments submitted by parties not included in the negotiation may receive less than due consideration because the policy approach has already been decided. Fourth, the Department should be alert to circumstances in which jointly recommended standards harm competition or prefer one manufacturer at the expense of others—which ultimately harms consumers. (GW, No. 48 at pp. 5, 13)

Similarly, the Joint Commenters stated that they did not see the need to amend the Process Rule to clarify how negotiated rulemaking fits into the overall procedure, but it likewise did not oppose memorializing the *status quo.* The CA IOUs urged that if DOE decides to amend the Process Rule to address negotiated rulemakings, the agency should not make negotiated rulemaking mandatory, and it should retain flexibility within the negotiations. (CA IOUs, No. 65 at p. 5)

Finally, there were at least two commenters who opposed the inclusion of negotiated rulemaking in the Process Rule, the first for practical considerations and the second on more substantive grounds. NEEP stated its view that given the case-by-case nature of a negotiated rule (a tool that DOE has used when there is a high likelihood of reaching stakeholder consensus), NEEP sees no benefit in explicitly adding negotiated rulemaking guidance to the Process Rule. It stated that adding unnecessary provisions through addition to the Process Rule could result in a more cumbersome and less effective negotiated rulemaking outcome. (NEEP, No. 77 at p. 2) NPGA argued that negotiated rulemakings may limit the number of stakeholders who can participate, may constrain review and development to meet arbitrary deadlines, and may cause an antagonistic rather than cooperative nature among the groups involved. Thus, NPGA suggested that negotiated rulemakings do not provide for the same open dialogue and input available through the traditional rulemaking route. (NPGA, No. 59 at p. 2)

DOE agrees with those commenters who see potential benefits to the use of negotiated rulemaking in appropriate cases, and the Department has tentatively decided that it makes sense to clarify its approach to this procedural mechanism in the Process Rule. Negotiated rulemaking has the potential to increase transparency, to foster stakeholder/DOE engagement, and to streamline the rulemaking process, thereby conserving the time and resources of all interested parties. Thorough consideration of the underlying issues and recommending potential standards at a consensus level may also reduce litigation risk. DOE sees no reason why explicitly addressing negotiated rulemaking in the Process Rule should alter the manner in which that rulemaking will occur when such rulemaking approach is deemed appropriate or reduce any flexibility permissible under the statute.

In response to ABMA, AGA, and Schneider Electric, DOE seeks broad representation of interested stakeholders for negotiated rulemakings as part of the ASRAC working groups, including representatives of individual manufacturers and their trade associations. In addition, DOE makes meetings of the ASRAC working groups open to the public, so there are additional opportunities for input from other interested parties, including public comment during those sessions. However, DOE takes EEI's point as to the need, as a matter of fairness, to fully air the concerns of stakeholders who are not part of the committee or working group (including end-use consumers), so DOE is proposing to incorporate provisions in the Process Rule to ensure their opportunity for public comment and to bring their concerns before the committee for discussion. However, DOE would stress that any proposed rule emerging from a negotiated rulemaking would still provide an opportunity for public comment on the published document, and DOE would be required to respond to public comments, as appropriate, so all interested parties retain the ability to play an active role in the rulemaking process. In response to Spire, DOE is committed to thoroughly considering all views and data brought before it, as well as to comply with all applicable statutory requirements. As to Spire's comments about first-time regulated products being more amenable to traditional notice-and-comment rulemaking, rather than negotiated rulemaking, DOE reiterates that this is a determination best made on a case-by-case basis in the context of a given rulemaking. It is DOE's expectation that use of a convenor will help address each of these issues. That is, a neutral, independent convenor can identify issues that any negotiation would need to address, assess the full breadth of interested parties who should be included in any negotiated rulemaking to address those issues and make a judgment as to whether there is the potential for a group of individuals negotiating in good faith to reach a consensus agreement given the issues presented.

DOE understands the concerns of GW that negotiated rulemaking should not lead to a rushed process where stakeholder opinions, public input, and analytical data are not fully considered and addressed. In part to mitigate such concerns, DOE is proposing to separate DFRs from the negotiated rulemaking process in the revised Process Rule. In this way, the outcome of any negotiated rulemaking would be a proposed rule, which would be subject to a comment period, as required under EPCA and the Administrative Procedure Act. DOE must then respond to comments received, including those regarding its data and analyses, in the final rule; in the event a comment raises a significant issue that previously had not been identified or properly considered, DOE may need to publish a supplemental notice of proposed rulemaking to modify its approach and seek further public comment. In this way, DOE endeavors to obtain the benefits of negotiated rulemaking, while making sure to maintain broad opportunity for

participation among working group members and the interested public and full consideration of relevant data and information. DOE believes that this reasoning also addresses the similar concerns of NPGA. Finally, DOE notes that a proposed appliance standards rule's impacts on competition is one of the topics that must be specifically addressed by the U.S. Department of Justice (''DOJ'') in any such rulemaking, as required under 42 U.S.C. 6295(o)(2)(B)(i)(VI) and (ii), and subsequently by DOE, regardless of whether the rule is developed through negotiated rulemaking, a joint proposal under DOE's DFR authority, or traditional notice-and-comment rulemaking.

3. Suggestions Regarding Implementation of Negotiated Rulemakings

Commenters seemed to generally agree that negotiated rulemaking may not be appropriate for all DOE rulemaking actions, and in some instances, traditional notice-and-comment rulemaking may remain the preferred approach. For example, the CA IOUs commented that negotiated rulemaking may not be useful where product categories cover a broad range of product classes and manufacturers and where it may not be feasible to identify all appropriate industry representatives, thereby making such process difficult. (CA IOUs, No. 65 at p. 4) Southern Company stated that because negotiated rulemakings require substantial time commitments from stakeholders, they should be reserved for larger, higher impact rulemakings where the Department and major stakeholders agree that a negotiated rulemaking is appropriate; in contrast, for most rulemakings, the commenter argued that the traditional process of notice and comment is more appropriate. (Southern Company Services, No. 70 at p. 4) The CEC stated that it does not object to a brief consideration of each product's potential for negotiated rulemaking but asserted that it is inappropriate to require the use, or even the evaluation, of a negotiated rulemaking for all products. (CEC, No. 53 at p.5)

DOE agrees with the commenters that negotiated rulemaking may not be appropriate in every case, particularly where there is not identification or participation of a significant number of interested stakeholders. DOE further acknowledges that negotiated rulemaking typically requires a significant input of time and resources on the part of both DOE and other interested parties, so it is important to initiate a negotiated rulemaking only where there is a reasonable likelihood of success. Consequently, as discussed previously, DOE plans to make a determination whether to conduct a negotiated rulemaking on a case-by-case basis in the context of a given rulemaking, based on a report produced by a third-party, neutral convenor.

According to the Joint Commenters, the following factors should militate in favor of a negotiated rulemaking: (1) Stakeholders commented in favor of negotiated rulemaking in response to the initial rulemaking notice; (2) The rulemaking analysis or underlying technologies in question are complex, and DOE can benefit from external expertise and/or real-time changes to the analysis based on stakeholder feedback, information, and data; (3) The rulemaking involves standards that have already been amended one or more times; (4) Stakeholders from differing points of view are willing to participate; and (5) DOE believes that the parties may be able to reach an agreement. If DOE determines that a negotiated rulemaking is viable, DOE should make a recommendation to the ASRAC or support an interested party's recommendation to the ASRAC that the committee form a working group to negotiate a term sheet that will be submitted to DOE as a consensus recommendation. (Joint Commenters, No. 51 at p. 13)

DOE agrees with the Joint Commenters that it would be beneficial to include relevant criteria in the Process Rule to improve the transparency of DOE's decision-making process for determining when a negotiated rulemaking may be appropriate. The points raised by the Joint Commenters would likely be helpful in that regard and, accordingly, merit inclusion in a proposed list of criteria. DOE welcomes comment on the aforementioned criteria and any additional factors that may serve as appropriate criteria for determining when negotiated rulemaking may be appropriate.

In terms of how DOE should decide when a given rulemaking is conducive to negotiated rulemaking, a number of commenters urged DOE to consult with stakeholders, especially industry. (Bradford White, No. 42 at p. 1; Schneider Electric, No. 69 at pp. 2–3) The CA IOUs suggested that DOE should work with stakeholders to outline the characteristics of standards and test procedures that would be appropriate for negotiated rulemaking. (CA IOUs, No. 65 at p. 4) AHRI also raised the possibility of using negotiated rulemaking when DOE makes modifications to its test procedures. (AHRI, January 9, 2018 Public Meeting Transcript, at p. 145) However, one commenter (Spire) recommended a more structured process, under which DOE would publish a notice in the **Federal Register** explaining that it is considering negotiated rulemaking and provide at least a 30-day comment period, prior to commencing such rulemaking; Spire added that the notice should also: (1) Identify the range of boundaries of the covered products at issue, including competing technologies and energy sources (*e.g.,* gas and electricity); (2) request comments on whether DOE should or should not proceed with negotiated rulemaking; and (3) solicit comments concerning the range of interests to be represented in the negotiations and nominations of individuals to serve on the negotiating committee. (Spire, No. 57 at pp. 13–14)

In response to these comments, DOE is open to broad input from stakeholders, including affected industry as well as interested members of the public, regarding the appropriateness of negotiated rulemaking for any given type of consumer product or commercial equipment. Questions regarding the boundaries of coverage, competing technologies and energy sources, appropriateness of negotiated rulemaking, the range of interests to be represented, and nominations for serving on an ASRAC working group are all topics worthy of discussion prior to engaging in a negotiated rulemaking. In response to AHRI's comment on the use of negotiated rulemaking for test procedures, DOE agrees that such mechanism may be suitable in certain situations (determined on a case-by-case basis), but in those cases where DOE anticipates adoption of an industry consensus standard with either no or limited modifications, the need for a negotiated rulemaking may not arise. For each of these reasons, DOE is proposing that it will engage the services of an independent, neutral convenor, as contemplated in the NRA, to assess these subjects through research and discussions with potentially interested parties. The convenor would then make a recommendation to the Department regarding the potential for use of negotiated rulemaking given the facts, issues and parties at interest.

When a negotiated rulemaking is determined to be appropriate, several commenters recommended that DOE continue to use its ASRAC process and procedures, which have generally provided a workable approach. (ALA, No. 55 at p. 2; HARDI, No. 56 at p. 3; Regal Beloit, No. 64 at p. 1) In addition

to expressing support for conducting negotiated rulemaking through the ASRAC, the Joint Commenters urged DOE to incorporate the ASRAC process and procedures into the Process Rule. According to the Joint Commenters, even though the 1996 Process Rule was drafted prior to the ASRAC being convened, the underlying principles and policies from the original Process Rule are embodied in the ASRAC process including, a breadth of participation from interested parties, effective and efficient proceedings, and support from agency staff, all of which are intended to result in a balanced and informed recommendation to the Department. When updating the Process Rule, the Joint Commenters argued that DOE should acknowledge both the ASRAC negotiated rulemaking process, as well as informal negotiations that result in consensus recommendations. (Joint Commenters, No. 51 at pp. 11–12)

DOE agrees with the commenters who have found the ASRAC process to be a useful and workable approach, even in those instances where consensus could not ultimately be reached. DOE is very appreciative of the work ASRAC has done to date and sees great benefit in continuing the ASRAC process. Given that the ASRAC has been used successfully for a number of years with refinements along the way, DOE has tentatively concluded that it may be appropriate to include reference to the ASRAC process in the Process Rule in the context of negotiated rulemaking. DOE believes that there may be benefits in terms of transparency and consistency associated with formalizing the negotiated rulemaking process as part of the Process Rule.

There were also various comments related to participation in the negotiated rulemaking process, some of which specifically referred to the ASRAC process. For example, the CA IOUs recommended that negotiated rulemaking participants should be fairly balanced, with a greater number of non-industry stakeholders drawn from consumer groups, utility companies, and energy efficiency advocacy organizations. (CA IOUs, No. 65 at p. 4) The Public Power Association commented that for products that have not previously been regulated, there should be a process to allow end-use consumers who purchase, operate, and maintain products to be part of the negotiation process, and to have direct input on the efficiency metric used to evaluate such products. (Public Power Association, No. 36 at p. 3) Acuity Brands stated that when weighing comments and data during a negotiated rulemaking, similar to its comments on DFRs, DOE should consider a commenter's specific qualifications and areas of expertise (or lack thereof), require sources of data or other validation of input, and trigger preemption at the start of the process. (Acuity Brands, No. 46 at p. 3) APPA added that stakeholders that are not part of the negotiation committee should be provided more time to provide input at committee meetings. (APPA, No. 36 at p. 3) NPCC stated that having the DOE contractors who do the analysis in the room during a negotiated rulemaking is an advantage, and overall, the process builds trust and communication. (NPCC, January 9, 2018 Public Meeting Transcript, at p. 138)

In terms of forming an ASRAC working group for an individual rulemaking, DOE is routinely confronted with the task of striking an appropriate balance between inclusion of all relevant points of view and keeping the membership to a manageable size. As meetings of the ASRAC working groups are open to the public, there is always the opportunity for input from interested parties who are not members of the working group itself. DOE sees the most important objective to be a thorough airing of the issues surrounding the subject product/equipment, regardless of the source or status of that source (*i.e.,* member or non-member of the working group). Thus, DOE envisions the negotiated rulemaking process to be a collaborative one, as opposed to an adversarial one. Because the working group is intended not only to raise issues but also to resolve them, it is important to have representation from technical experts who have experience with the products/equipment under consideration. Moreover, given that a consensus recommendation requires unanimity (unless the working group itself votes to require something less than unanimity), DOE views parity of representation between industry groups and non-industry groups as unnecessary. Furthermore, DOE expects that non-members of the working group will caucus with like-minded members to make sure that their views are addressed by the committee. Absent that, non-members are free to raise issues themselves during opportunities for public comment at the ASRAC working group meetings. In response to APPA, DOE welcomes participation in the negotiated rulemaking process by end-users of the subject product or equipment; industry trade associations or manufacturers may be well positioned to identify end-users who may wish to offer input to the negotiated rulemaking.

In the spirit of fostering further public engagement, DOE is proposing to adopt APPA's suggestion to schedule a dedicated portion of each ASRAC working group meeting to receive input and data from non-members. Such period would not truncate the public's existing ability to provide relevant comments at appropriate points in the ongoing negotiations. However, by setting aside a scheduled block of time, DOE would hope to raise the level of detail and substantive input from interested stakeholders who are not voting members of the working group. While DOE strongly supports comments accompanied by data, it does not agree with Acuity Brands that there should be a litmus test for comment based upon academic credentials or professional/technical experience. In DOE's view, a non-expert is capable of providing meaningful insight or raising legitimate concerns, even if further inquiry is then required on the part of the agency. Likewise, DOE does not support nor can it necessarily legally impose preemption at the start of a negotiated rulemaking; instead, DOE will continue to consider preemption as expressed in EPCA. DOE agrees with NPCC that there is value in having DOE contractors present at the negotiated rulemaking sessions to answer questions regarding related technical analyses, a practice which DOE intends to continue. In a final thought on this topic, DOE notes that under its proposed revisions to the Process Rule, every successful negotiated rulemaking would result in a notice of proposed rulemaking, so at that point, all interested parties would have an equal opportunity to comment on DOE's proposal, and DOE would be required to address comments in proceeding to a final rule.

Commenters generally supported use of an experienced convener or facilitator for each negotiated rulemaking, an individual who can help guide the process by ensuring that all procedures are followed and that all participants have an equal opportunity to contribute to the dialogue. (Bradford White, No. 42 at p. 1; Lennox, No. 62 at p. 7; PHCC, No. 63 at pp. 1–2; Spire, No. 57 at pp. 13–14; Acuity Brands, No. 46 at p. 3; CEC, No. 53 at p. 5; NEMA, January 9, 2018 Public Meeting Transcript, at p. 139) NEMA recommended that DOE should retain a professional facilitator, who is both neutral and independent, to meet with interested parties. (NEMA, January 9, 2018 Public Meeting Transcript, at p. 139) Spire stated that a neutral facilitator should be utilized at the option of the negotiating committee,

but such person should not be a stakeholder representative or DOE staff member. (Spire, No. 57 at pp. 13–14) Acuity Brands added that while a facilitator possessing some level of familiarity with energy conservation standards may be helpful, a facilitator with a high level of technical expertise (*e.g.,* staff from national labs) may be an inappropriate choice, due to the potential to interject bias into the negotiations. (Acuity Brands, No. 46 at p. 3) Lennox commented that while it has generally found experienced facilitators to be helpful, the NRA already contains provisions regarding facilitators (*e.g.,* 5 U.S.C. 566(c),(d)). Accordingly, Lennox does not see a compelling need to amend the Process Rule in detail regarding the use of facilitators, although DOE could incorporate provisions along the lines of those statutory requirements. (Lennox, No. 62 at p. 7) The Joint Commenters expressed a similar sentiment, stating that while the use of a facilitator is generally helpful, the Joint Commenters have not identified the failure to assign a facilitator to be a problem that requires addressing in the amended Process Rule. (Joint Commenters, No. 51 at p. 13)

Other commenters (NPCC, ABB) suggested that use of a facilitator may not be essential in the context of a negotiated rulemaking. Instead, these commenters argued that while typically useful, sometimes the facilitator can get in the way of making progress when faced with complex technical issues. (NPCC, January 9, 2018 Public Meeting Transcript, at p. 144; ABB, January 9, 2018 Public Meeting Transcript, at pp. 144–145) EEI stated that the Process Rule should provide for the use of a facilitator or convener as a discretionary matter. (EEI, January 9, 2018 Public Meeting Public Meeting Transcript, at pp. 149–150)

In contemplating potential revisions to its Process Rule, DOE has decided to incorporate new mechanisms and procedures that the agency has been using subsequent to the adoption of the original Process Rule—such as negotiated rulemaking. In evaluating its current approaches, DOE is also seeking to identify further improvements that can be made and included in an updated Process Rule. Along these lines, DOE is proposing to use a neutral, third-party convener to gauge the suitability of negotiated rulemaking in a given case, consistent with the NRA (5 U.S.C. 566(b)).

DOE envisions the convener providing an important evaluation and screening function, which can assist DOE in making its decision of how best to conduct a rulemaking. The convener would have early interaction with stakeholders, who could help shape how the rulemaking process unfolds.

DOE also plans to continue its current practice of having a neutral and independent facilitator present at all ASRAC working group meetings. In DOE's experience, facilitators have played a beneficial role in the overwhelming majority of the agency's past negotiated rulemakings. The Department agrees that the facilitator should not be a stakeholder representative, a member of DOE's staff, a DOE consultant, or a technical expert in the subject matter (due to the potential to interject bias). DOE may elect to have the convener serve as facilitator, particularly given the knowledge acquired at the earlier stages of inquiry. Consistent with 5 U.S.C. 566(c), DOE will nominate a facilitator for the negotiations of the committee, subject to the approval of the committee by consensus. Given the useful role facilitators have played in past negotiated rulemakings and the similarly useful role that conveners could play in the future, DOE sees no reason not to explicitly include provisions for their use in the revised Process Rule.

Whenever DOE conducts rulemaking, including negotiated rulemaking, the Department attempts to ensure broad stakeholder involvements and input, as well as ample opportunity for public comment. DOE provides notice in the **Federal Register** of its intent to form an ASRAC working group (including a request for nominations to serve on the committee), announcement of the selection of working group members (including their affiliation), and announcement of public meeting and the subject matter to be addressed. Such documents routinely note the products/equipment at issue and the responsible DOE contact. Consistent with 5 U.S.C. 565(b), DOE ''shall limit membership on a negotiated rulemaking committee to 25 members, unless the agency head determines that a greater number of members is necessary for the functioning of the committee or to achieve balanced membership.'' DOE notes that in addition to formal membership on the ASRAC working group, the agency's negotiated rulemakings also provide the opportunity for substantial public comment and input, thereby helping to ensure that all relevant interests are represented. Again, it is DOE's expectation that use of a neutral, independent convenor will help ensure that the negotiating committee will encompass the necessary parties in a balanced way that can reach an agreement addressing relevant issues.

If negotiations move forward and a consensus agreement is ultimately reached, Spire argued that DOE should publish a notice in the **Federal Register** (with a minimum 30-day comment period) explaining the consensus agreement, requesting public comments on additional issues to be addressed, and ascertaining whether DOE should move forward with the consensus agreement under its direct final rule authority or by issuing a notice of proposed rulemaking. Finally, Spire commented that all negotiated rules should undergo technological feasibility and economic justification analyses consistent with those applied to other covered products with similar market presence and potential, but for which the negotiated rulemaking path is not undertaken. Spire remarked that regardless of the use of negotiated rulemaking, EPCA requirements for meeting the test of technological feasibility and economic justification remain a requirement for minimum efficiency standards and need to receive full analytical consideration. (Spire, No. 57 at pp. 13–14)

In response, DOE notes that it has tentatively decided to modify its approach such that any negotiated rulemaking would result in a NOPR. Once the NOPR is published, interested parties will be presented with DOE's proposal and supporting analyses, and as part of the NOPR, DOE will explain and document why its negotiated rulemaking proposal meets the statutory requirements for a significant savings of energy, technological feasibility and economic justification, just the same as with any other notice-and-comment rulemaking. In addition, the NOPR will provide a minimum comment period of 60 days, at which time commenters may raise any issue they have with DOE's proposal.

A number of commenters cautioned DOE to make sure to maintain the flexibility associated with its current negotiated rulemaking process, which many see as a valuable feature. Specifically, the CEC stated that key to the success of negotiated rulemakings is the flexibility to fit the process to each individual product being considered, so any revisions to the Process Rule to incorporate negotiated rulemaking should maintain this flexibility and not be prescriptive (*e.g.,* professional facilitation should be an option and composition of working groups should be a guideline). In contrast, the CEC stated that DOE could define ''consensus'' and apply that to all negotiated rulemakings instead of

having the definition of consensus be determined in each negotiated rulemaking. (CEC, No. 53 at p. 5) EEI added that the Process Rule should be flexible as to the time allotted for completion of a negotiated rulemaking. (EEI, January 9, 2018 Public Meeting Transcript, at pp. 141–142) In terms of flexibility to consider and recommend reasonable alternatives in the context of a negotiated rulemaking, Daikin appeared to support that concept (Daikin, January 9, 2018 Public Meeting Transcript, at pp. 153–154), whereas the CEC disfavored a requirement for the Process Rule to specify which alternatives can be considered for fear of restricting or delaying the negotiated rulemaking process (CEC, January 9, 2018 Public Meeting Transcript, at pp. 158–159). The Joint Commenters disfavors updating the Process Rule to specify the need to consider all reasonable alternatives, because the current state of negotiated rulemaking already provides for that and nothing prevents the parties to a negotiation from raising all possible options during the course of discussions. (Joint Commenters, No. 51 at p. 14)

In response, DOE sees value in providing flexibility to interested and knowledgeable stakeholders to negotiate potential standard levels that take into account real world concerns regarding manufacturing processes, implementation challenges, and associated costs. The Department is open to allowing ASRAC working groups to tailor the negotiated rulemaking process to the specific product/equipment at issue. However, DOE emphasizes that any potential standard upon which an ASRAC working group reaches consensus must comply with all of the provisions of EPCA under which the rule was authorized. DOE will not accept recommended standard levels or issue a NOPR based upon negotiated rulemaking that does not comply with all pertinent parts of EPCA.

In response to the CEC's concern about the facilitator somehow diminishing the group's flexibility, DOE does not view this to be a problem, because it is not the role of the facilitator to drive any particular outcome; rather, the facilitator is there to assist the committee members in achieving their own consensus, if possible. Similarly with the composition of ASRAC working groups, DOE is maintaining its discretion to select members best suited to analyzing potential standards for the product/equipment in question. DOE agrees that sufficient time should be allocated to properly conduct the negotiated rulemaking and thoroughly address the underlying issues, while keeping in mind any applicable statutory or judicial deadlines. Regarding the term ''consensus,'' section 562(2) of the NRA defines that term to mean unanimous concurrence among the interests represented on a negotiated rulemaking committee unless such committee agrees to another definition. Thus, defining consensus is committed to the discretion of the ASRAC committee by law, so DOE cannot establish a standardized measure of consensus for all negotiated rulemakings. Regarding the ability of the negotiated rulemaking committee to consider all reasonable alternatives, DOE notes that consideration of available alternatives is a routine part of negotiated rulemakings and requires no special provisions in the Process Rule.

NPCC urged DOE, as part of the negotiated rulemaking process, to continue and enhance pre-rule access to DOE's technical staff, which NPCC finds improves the efficacy and validity of the data collection process, improves communications with manufacturers, builds confidence in the underlying data and analytics, and fosters greater understanding and acceptance of analytical results. (NPCC, No. 35 at pp. 5–6, 13) In a related comment on the technical aspects of a negotiated rulemaking, the CEC stated that to support that process, DOE should commit to: (1) Ensuring that adequate product data and technical consultation are made available to the negotiated rulemaking working group, and (2) ensuring that negotiations are scheduled such that participants can fully engage. (CEC, No. 53 at p. 6)

DOE agrees that for a negotiated rulemaking to be successful, ASRAC working group members require access to relevant data and analyses, as well as support from DOE's technical staff. DOE has committed to providing technical support for consensus development in section 8 of the current Process Rule. The use of a convener should provide interested parties with further opportunity for engagement and to share relevant thoughts and information regarding the topic of the negotiated rulemaking prior to the beginning of such a proceeding. Furthermore, DOE understands that to achieve the optimal result, all committee members should be present and fully contributing to negotiating rulemaking sessions, so the agency strives to schedule meetings as to maximize participation (preferable through in-person attendance but through remote access when necessary). DOE intends to continue these practices as part of its negotiated rulemaking process.

DOE continues to seek comment on any and all issues related to the use of negotiated rulemaking in the development of energy conservation standards, including how DOE can improve its current use of the process as envisioned by the NRA. DOE acknowledges the concern that relevant parties or points of view must be represented during the negotiations to ensure the most appropriate outcome and associated burden and distribution of costs. In particular, DOE seeks comment on its proposal to amend the Process Rule to provide for the use of a convenor or facilitator for each negotiated rulemaking. DOE also continues to request comment on amendments to the Process Rule that would ensure that all reasonable alternatives are explored in that process, including the option of not amending or issuing a standard and alternatives that will affect different stakeholders differently. DOE also requests further comment on the use of the DFR mechanism at the conclusion of a negotiated rulemaking.

L. Other Revisions and Issues

1. DOE's Analytical Methodologies, Generally

DOE received a variety of comments regarding its analytical methodologies. Some commenters offered detailed suggestions on how DOE might improve on specific aspects of its current set of methodologies. These issues generally fell into certain discrete areas—the peer review process, proprietary data, and DOE's analytical methodologies. The suggestions were both detailed and specific. However, the general consensus from the commenters suggested that there was room for DOE to improve its analytical methods.

In considering the numerous comments it received regarding its analyses, DOE believes it needs additional time to make a determination on proceeding and whether any changes to the Process Rule are necessary to address the methodological issues raised. In order to both assess what changes to the analytical methodologies are needed, and, potentially, what changes to the Process Rule might be appropriate, DOE is committing to conducting an expert independent peer review consistent with OMB's Information Quality Bulletin for Peer Review [12] of its assumptions, models, and methodologies to ensure that its approach is designed to provide

[12] 70 FR 2664 (Jan. 14, 2005).

projections that are sufficiently rigorous for their intended use. Additionally, in an effort to ensure that the analytical models and approaches that DOE regularly uses are as up-to-date and accurate as possible, DOE will undertake a recurring peer review of DOE's analytical methods at least once every 10 years.

While applying this approach may increase the overall commitment of time and resources both by DOE and interested parties wishing to participate as part of this peer review process, in DOE's view, making this investment should yield a number of potentially beneficial dividends with respect to each standards (or determination) rulemaking that DOE conducts when using this process—primarily in the form of more accurate economic forecasting and projections of energy savings. Because these benefits would apply across a wide variety of DOE's rulemakings and impact both consumer products and commercial equipment, in DOE's view, conducting a peer review in the immediate future and on a specified periodic basis thereafter would help improve the overall rulemaking process and ensure the credibility and validity of the results of that process. While DOE recognizes that the changes that the peer review process may bring could increase the amount of time that DOE must commit to any individual rulemaking activity, there may also be an opportunity for time and resource savings in those instances where it is readily apparent that a new standards rulemaking is unlikely to yield significant energy savings under EPCA. For those rulemakings which do move forward, there could be further savings of time and other resources to the extent that there is a diminished level of controversy surrounding DOE's rulemaking analyses.

DOE last peer reviewed its analytical approaches in 2005. At that time, DOE supplied seven reviewers with three rulemaking analyses concerning commercial unitary air conditioners and heat pumps, distribution transformers, and residential furnaces and boilers. These analyses were publicly available in the technical support documents at the time and had been posted in July 2004 as part of the ANOPR process for the respective product groups. Selected peer reviewers were energy experts whose backgrounds were primarily in engineering.[13]

DOE has identified 12 potential focus areas for the review to which it is currently committing, which are outlined in Table L1.1 below. DOE plans to task participants with reviewing the appropriate time horizon(s) for its analysis, estimation of baseline product efficiency, forecasting of future product prices, consumer choice models/modeling, emissions analysis, approaches to estimating indirect employment effects, fuel switching analysis, marginal manufacturer markup, effects on product performance, subgroup analysis, and how to undertake a welfare analysis as part of DOE's regulatory analysis. The charge to the peer reviewers will emphasize that, overall, DOE is interested in the sensitivity of the results to the assumptions made, thus the uncertainty inherent in the final model that it adopts. Procedurally, DOE is also interested in comments regarding the Department's handling and use of proprietary data.

Two peer review approaches that DOE is considering for this round of peer review are outlined in Table L1.1 below. The first approach, labeled ''Analytical Overview'', would differ from the peer review process in 2005 by drawing from portions of existing regulatory analyses to illustrate the analytical focus areas that DOE has identified. The second approach would more closely mirror the 2005 peer review by tasking reviewers with reviewing the entirety of 2–3 existing regulatory analyses. Both approaches would attempt to include analyses that include aspects of fuel switching, commercial products, and white goods.

TABLE L1.1—PROPOSED PEER REVIEW STRUCTURE AND FOCUS AREAS

Peer review structure	Peer review materials	Analytical focus areas
Analytical overview	DOE would illustrate the analytical focus areas using examples from specific product rulemakings. Product examples would include illustrations that touch on fuel switching, commercial products, and white goods.	• Analytical time horizon. • Baseline efficiency estimates. • Consumer choice model. • Emissions analysis. • Fuel switching analysis. • Indirect employment effects. • Marginal manufacturer markup. • Product price forecasts. • Product performance. • Subgroup analysis. • Use of proprietary data. • Welfare analysis and deadweight loss.
Rule Case Studies	DOE would assign 2–3 docketed technical support documents for existing standards to illustrate focus areas. Selected TSDs would be recent (2014–2016) and include fuel switching, commercial products, and white goods.	

This review is intended to evaluate analytical methods employed by DOE rather than to evaluate the efficacy of DOE's programs themselves. DOE further intends to make the peer review available to the public, including an opportunity for public commenters to raise concerns for the peer reviewers' consideration. Consistent with the requirements of OMB's Information Quality Bulletin for Peer Review, DOE will make the results of the peer review and its responses available to the public. In addition, DOE may seek comment on its findings.

DOE seeks comment on these proposed approaches, including comment on the areas of focus that DOE has identified. DOE also seeks suggestions regarding what specific

[13] *https://www.energy.gov/sites/prod/files/2013/12/f5/peer_review_report021507.pdf.*

changes to its analytical methodologies would be needed to improve on its current approach. To the extent that certain specific changes are needed for particular product or equipment sectors, DOE seeks detailed information on those aspects as well. Any potential changes to the Process Rule that might be appropriate based on the results of the peer review and any methodological update would be addressed in a subsequent proceeding to amend the Process Rule.

One methodological issue upon which DOE seeks comment in this document is the ''walk-down'' approach to assessing different potential standards. Using this approach, DOE starts from the most stringent choice to determine both economic justification and technological feasibility by ''walking-down'' through the available choices by stringency until arriving at the first choice that meets all of the statutory criteria. Economic theory suggests that the most logical way to determine if a particular option is ''economically justified'' is to compare it to the full range of available choices, rather than just one baseline. Applying economic theory, DOE is proposing at 10 CFR part 430 Appendix A, sec. (7)(e)(2)(G) to require the Secretary to determine whether a candidate/trial standard level would be economically justified when compared to the full range of other feasible trial standard levels. In making this determination, the Secretary is to consider whether an economically rational consumer would choose a product meeting the candidate/trial standard level over products meeting the other feasible trial standard levels after considering all relevant factors, including but not limited to, energy savings, efficacy, product features, and life-cycle costs. If an economically rational consumer would not choose the candidate trial standard level after considering these factors, it would be rejected as economically unjustified. This approach recognizes that the ''economic justification'' of any particular option depends on a broader comparison of economic attributes relative to other available options, rather than relative to just one baseline, particularly one that is likely to be of little relevance to a consumer when choosing which product(s) are economically justified for her purchase. Rather she is likely to be focused on the set of actually available products at the time of purchase rather than some hypothetical baseline representing the set of products that would have been available in the absence of the standard (including perhaps the model she is currently replacing). DOE seeks public comment on its proposal to refine the ''walk-down'' approach to require determinations of economic justification to consider comparisons of economically relevant factors across trial standard levels, consistent with both economic theory and the actual purchasing behavior of rational consumers.

2. Cumulative Regulatory Burden

DOE received a number of written comments related to the issue of addressing cumulative regulatory burden in conjunction with the agency's energy conservation standards rulemakings. Commenters generally suggested that the agency should account for this burden more comprehensively in light of the substantial burdens already faced by manufacturers from multiple regulatory requirements. For example, Sub-Zero stated that in light of the large number of regulatory requirements involving energy consumption and related environmental restrictions applying to a variety of different appliance types, it must still continue to introduce new products and features to stay in business. The cumulative burden presented by these requirements is, in its view, almost insurmountable. Sub-Zero asserted that the timing of different regulations from various government agencies for different products is a significant factor that can increase the burden on manufacturers. While Sub-Zero acknowledged that DOE claims to take these factors into account when determining the economic and competitive impacts from a given rulemaking, the company asserted that the agency underestimates the overall impact—particularly for smaller manufacturers such as Sub-Zero. (Sub-Zero, No. 43 at p. 2)

Other industry commenters held similar views. The Heating, Air-conditioning & Refrigeration Distributors International (''HARDI'') stated that the Process Rule should account for cumulative regulatory burden. (HARDI, No. 56 at pp. 3–4) Lennox argued that DOE should develop transparent and more robust guidance on the process for including cumulative regulatory costs on manufacturers into its economic analysis, with supporting analysis made available to stakeholders, to ensure that the mandated cost-benefit analysis reasonably reflects real-world costs. (Lennox, No. 62 at p. 12) Within the context of its particular industry, MHI urged DOE to work with the Department of Housing and Urban Development (''HUD'') to consider the cumulative regulatory impact of such regulations on producers of manufactured housing as a part of its cost-benefit analyses. (MHI, No. 67 at p. 2) Similarly, Nor-Lake stated that DOE should coordinate its efforts with other government agencies to avoid conflicting or overlapping mandates. (Nor-Lake, No. 68 at p. 3) Schneider Electric asserted that DOE should engage industry early enough in the process to ensure that standards under consideration are also reflective of its commitment to ENERGY STAR—a voluntary program geared towards encouraging the purchase of energy-efficient products and equipment that is overseen by the Environmental Protection Agency but that relies on technical expertise and input from DOE. (Schneider Electric, No. 69 at p. 2)

The Joint Commenters similarly argued that a modernized Process Rule should meaningfully consider cumulative regulatory burden in DOE's rulemaking analyses. They asserted that the Process Rule should include cumulative regulatory burden analysis as a factor in DOE's decision on a proposed and final energy conservation standard, but it should not be a stand-alone analysis with no real impact. Instead, in their view, DOE should consider that burden as part of its analysis that manufacturers must comply with both a variety of domestic and international regulations. They added that a true cumulative regulatory burden analysis should not only consider the number of rulemakings to which appliance manufacturers are subject, but also the timing and technical and economic relationship of those rulemakings. The Joint Commenters urged DOE to consider manufacturers' relative and cumulative research and development, testing, and certification burdens, which can be significantly higher when regulations from different agencies take effect in close temporal proximity to each other. This burden, they argued, can be especially difficult for industries that have access to only a small number of accredited labs, creating a bottleneck problem as industry is forced to comply with several largely unrelated requirements at the same time. They stated further that both time and resources are needed to evaluate and respond to DOE's proposed test procedures and energy conservation standards, and when these rulemakings occur simultaneously, the cumulative burden on industry increases dramatically. They also argued that the same burden applies when compliance dates are clumped together for all of these products. The Joint Commenters

suggested that DOE should consider voluntary, non-regulatory options in its analysis but cautioned that the Department should not assume that labeling is a less burdensome approach; even without energy conservation requirements, labeling and other forms of providing information can require the same amount of testing and can have similar compliance risks. (Joint Commenters, No. 51 at pp. 2, 23–25) Lutron and Whirlpool signed on to the Joint Commenters' submission. (Lutron, No. 50 at p. 2 and Whirlpool, No. 76 at p. 1)

In contrast, the CEC supported DOE's consideration of cumulative regulatory burden in DOE's manufacturer impact analysis. It stated that this burden should be considered when determining the mandatory compliance date of an energy conservation standard and stressed that considering the cumulative regulatory burden faced by regulated entities should not be a factor in the life-cycle cost analysis. (CEC, No. 53 at p. 7) Within this context, the CEC also supported vetting manufacturer interview questions with the appropriate trade organization to improve the consistency and effectiveness of the interviews. (CEC, No. 53 at p. 7)

DOE acknowledges that its past treatment of the cumulative regulatory burdens faced by regulated entities may have lacked the comprehensiveness sought by some of the industry commenters. However, DOE has attempted to address these burdens in a consistent manner to ensure that it accounts for them in each of DOE's energy conservation standards rulemakings. To improve its assessments of the potential burdens (*i.e.,* costs) faced by industry in implementing potential standards, DOE commits to improving its analysis. As part of this effort, DOE will attempt to account for these potential costs through its modeling approaches. And as always, DOE remains open to constructive feedback on particular steps it should take (consistent with its legal obligations) that would help improve its evaluation of the cumulative regulatory burdens faced by regulated entities within the energy conservation standards context.

3. Should DOE conduct retrospective reviews of the energy savings and costs of energy conservation standards?

DOE solicited feedback during the public meeting regarding whether (and how) it should conduct a retrospective review of the energy savings and costs for its current standards and associated costs and benefits as part of any pre-rulemaking process that it ultimately adopts. A number of commenters weighed in with suggestions and varying viewpoints on this issue.

Some commenters supported the use of a retrospective review. AHRI suggested that a retrospective review could be part of the initial assessment when DOE is deciding whether to proceed to another round of rulemaking and that it should be required every time. (AHRI, January 9, 2018 Public Meeting Transcript at pp. 175–176) NPCC supported the use of retrospective review, but it did not believe it would be useful or informative to carry out such an analysis on every standard or any current standard prior to commencing work on the development of revised standards. Looking back, the commenter asserted that prior retrospective reviews found that DOE overestimated the costs of meeting standards. Going forward, NPCC added that if DOE undertakes a retrospective review, it should determine the scope and submit that scope for public comment. (NPCC, No. 35 at p. 15)

GW expressed support for the use of retrospective review, and it recommended that DOE should follow GW's suggested framework, which was contained in a supplemental attachment to its submission. GW argued that revisiting regulatory inputs is key to effective retrospective review. It asserted that these types of reviews could help DOE in verifying the accuracy of its forecasted assumptions on consumer behavior and energy prices, which both illustrate the costs and benefits of previous appliance standards and help improve future forecast analyses by providing more accurate inputs. (GW, No. 48 at pp. 8, 13–14)

Nor-Lake suggested that DOE should solicit feedback from stakeholders, either in the form of an RFI or otherwise, as to the retrospective impacts of the standard that is scheduled to be revised. In its view, this information would guide DOE in establishing its priorities and in determining whether it should promulgate an amended standard. (Nor-Lake, No. 68 at p. 2)

NAFEM stated that at the pre-rulemaking stage, DOE's first step should be to evaluate whether under the current standard, the anticipated energy efficiency gains have been achieved and assess what the actual associated costs to consumers and manufacturers were. NAFEM argued that this step would be one of the most important ways for DOE to reduce regulatory burdens. (NAFEM, No. 47 at pp. 2–3)

NPGA commented on the importance of DOE conducting a retrospective review and evaluation of current energy conservation standards prior to initiating a rulemaking for amended standards. It argued that the agency should refrain from amending its energy conservation standards on an arbitrary schedule (*e.g.,* every 5 years, every 8 years), but instead, DOE should assess the performance of the current standard, as well as the market penetration of more efficient standards, to determine whether a new rulemaking is in fact necessary. (NPGA, No. 59 at p. 3)

While the Joint Commenters conceded that the actual impact and energy savings attributable to a current standard are highly relevant for future rulemakings, they did not support the creation of a separate process for performing retrospective review of current standards. They stated that such a review would essentially be another rulemaking and would significantly draw out the regulatory process by requiring the collection of data which would impose an additional burden on stakeholders. In their view, the imposition of a regular, mandatory retrospective review process would add burden, cost, and delay to the rulemaking process and would serve no real benefit. They added that commenters can always raise views on the impact of current standards, and DOE can respond to these issues without the need to dedicate its limited resources to obtaining the necessary data to support a retrospective review on its own. Instead, the Joint Commenters recommended the adoption of an inquiry at an early stage of a DOE regulatory action examining whether anything has changed since a previous DOE appliance efficiency standards final rule was adopted. (Joint Commenters, No. 51 at pp. 10–11) Lutron and Whirlpool supported the Joint Commenters' view by signing on to the Joint Comment. (*See* Lutron, No. 50 at p. 2 and Whirlpool, No. 76 at p. 1)

Other commenters flatly opposed the use of a separate retrospective analysis. The American Lighting Association (''ALA'') opposed this approach and asserted that DOE should instead engage stakeholders by asking what, if any, new developments have occurred since the previous rulemaking proceeding. (ALA, No. 55 at p. 2) HARDI also opposed the creation of a separate retrospective review process, suggesting instead that such a process could occur concurrently with the standards rulemaking process to help reduce both the regulatory timetable and associated product development costs. (HARDI, No. 56 at pp. 2–3) Lennox similarly asserted that

requiring a retrospective review for all rulemakings would unnecessarily burden DOE and manufacturers alike. It argued that EPCA already requires an extensive economic justification test (*e.g.,* 42 U.S.C. 6295(o)), so a retrospective review of market impacts some six years or more before a rulemaking is not necessarily relevant to determining whether a standard under consideration is economically justified. As part of this economic justification analysis for a particular product, rather than leaping to a full and burdensome retrospective review, Lennox argued that DOE ''should make common sense inquiries such as what, if anything, has changed since a previous DOE appliance efficiency standards final rule for that product was adopted.'' (Lennox, No. 62 at p. 8)

NEEP stated that it sees no benefit in performing a retrospective review of current standards and associated costs and benefits as part of a pre-rule process. It argued that the market analysis being conducted to inform a new standard will already include the impacts of earlier standards, as they have influenced the market. In its view, as DOE maps out any given market to inform a rule, the costs and benefits from current standards will become clear as will any other market influences (*e.g.,* utility programs, technological innovations, and economies of scale being reached). NEEP added that DOE's understanding of the real-world impact of appliance standards is important in understanding the success of the program, but it is not needed as an explicit goal of data collection before a rule begins. (NEEP, No. 77 at p. 3)

The CA IOUs stated that retrospective reviews should not be compulsory, because there is often not enough publicly available information to allow for a comprehensive review in time for DOE to meet its statutory obligations for completing updated rulemakings. (CA IOUs, No. 65 at p. 5) However, the CA IOUs did endorse the idea of DOE conducting some retrospective reviews to ensure that the predictions of its analytical models are accurate, and based upon these reviews, DOE should adjust the models accordingly where inaccuracies are found. (CA IOUs, No. 65 at pp. 7–8) Similarly, the CEC did not object to DOE performing a retrospective analysis of current standards, but it argued that it should not be a mandatory requirement for all rulemakings. CEC recommended that DOE should instead conduct a retrospective analysis outside of any specific rulemaking. It also noted that DOE must meet its statutory obligations to review standards and test procedures, regardless of any retrospective analysis. (CEC, No. 53 at p. 4)

A few commenters were undecided or expressed misgivings about the appropriateness of conducting a retrospective review. Given the statutory timelines, one commenter expressed the opinion that there may not be time for a retrospective review. (EEI, January 9, 2018 Public Meeting Transcript at pp. 174–175) Other commenters (Lennox, January 9, 2018 Public Meeting Transcript, at p. 176; Southern Company, January 9, 2018 Public Meeting Transcript at pp. 176–177) expressed reservations about investing the extensive time and effort in a retrospective review without first having a clear understanding of what to examine. Bradford White urged DOE to conduct an analysis of its current standards as part of the ANOPR process, but it did not suggest that a retrospective analysis should occur separately from this process. (Bradford White, No. 42 at p. 2)

In response, DOE acknowledges that a broad and comprehensive retrospective review of DOE's current and past energy conservation standards could provide significant data for DOE to consider as part of future standards rulemakings. While DOE recognizes the potential benefits of conducting this type of retrospective review on a periodic basis, it also recognizes that it faces limits on its own resources to conduct the broad and comprehensive analyses that would be needed to collect and analyze this information. As indicated by the variety of positions detailed in the comments submitted in response to the RFI, interested parties also recognize the considerable efforts and resources that would need to be committed to conducting these reviews on a regular basis. Accordingly, DOE is continuing to evaluate the prospect of conducting these types of reviews, including on a longer-term (*e.g.,* 10-year) basis but has not, as of yet, reached a final decision as to how to proceed. DOE does note that the early assessment processes proposed in this proceeding to amend the Process Rule do incorporate an element of retrospective review. That is, by beginning a potential proceeding to amend existing energy conservation standards or test procedures for a product by asking if anything has changed since issuance of the last standard or test procedure, DOE will be seeking input in what effectively amounts to a retrospective review of the impact and effectiveness of its most recent regulatory action for the product at issue.

4. Certification, Compliance, and Enforcement (CCE)-Related Issues

DOE received a variety of comments regarding its certification, compliance, and enforcement (CCE) process. In summary, these comments offered suggestions on how DOE might improve the effectiveness of the agency's CCE-related efforts and steps that could be taken to streamline the rulemaking process involving CCE matters.

DOE has given serious consideration to the various CCE-related issues raised by the commenters. However, the comments raise issues with DOE regulations other than the Process Rule. In light of the nature of these issues and others that DOE is addressing in this proposal, DOE is opting to evaluate this topic further.

In 2010–2011 when DOE changed its certification, compliance, and enforcement requirements for all products in a single rulemaking, DOE learned that process was unwieldy, particularly given the level of interest from various parties and volume of comments received. 76 FR 38287 (June 30, 2011).[14] In light of that, DOE's plan is to address changes to the certification, compliance, and enforcement regulations, and related provisions in 10 CFR parts 430 and 431, in separate rulemakings with separate public meetings to help manage comments and to allow DOE to consider industry-specific issues in a more focused format. DOE may ultimately adopt different provisions for different products based on comments and would make appropriate changes to regulatory text to be more general or product-specific in a final rule.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

This proposed regulatory action, if adopted, would be a significant regulatory action under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this proposed regulatory action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under Executive Order 13771 and 13777

On January 30, 2017, the President issued Executive Order (E.O.) 13771,

[14] Docket Number EERE–2010–BT–CE–0014, *https://www.regulations.gov/docket?D=EERE-2010-BT-CE-0014.*

''Reducing Regulation and Controlling Regulatory Costs.'' 82 FR 9339 (Jan. 30, 2017). That Order states that the policy of the Executive Branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. More specifically, the Order provides that it is essential to manage the costs associated with the governmental imposition of requirements necessitating private expenditures of funds required to comply with Federal regulations. In addition, on February 24, 2017, the President issued Executive Order 13777, ''Enforcing the Regulatory Reform Agenda.'' 82 FR 12285 (March 1, 2017). The Order requires the head of each agency to designate an agency official as its Regulatory Reform Officer (RRO). Each RRO is tasked with overseeing the implementation of regulatory reform initiatives and policies to ensure that individual agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law.

To implement these Executive Orders, the Department, among other actions, issued a request for information (RFI) seeking public comment on how best to achieve meaningful burden reduction while continuing to achieve the Department's regulatory objectives. 82 FR 24582 (May, 30, 2017). In response to this RFI, the Department received numerous and extensive comments pertaining to DOE's Process Rule.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website at: *http://energy.gov/gc/office-general-counsel.*

Because this proposed rule would not directly regulate small entities but instead only imposes procedural requirements on DOE itself, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis is required. *Mid-Tex Elec. Co-Op, Inc.* v. *F.E.R.C.,* 773 F.2d 327 (1985).

D. Review Under the Paperwork Reduction Act of 1995

Manufacturers of covered products/equipment must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for such products/equipment, including any amendments adopted for those test procedures, on the date that compliance is required. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment. 76 FR 12422 (March 7, 2011); 80 FR 5099 (Jan. 30, 2015). The collection-of-information requirement for certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Specifically, this proposed rule, addressing clarifications to the Process Rule itself, does not contain any collection of information requirement that would trigger the PRA.

E. Review Under the National Environmental Policy Act of 1969

In this document, DOE proposes to revise its Process Rule, which outlines the procedures DOE will follow in conducting rulemakings for new or amended energy conservation standards and test procedures for covered consumer products and commercial/industrial equipment. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule is strictly procedural and is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. It will primarily affect the procedure by which DOE develops proposed rules to revise energy conservation standards and test procedures. EPCA governs and prescribes Federal preemption of State regulations that are the subject of DOE's regulations adopted pursuant to the statute. In such cases, States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C.

6297(d)) Therefore, Executive Order 13132 requires no further action.

G. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and tentatively determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (This policy is also available at *http://www.energy.gov/gc/office-general-counsel* under ''Guidance & Opinions'' (Rulemaking)) DOE examined the proposed rule according to UMRA and its statement of policy and has tentatively determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

K. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has tentatively concluded that it is consistent with the applicable policies in those guidelines.

L. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that the regulatory action in this document, which proposes clarifications to the Process Rule that guides the Department in proposing energy conservation standards is not a significant energy action because it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects for this proposed rule.

M. Review Consistent With OMB's Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the

bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report,'' dated February 2007, has been disseminated and is available at the following website: *http://www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.* Because available data, models, and technological understanding have changed since 2007, DOE is committing in this proceeding to engage in a new peer review of its analytical methodologies.

V. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov.*

Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the Forrestal Building. Any person wishing to bring these devices into the building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding identification (ID) requirements for individuals wishing to enter Federal buildings from specific States and U.S. territories. As a result, driver's licenses from several States and one territory will not be accepted for building entry, and instead, one of the alternate forms of ID listed below will be required. DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the States of Minnesota, New York, or Washington (Enhanced licenses issued by these States are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government-issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website at: *https://www.energy.gov/eere/buildings/regulatory-processes,* under the heading Process Rule. Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this document. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA. (42 U.S.C. 6306) A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the public meeting, interested parties may submit further comments on the proceedings, as well as on any aspect of the rulemaking, until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice and will be accessible on the DOE website. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses, Test procedures.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Incorporation by reference, Reporting and recordkeeping requirements, Test procedures.

Signed in Washington, DC, on January 28, 2019.

Daniel R. Simmons,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is proposing to amend parts 430 and 431 of title 10 of the Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Appendix A to subpart C of part 430 is revised to read as follows:

Appendix A to Subpart C of Part 430—Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment

1. Objectives
2. Scope
3. Mandatory Application of the Process Rule
4. Setting Priorities for Rulemaking Activity
5. Coverage Determination Rulemakings
6. Process for Developing Energy Conservation Standards
7. Policies on Selection of Standards
8. Test Procedures
9. ASHRAE Equipment
10. Direct Final Rules
11. Negotiated Rulemaking Process
12. Principles for Distinguishing Between Effective and Compliance Dates
13. Principles for the Conduct of the Engineering Analysis
14. Principles for the Analysis of Impacts on Manufacturers
15. Principles for the Analysis of Impacts on Consumers
16. Consideration of Non-Regulatory Approaches
17. Cross-cutting Analytical Assumptions

1. Objectives

This appendix establishes procedures, interpretations, and policies that DOE will follow in the consideration and promulgation of new or revised appliance energy conservation standards and test procedures under the Energy Policy and Conservation Act (EPCA). This appendix applies to both covered consumer products and covered commercial/industrial equipment. The Department's objectives in establishing these procedures include:

(a) *Provide for early input from stakeholders.* The Department seeks to provide opportunities for public input early in the rulemaking process so that the initiation and direction of rulemakings is informed by comment from interested parties. Under the procedures established by this appendix, DOE will seek early input from interested parties in determining whether establishing new or amending existing energy conservation standards will result in significant savings of energy and is economically justified and technologically feasible. In the context of test procedure rulemakings, DOE will seek early input from interested parties in determining whether—

(1) Establishing a new or amending an existing test procedure will better measure the energy efficiency, energy use, water use (as specified in EPCA), or estimated annual operating cost of a covered product/equipment during a representative average use cycle or period of use (for consumer products); and

(2) Will not be unduly burdensome to conduct.

(b) *Increase predictability of the rulemaking timetable.* The Department seeks to make informed, strategic decisions about how to deploy its resources on the range of possible standards and test procedure development activities, and to announce these prioritization decisions so that all interested parties have a common expectation about the timing of different rulemaking activities. Further, DOE will offer the opportunity to provide input on the prioritization of rulemakings through a request for comment as DOE begins preparation of its Regulatory Agenda each spring.

(c) *Eliminate problematic design options early in the process.* The Department seeks to eliminate from consideration, early in the process, any design options that present unacceptable problems with respect to manufacturability, consumer utility, or safety, so that the detailed analysis can focus only on viable design options. Under the procedures in this appendix, DOE will eliminate from consideration design options if it concludes that manufacture, installation or service of the design will be impractical, or that the design option will have a material adverse impact on the utility of the product, or if the design option will have a material adverse impact on safety or health. DOE will also eliminate from consideration proprietary design options that represent a unique pathway to achieving a given efficiency level. This screening will be done at the outset of a rulemaking.

(d) *Fully consider non-regulatory approaches.* The Department seeks to understand the effects of market forces and voluntary programs on encouraging the purchase of energy efficient products so that the incremental impacts of a new or revised standard can be accurately assessed and the Department can make informed decisions about where standards and voluntary programs can be used most effectively. DOE will continue to support voluntary efforts by manufacturers, retailers, utilities, and others to increase product/equipment efficiency.

(e) *Conduct thorough analysis of impacts.* In addition to understanding the aggregate social and private costs and benefits of standards, the Department seeks to understand the distribution of those costs and benefits among consumers, manufacturers, and others, as well as the uncertainty associated with these analyses of costs and benefits, so that any adverse impacts on subgroups and uncertainty concerning any adverse impacts can be fully considered in selecting a standard. Pursuant to this appendix, the analyses will consider the variability of impacts on significant groups of manufacturers and consumers in addition to aggregate social and private costs and benefits, report the range of uncertainty associated with these impacts, and take into account cumulative impacts of regulation on manufacturers. The Department will also conduct appropriate analyses to assess the impact that new or amended test procedures will have on manufacturers and consumers.

(f) *Use transparent and robust analytical methods.* The Department seeks to use qualitative and quantitative analytical methods that are fully documented for the public and that produce results that can be explained and reproduced, so that the analytical underpinnings for policy decisions on standards are as sound and well-accepted as possible.

(g) *Support efforts to build consensus on standards.* The Department seeks to encourage development of consensus proposals for new or revised standards because standards with such broad-based support are likely to balance effectively the various interests affected by such standards.

2. Scope

The procedures, interpretations, and policies described in this appendix apply to rulemakings concerning new or revised Federal energy conservation standards and test procedures, and related rule documents (*i.e.,* coverage determinations) for consumer products in Part A and commercial and industrial equipment under Part A–1 of the Energy Policy and Conservation Act (EPCA), as amended, except covered ASHRAE equipment in Part A–1 are governed by section 9 in this appendix.

3. Mandatory Application of the Process Rule

The rulemaking procedures established in this appendix are binding on DOE.

4. Setting Priorities for Rulemaking Activity

(a) In establishing its priorities for undertaking energy conservation standards and test procedure rulemakings, DOE will consider the following factors, consistent with applicable legal obligations:

(1) Potential energy savings;

(2) Potential social and private, including environmental or energy security, benefits;

(3) Applicable deadlines for rulemakings;

(4) Incremental DOE resources required to complete the rulemaking process;

(5) Other relevant regulatory actions affecting the products/equipment;

(6) Stakeholder recommendations;

(7) Evidence of energy efficiency gains in the market absent new or revised standards;

(8) Status of required changes to test procedures; and

(9) Other relevant factors.

(b) DOE will offer the opportunity to provide input on prioritization of rulemakings through a request for comment as DOE begins preparation of its Regulatory Agenda each spring.

5. Coverage Determination Rulemakings

(a) DOE has discretion to conduct proceedings to determine whether additional consumer products and commercial/industrial equipment should be covered under EPCA if certain statutory criteria are met. (42 U.S.C. 6292 and 6295(l) for consumer products; 42 U.S.C. 6312 for commercial/industrial equipment)

(b) If DOE determines to initiate the coverage determination process, it will first publish a notice of proposed determination, providing an opportunity for public comment of not less than 60 days, in which DOE will explain how such products/equipment that it seeks to designate as ''covered'' meet the statutory criteria for coverage and why such coverage is ''necessary or appropriate'' to carry out the purposes of EPCA. In the case of commercial equipment, DOE will follow the same process, except that the Department must demonstrate that coverage of the equipment type is ''necessary'' to carry out the purposes of EPCA.

(c) DOE will publish its final decision on coverage as a separate notice, an action that

will be completed prior to the initiation of any test procedure or energy conservation standards rulemaking (*i.e.,* DOE will not issue any RFIs, NODAs, or any other mechanism to gather information for the purpose of initiating a rulemaking to establish a test procedure or energy conservation standard for the proposed covered product/equipment prior to finalization of the coverage determination.). If DOE determines that coverage is warranted, DOE will proceed with its typical rulemaking process for both test procedures and standards. Specifically, DOE will finalize coverage for a product/equipment at least 180 days prior to publication of a proposed rule to establish a test procedure. And, DOE will complete the test procedure rulemaking at least 180 days prior to publication of a proposed energy conservation standard.

(d) If, during the substantive rulemaking proceedings to establish test procedures or energy conservation standards after completing a coverage determination, DOE finds it necessary and appropriate to expand or reduce the scope of coverage, a new coverage determination process will be initiated and finalized prior to moving forward with the test procedure or standards rulemaking.

6. Process for Developing Energy Conservation Standards

This section describes the process to be used in developing energy conservation standards for covered products and equipment other than those covered equipment subject to ASHRAE/IES Standard 90.1.

(a) Early Assessment. (1) As the first step in any proceeding to consider establishing or amending any energy conservation standard, DOE will publish a notice in the **Federal Register** announcing that DOE is considering initiating a rulemaking proceeding. As part of that notice, DOE will request submission of related comments, including data and information on whether DOE should proceed with the rulemaking, including whether any new or amended rule would be economically justified, technologically feasible, or would result in a significant savings of energy. If DOE receives sufficient information suggesting that it could justify a determination that no new or amended standard would meet the applicable statutory criteria, DOE would engage in notice and comment rulemaking to make that determination. If DOE receives sufficient information suggesting it could justify a new or amended standard or the information received is inconclusive with regard to the statutory criteria, DOE would undertake the preliminary stages of a rulemaking to issue or amend an energy conservation standard, as discussed further in paragraph (a)(2) of this section.

(2) If the Department determines it is appropriate to proceed with a rulemaking, the preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a Framework Document and Preliminary Analysis, or an Advance Notice of Proposed Rulemaking (ANOPR). Requests for Information (RFI) and Notices of Data Availability (NODA) could be issued, as appropriate, in addition to these preliminary-stage documents.

(3) In those instances where the early assessment either suggested that a new or amended energy conservation standard might be justified or in which the information was inconclusive on this point, and DOE undertakes the preliminary stages of a rulemaking to establish or amend an energy conservation standard, DOE may still ultimately determine that such a standard is not economically justified, technologically feasible or would not result in a significant savings of energy. Therefore, DOE will examine the potential costs and benefits and energy savings potential of a new or amended energy conservation standard at the preliminary stage of the rulemaking.

(b) Significant Savings of Energy. (1) In evaluating the prospects of proposing a new or amended standard—or in determining that no new or amended standard is needed—DOE will first look to the projected energy savings that are likely to result. DOE will determine as a preliminary matter whether the rulemaking has the potential to result in ''significant energy savings.'' If the rulemaking passes the significant energy savings threshold, DOE will then compare these projected savings against the technological feasibility of and likely costs necessary to meet the new or amended standards needed to achieve these energy savings.

(2) Under its significant energy savings analysis, DOE will examine both the total amount of projected energy savings and the relative percentage increase in efficiency or decrease in energy usage that could be obtained from establishing or amending energy conservation standards for a given covered product or equipment. Under the first step of this approach, the projected energy savings from a potential maximum technologically feasible (''max-tech'') standard will be evaluated against a threshold of 0.5 quads of energy saved over a 30-year period.

(3) If the projected max-tech energy savings does not meet or exceed this threshold, those max-tech savings would then be compared to the total energy usage of the covered product or equipment to calculate a potential percentage improvement in energy efficiency or reduction in energy usage.

(4) If this comparison does not yield an energy savings improvement of at least 10 percent, the analysis will end, and DOE will propose to determine that no significant energy savings would likely result from setting new or amended standards.

(5) If either one of the thresholds described in paragraphs (b)(3) or (b)(4) of this section is reached, DOE will conduct analyses to ascertain whether a standard can be prescribed that produces the maximum improvement in energy efficiency that is both technologically feasible and economically justified and still constitutes significant energy savings (using the same criteria of either 0.5 quad of aggregate energy savings or a 10-percent improvement in energy efficiency or decrease in energy use) at the level determined to be economically justified.

(c) Design options. (1) *General.* Once the Department has initiated a rulemaking for a specific product/equipment but before publishing a proposed rule to establish or amend standards, DOE will identify the product/equipment categories and design options to be analyzed in detail, as well as those design options to be eliminated from further consideration. During the pre-proposal stages of the rulemaking, interested parties may be consulted to provide information on key issues through a variety of rulemaking documents. The preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a framework document and preliminary analysis, or an advance notice of proposed rulemaking (ANOPR). Requests for Information (RFI) and Notice of Data Availability (NODA) could also be issued, as appropriate.

(2) *Identification and screening of design options.* During the pre-NOPR phase of the rulemaking process, the Department will develop a list of design options for consideration. Initially, the candidate design options will encompass all those technologies considered to be technologically feasible. Following the development of this initial list of design options, DOE will review each design option based on the factors described in paragraph (c)(3) of this section and the policies stated in section 7. The reasons for eliminating or retaining any design option at this stage of the process will be fully documented and published as part of the NOPR and as appropriate for a given rule, in the pre-NOPR documents. The technologically feasible design options that are not eliminated in this screening will be considered further in the Engineering Analysis described in paragraph (d) of this section.

(3) *Factors for screening of design options.* The factors for screening design options include:

(i) Technological feasibility. Technologies incorporated in commercial products or in working prototypes will be considered technologically feasible.

(ii) Practicability to manufacture, install and service. If mass production of a technology under consideration for use in commercially-available products (or equipment) and reliable installation and servicing of the technology could be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standard, then that technology will be considered practicable to manufacture, install and service.

(iii) Adverse Impacts on Product Utility or Product Availability.

(iv) Adverse Impacts on Health or Safety.

(v) Unique-Pathway Proprietary Technologies. If a design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further.

(d) *Engineering analysis of design options and selection of candidate standard levels.* After design options are identified and screened, DOE will perform the engineering analysis and the benefit/cost analysis and select the candidate standard levels based on

these analyses. The results of the analyses will be published in a Technical Support Document (TSD) to accompany the appropriate rulemaking documents.

(1) *Identification of engineering analytical methods and tools.* DOE will select the specific engineering analysis tools (or multiple tools, if necessary to address uncertainty) to be used in the analysis of the design options identified as a result of the screening analysis.

(2) *Engineering and life-cycle cost analysis of design options.* DOE and its contractor will perform engineering and life-cycle cost analyses of the design options.

(3) *Review by stakeholders.* Interested parties will have the opportunity to review the results of the engineering and life-cycle cost analyses. If appropriate, a public workshop will be conducted to review these results. The analyses will be revised as appropriate on the basis of this input.

(4) *New information relating to the factors used for screening design options.* If further information or analysis leads to a determination that a design option, or a combination of design options, has unacceptable impacts, that design option or combination of design options will not be included in a candidate standard level.

(5) *Selection of candidate standard levels.* Based on the results of the engineering and life-cycle cost analysis of design options and the policies stated in paragraph (c) of this section, DOE will select the candidate standard levels for further analysis.

(e) *Pre-NOPR Stage*—(1) *Documentation of decisions on candidate standard selection.*

(i) If the early assessment and screening analysis indicates that continued development of a standard is appropriate, the Department will publish either:

(A) A notice accompanying a framework document and, subsequently, a preliminary analysis or;

(B) An ANOPR. The notice document will be published in the **Federal Register**, with accompanying documents referenced and posted in the appropriate docket.

(ii) If DOE determines at any point in the pre-NOPR stage that no candidate standard level is likely to produce the maximum improvement in energy efficiency that is both technologically feasible and economically justified or constitute significant energy savings, that conclusion will be announced in the **Federal Register** with an opportunity for public comment provided to stakeholders. In such cases, the Department will proceed with a rulemaking that proposes not to adopt new or amended standards.

(2) *Public comment and hearing.* The length of the public comment period for pre-NOPR rulemaking documents will vary depending upon the circumstances of the particular rulemaking, but will not be less than 75 calendar days. For such documents, DOE will determine whether a public hearing is appropriate.

(3) *Revisions based on comments.* Based on consideration of the comments received, any necessary changes to the engineering analysis or the candidate standard levels will be made.

(f) *Analysis of impacts and selection of proposed standard level.* After the pre-NOPR stage, if DOE has determined preliminarily that a candidate standard level is likely to produce the maximum improvement in energy efficiency that is both technologically feasible and economically justified or constitute significant energy savings, economic analyses of the impacts of the candidate standard levels will be conducted. The Department will propose new or amended standards based on the results of the impact analysis.

(1) *Identification of issues for analysis.* The Department, in consideration of comments received, will identify issues that will be examined in the impacts analysis.

(2) *Identification of analytical methods and tools.* DOE will select the specific economic analysis tools (or multiple tools if necessary to address uncertainty) to be used in the analysis of the candidate standard levels.

(3) *Analysis of impacts.* DOE will conduct the analysis of the impacts of candidate standard levels.

(4) *Factors to be considered in selecting a proposed standard.* The factors to be considered in selection of a proposed standard include:

(i) Impacts on manufacturers. The analysis of private manufacturer impacts will include: Estimated impacts on cash flow; assessment of impacts on manufacturers of specific categories of products/equipment and small manufacturers; assessment of impacts on manufacturers of multiple product-specific Federal regulatory requirements, including efficiency standards for other products and regulations of other agencies; and impacts on manufacturing capacity, plant closures, and loss of capital investment.

(ii) Private Impacts on consumers. The analysis of consumer impacts will include: Estimated private energy savings impacts on consumers based on national average energy prices and energy usage; assessments of impacts on subgroups of consumers based on major regional differences in usage or energy prices and significant variations in installation costs or performance; sensitivity analyses using high and low discount rates reflecting both private transactions and social discount rates and high and low energy price forecasts; consideration of changes to product utility, changes to purchase rate of products, and other impacts of likely concern to all or some consumers, based to the extent practicable on direct input from consumers; estimated life-cycle cost with sensitivity analysis; consideration of the increased first cost to consumers and the time required for energy cost savings to pay back these first costs; and loss of utility.

Other analyses of social and distributional effects include:

(iii) Impacts on competition, including industry concentration analysis.

(iv) Impacts on utilities. The analysis of utility impacts will include estimated marginal impacts on electric and gas utility costs and revenues.

(v) National energy, economic, and employment impacts. The analysis of national energy, economic, and employment impacts will include: Estimated energy savings by fuel type; estimated net present value of benefits to all consumers; and estimates of the direct and indirect impacts on employment by appliance manufacturers, relevant service industries, energy suppliers, suppliers of complementary and substitution products, and the economy in general.

(vi) Impacts on the environment. The analysis of environmental impacts will include estimated impacts on emissions of carbon and relevant criteria pollutants, and impacts on pollution control costs.

(vii) Impacts of non-regulatory approaches. The analysis of energy savings and consumer impacts will incorporate an assessment of the impacts of market forces and existing voluntary programs in promoting product/equipment efficiency, usage, and related characteristics in the absence of updated efficiency standards.

(viii) New information relating to the factors used for screening design options.

(g) *Notice of Proposed Rulemaking*—(1) *Documentation of decisions on proposed standard selection.* The Department will publish a NOPR in the **Federal Register** that proposes standard levels and explains the basis for the selection of those proposed levels, and will post on its website a draft TSD documenting the analysis of impacts. The draft TSD will also be posted in the appropriate docket on *http://www.regulations.gov.* As required by 42 U.S.C. 6295(p)(1) of EPCA, the NOPR also will describe the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible and, if the proposed standards would not achieve these levels, the reasons for proposing different standards.

(2) *Public comment and hearing.* There will be not less than 75 days for public comment on the NOPR, with at least one public hearing or workshop. (42 U.S.C. 6295(p)(2) and 6306)

(3) *Revisions to impact analyses and selection of final standard.* Based on the public comments received, DOE will review the proposed standard and impact analyses, and make modifications as necessary. If major changes to the analyses are required at this stage, DOE will publish a Supplemental Notice of Proposed Rulemaking (SNOPR), when required. DOE may also publish a NODA or RFI, where appropriate.

(h) *Final Rule.* The Department will publish a Final Rule in the **Federal Register** that promulgates standard levels, responds to public comments received on the NOPR, and explains how the selection of those standards meets the statutory requirement that any new or amended energy conservation standard produces the maximum improvement in energy efficiency that is both technologically feasible and economically justified and constitutes significant energy savings, accompanied by a final TSD.

7. Policies on Selection of Standards

(a) *Purpose.* (1) Section 5 describes the process that will be used to consider new or revised energy efficiency standards and lists a number of factors and analyses that will be considered at specified points in the process. Department policies concerning the selection of new or revised standards, and decisions preliminary thereto, are described in this section. These policies are intended to elaborate on the statutory criteria provided in 42 U.S.C. 6295 of EPCA.

(2) The procedures described in this section are intended to assist the Department in making the determinations required by EPCA and do not preclude DOE's consideration of any other information consistent with the relevant statutory criteria. The Department will consider pertinent information in determining whether a new or revised standard is consistent with the statutory criteria.

(b) *Screening design options.* These factors will be considered as follows in determining whether a design option will receive any further consideration:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in commercially-viable, existing prototypes will not be considered further.

(2) *Practicability to manufacture, install and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility.* If a technology is determined to have significant adverse impact on the utility of the product/equipment to subgroups of consumers, or result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S. at the time, it will not be considered further.

(4) *Safety of technologies.* If it is determined that a technology will have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-pathway proprietary technologies.* If a technology has proprietary protection and represents a unique pathway to achieving a given efficiency level, it will not be considered further, due to the potential for monopolistic concerns.

(c) *Identification of candidate standard levels.* Based on the results of the engineering and cost/benefit analyses of design options, DOE will identify the candidate standard levels for further analysis. Candidate standard levels will be selected as follows:

(1) *Costs and savings of design options.* Design options that have payback periods that exceed the median life of the product or which result in life-cycle cost increases relative to the base case, using typical fuel costs, usage, and private discount rates, will not be used as the basis for candidate standard levels.

(2) *Further information on factors used for screening design options.* If further information or analysis leads to a determination that a design option, or a combination of design options, has unacceptable impacts under the policies stated in this Appendix, that design option or combination of design options will not be included in a candidate standard level.

(3) *Selection of candidate standard levels.* Candidate standard levels, which will be identified in the pre-NOPR documents and on which impact analyses will be conducted, will be based on the remaining design options.

(i) The range of candidate standard levels will typically include:

(A) The most energy-efficient combination of design options;

(B) The combination of design options with the lowest life-cycle cost; and

(C) A combination of design options with a payback period of not more than three years.

(ii) Candidate standard levels that incorporate noteworthy technologies or fill in large gaps between efficiency levels of other candidate standard levels also may be selected.

(d) *Pre-NOPR Stage.* New information provided in public comments on any pre-NOPR documents will be considered to determine whether any changes to the candidate standard levels are needed before proceeding to the analysis of impacts.

(e) *Selection of proposed standard.* Based on the results of the analysis of impacts, DOE will select a standard level to be proposed for public comment in the NOPR. As required under 42 U.S.C. 6295(o)(2)(A), any new or revised standard must be designed to achieve the maximum improvement in energy efficiency that is determined to be technologically feasible and economically justified.

(1) *Statutory policies.* The fundamental policies concerning the selection of standards include:

(i) A candidate/trial standard level will not be proposed or promulgated if the Department determines that it is not technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and (o)(3)(B)) For a standard level to be economically justified, the Secretary must determine that the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) A standard level is subject to a rebuttable presumption that it is economically justified if the payback period is three years or less. (42 U.S.C. 6295(o)(2)(B)(iii))

(ii) If the Department determines that a standard level is likely to result in the unavailability of any covered product/equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S. at the time, that standard level will not be proposed. (42 U.S.C. 6295(o)(4))

(iii) If the Department determines that a standard level would not result in significant conservation of energy, that standard level will not be proposed. (42 U.S.C. 6295(o)(3)(B))

(2) *Considerations in assessing economic justification.*

(i) The following considerations will guide the application of the economic justification criterion in selecting a proposed standard:

(A) The Department will determine whether a candidate/trial standard level would result in a negative return on investment for the industry, would significantly reduce the value of the industry, or would cause significant adverse impacts to a significant subgroup of manufacturers (including small manufacturing businesses).

(B) The Department will determine whether a candidate/trial standard level would be the direct cause of plant closures, significant losses in domestic manufacturer employment, or significant losses of capital investment by domestic manufacturers.

(C) The Department will determine whether a candidate/trial standard level would have a significant adverse impact on the environment or energy security.

(D) The Department will determine whether a candidate/trial standard level would not result in significant energy conservation relative to non-regulatory approaches.

(E) The Department will determine whether a candidate/trial standard level is not practicable to manufacture or has a negative impact on consumer utility or safety.

(F) The Department will determine whether a candidate/trial standard level is not consistent with the policies relating to consumer costs in paragraph (c)(1) of this section.

(G) The Department will determine whether a candidate/trial standard level would be economically justified when compared to the set of other feasible trial standard levels. In making this determination, the Department will consider whether an economically rational consumer would choose a product meeting the candidate/trial standard level over products meeting the other feasible trial standard levels after considering all relevant factors, including but not limited to, energy savings, efficacy, product features, and life-cycle costs.

(H) The Department will determine whether a candidate/trial standard level will have significant adverse impacts on a significant subgroup of consumers (including low-income consumers).

(I) The Department of Energy and the Department of Justice will determine whether a candidate/trial standard level would have significant anticompetitive effects.

(ii) DOE will, consistent with paragraph (f) of this section, account for the views expressed by the Department of Justice regarding a given proposal's effects on competition.

(f) *Selection of a final standard.* New information provided in the public comments on the NOPR and any analysis by the Department of Justice concerning impacts on competition of the proposed standard will be considered to determine whether issuance of a new or amended energy conservation standard produces the maximum improvement in energy efficiency that is both technologically feasible and economically justified and still constitutes significant energy savings or whether any change to the proposed standard level is needed before proceeding to the final rule. The same policies used to select the proposed standard level, as described in this section, will be used to guide the selection of the final standard level or a determination that no new or amended standard is justified.

8. Test Procedures

(a) *General.* As with the early assessment process for energy conservation standards, DOE believes that early stakeholder input is also very important during test procedure

rulemakings. DOE will follow an early assessment process similar to that described in the preceding sections discussing DOE's consideration of new or amended energy conservation standards. Consequently, DOE will publish a notice in the **Federal Register** whenever DOE is considering initiation of a rulemaking for new or revised test procedures. In that notice, DOE will request submission of comments, including data and information on whether an amended test procedure rule would:

(1) More accurately measure energy efficiency, energy use, water use (as specified in EPCA), or estimated annual operating cost of a covered product during a representative average use cycle or period of use; and

(2) Not be unduly burdensome to conduct. DOE will review comments submitted and, subject to statutory obligations, determine whether it agrees with the submitted information. If DOE determines that a new or amended test procedure is not justified at that time, it will not pursue the rulemaking and will publish a notice in the **Federal Register** to that effect. If DOE receives sufficient information suggesting a new or amended test procedure could more accurately measure energy efficiency, energy use, water use (as specified in EPCA), or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct or the information received is inconclusive with regard to these points, DOE would undertake the preliminary stages of a rulemaking to issue or amend the test procedure, as discussed further in the paragraphs that follow in this section.

(b) *Identifying the need to modify test procedures.* DOE will identify any necessary modifications to established test procedures prior to initiating the standards development process. It will consider all stakeholder comments with respect to needed test procedure modifications. If DOE determines that it is appropriate to continue the test procedure rulemaking after the early assessment process, it would provide further opportunities for early public input through **Federal Register** documents, including NODAs and/or RFIs.

(c) *Adoption of Industry Test Methods.* DOE will adopt industry test standards as DOE test procedures for covered products and equipment, unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that equipment during a representative average use cycle.

(d) *Issuing final test procedure modification.* Test procedure rulemakings establishing methodologies used to evaluate proposed energy conservation standards will be finalized at least 180 days prior to publication of a NOPR proposing new or amended energy conservation standards.

(e) *Effective Date of Test Procedures.* If required only for the evaluation and issuance of updated efficiency standards, use of the modified test procedures typically will not be required until the implementation date of updated standards.

9. ASHRAE Equipment

(a) EPCA provides that ASHRAE equipment are subject to unique statutory requirements and their own set of timelines. More specifically, pursuant to EPCA's statutory scheme for covered ASHRAE equipment, DOE is required to consider amending the existing Federal energy conservation standards and test procedures for certain enumerated types of commercial and industrial equipment (generally, commercial water heaters, commercial packaged boilers, commercial air-conditioning and heating equipment, and packaged terminal air conditioners and heat pumps) when ASHRAE Standard 90.1 is amended with respect to standards and test procedures applicable to such equipment. Not later than 180 days after the amendment of the standard, the Secretary will publish in the **Federal Register** for public comment an analysis of the energy savings potential of amended energy efficiency standards. For each type of equipment, EPCA directs that if ASHRAE Standard 90.1 is amended, not later than 18 months after the date of publication of the amendment to ASHRAE Standard 90.1, DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1 as the uniform national standard for such equipment, or amend the test procedure referenced in ASHRAE Standard 90.1 for the equipment at issue to be consistent with the applicable industry test procedure, respectively, unless—

(1) DOE determines by rule, and supported by clear and convincing evidence, that a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified; or

(2) The test procedure would not meet the requirements for such test procedures specified in EPCA. In such case, DOE must adopt the more stringent standard not later than 30 months after the date of publication of the amendment to the ASHRAE/IES Standard 90.1 for the product.

(b) For ASHRAE equipment, DOE will adopt the revised ASHRAE levels or the industry test procedure, as contemplated by EPCA, except in very limited circumstances.

With respect to DOE's consideration of standards more-stringent than the ASHRAE levels or changes to the industry test procedure, DOE will do so only if it can meet a very high bar to demonstrate the ''clear and convincing evidence'' threshold. Specifically, clear and convincing evidence would exist only where the facts and data made available to DOE regarding a particular ASHRAE amendment demonstrates that there is *no substantial doubt* that the more stringent standard would result in a significant additional amount of energy savings over the relevant ASHRAE level, is technologically feasible and economically justified, or, in the case of test procedures, that the industry test procedure does not meet the EPCA requirements. DOE will make this determination only after seeking data and information from interested parties and the public to help inform the Agency's views. DOE will seek from interested stakeholders and the public data and information to assist in making this determination, prior to publishing a proposed rule to adopt more-stringent standards or a different test procedure.

(c) DOE's review in adopting amendments based on an action by ASHRAE to amend Standard 90.1 is strictly limited to the specific standards or test procedure amendment for the specific equipment for which ASHRAE has made a change (*i.e.,* determined down to the equipment class level). DOE believes that ASHRAE not acting to amend Standard 90.1 is tantamount to a decision that the existing standard remain in place. Thus, when undertaking a review as required by 42 U.S.C. 6313(a)(6)(C), DOE would need to find clear and convincing evidence, as defined in this section, to issue a standard more stringent than the existing standard for the product.

10. Direct Final Rules

(a) A direct final rule (DFR), as contemplated in 42 U.S.C. 6295(p)(4), is a procedural mechanism separate from the negotiated rulemaking process outlined under the Negotiated Rulemaking Act (5 U.S.C. 563). DOE may issue a DFR adopting energy conservation standards for a covered product provided that:

(1) DOE receives a joint proposal from a group of ''interested persons that are fairly representative of relevant points of view,'' which does not include DOE as a member of the group. At a minimum, to be ''fairly representative of relevant points of view'' the group submitting a joint statement must include larger concerns and small businesses in the regulated industry/manufacturer community, energy advocates, energy utilities, as appropriate, consumers, and States. However, it will be necessary to evaluate the meaning of ''fairly representative'' on a case-by-case basis, subject to the circumstances of a particular rulemaking, to determine whether additional parties must be part of a joint statement in order to be ''fairly representative of relevant points of view.''

(2) This paragraph (a)(2) describes the steps DOE will follow with respect to a DFR.

(i) DOE must determine the energy conservation standard recommended in the joint proposal is in accordance with the requirements of 42 U.S.C. 6295(o) or section 342(a)(6)(B) as applicable. Because the DFR provision is procedural, and not a separate grant of rulemaking authority, any standard issued under the DFR process must comply fully with the provisions of the EPCA subsection under which the rule is authorized. DOE will not accept or issue as a DFR a submitted joint proposal that does not comply with all applicable EPCA requirements.

(ii) Upon receipt of a joint statement recommending energy conservation standards, DOE will publish in the **Federal Register** that statement, as submitted to DOE, in order to obtain feedback as to whether the joint statement was submitted by a group that is fairly representative of relevant points of view. If DOE determines that the DFR was not submitted by a group that is fairly representative of relevant points of view, DOE will not move forward with a DFR and

will consider whether any further rulemaking activity is appropriate. If the Secretary determines that a DFR cannot be issued based on the statement, the Secretary shall publish a notice of the determination, together with an explanation of the reasons for the determination.

(iii) Simultaneous with the issuance of a DFR, DOE must also publish a NOPR containing the same energy conservation standards as in the DFR. Following publication of the DFR, DOE must solicit public comment for a period of at least 110 days; then, not later than 120 days after issuance of the DFR, the Secretary must determine whether any adverse comments ''may provide a reasonable basis for withdrawing the direct final rule,'' based on the rulemaking record. If DOE determines that one or more substantive comments objecting to the DFR provides a sufficient reason to withdraw the DFR, DOE will do so, and will instead proceed with the published NOPR (unless the information provided suggests that withdrawal of that NOPR would likewise be appropriate). In making this determination, DOE may consider comments as adverse, even if the issue was brought up previously during DOE-initiated discussions (*e.g.* publication of a framework or RFI document), if the Department concludes that the comments merit further consideration.

11. Negotiated Rulemaking Process

(a)(1) In those instances where negotiated rulemaking is determined to be appropriate, DOE will comply with the requirements of the Negotiated Rulemaking Act (NRA) (5 U.S.C. 561–570) and the requirements of the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). To facilitate potential negotiated rulemakings, and to comply with the requirements of the NRA and the FACA, DOE established the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC). Working groups can be established as subcommittees of ASRAC, from time to time, and for specific products/equipment, with one member representative from the ASRAC committee attending and participating in the meetings of a specific working group. (Consistent with 5 U.S.C. 565(b), committee membership is limited to 25 members, unless the agency determines that more members are necessary for the functioning of the committee or to achieve balanced membership.) Ultimately, the working group reports to ASRAC, and ASRAC itself votes on whether to make a recommendation to DOE to adopt a consensus agreement developed through the negotiated rulemaking.

(2) DOE will use the negotiated rulemaking process, on a case-by-case basis and, in appropriate circumstances, in an attempt to develop a consensus proposal before issuing a proposed rule. When approached by one or more stakeholders or on its own initiative, DOE will use a convener to ascertain, in consultation with relevant stakeholders, whether the development of the subject matter of a potential rulemaking proceeding would be conducive to negotiated rulemaking, with the agency evaluating the convener's recommendation before reaching a decision on such matter. A neutral, independent convenor will identify issues that any negotiation would need to address, assess the full breadth of interested parties who should be included in any negotiated rulemaking to address those issues, and make a judgment as to whether there is the potential for a group of individuals negotiating in good faith to reach a consensus agreement given the issues presented. DOE will have a neutral and independent facilitator, who is not a DOE employee or consultant, present at all ASRAC working group meetings.

(3) DOE will base its decision to proceed with a potential negotiated rulemaking on the report of the convenor. The following additional factors militate in favor of a negotiated rulemaking:

(i) Stakeholders commented in favor of negotiated rulemaking in response to the initial rulemaking notice;

(ii) The rulemaking analysis or underlying technologies in question are complex, and DOE can benefit from external expertise and/or real-time changes to the analysis based on stakeholder feedback, information, and data;

(iii) The current standards have already been amended one or more times;

(iv) Stakeholders from differing points of view are willing to participate; and

(v) DOE determines that the parties may be able to reach an agreement.

(4) DOE will provide notice in the **Federal Register** of its intent to form an ASRAC working group (including a request for nominations to serve on the committee), announcement of the selection of working group members (including their affiliation), and announcement of public meetings and the subject matter to be addressed.

(b) DOE's role in the negotiated rulemaking process is to participate as a member of a group attempting to develop a consensus proposal for energy conservation standards for a particular product/equipment and to provide technical/analytical advice to the negotiating parties and legal input where needed to support the development of a potential consensus recommendation in the form of a term sheet.

(c) A negotiated rulemaking may be used to develop energy conservation standards, test procedures, product coverage, and other categories of rulemaking activities.

(d) A dedicated portion of each ASRAC working group meeting will be set aside to receive input and data from non-members of the ASRAC working group. This additional opportunity for input does nothing to diminish stakeholders' ability to provide comments and ask relevant questions during the course of the working group's ongoing deliberations at the public meeting.

(e) If DOE determines to proceed with a rulemaking at the conclusion of negotiations, DOE will publish a proposed rule. DOE will consider the approved term sheet in developing such proposed rule. A negotiated rulemaking in which DOE participates under the ASRAC process will not result in the issuance of a DFR. Further, any potential term sheet upon which an ASRAC working group reaches consensus must comply with all of the provisions of EPCA under which the rule is authorized. DOE cannot accept recommendations or issue a NOPR based upon a negotiated rulemaking that does not comply with all applicable EPCA requirements, including those product- or equipment-specific requirements included in the provision that authorizes issuance of the standard.

12. Principles for Distinguishing Between Effective and Compliance Dates

(a) It is critical to recognize that for any given rule, the effective and compliance dates for either DOE test procedures or DOE energy conservation standards are typically not identical. These terms should not be used interchangeably.

(b) *Effective date.* The effective date is the date a rule is legally operative after being published in the **Federal Register**.

(c) *Compliance date.* (1) For test procedures, the compliance date is the specific date when manufacturers are required to use the new or amended test procedure requirements to make representations concerning the energy efficiency or use of a product, including certification that the covered product/equipment meets an applicable energy conservation standard.

(2) For energy conservation standards, the compliance date is the specific date upon which manufacturers are required to meet the new or amended standards for applicable covered products/equipment that are distributed in interstate commerce.

13. Principles for the Conduct of the Engineering Analysis

(a) The purpose of the engineering analysis is to develop the relationship between efficiency and cost of the subject product/equipment. The Department will use the most appropriate means available to determine the efficiency/cost relationship, including an overall system approach or engineering modeling to predict the improvement in efficiency that can be expected from individual design options as discussed in paragraphs (b) and (c) of this section. From this efficiency/cost relationship, measures such as payback, life-cycle cost, and energy savings can be developed. The Department will identify issues that will be examined in the engineering analysis and the types of specialized expertise that may be required. DOE will select appropriate contractors, subcontractors, and expert consultants, as necessary, to perform the engineering analysis and the impact analysis. Also, the Department will consider data, information, and analyses received from interested parties for use in the analysis wherever feasible.

(b) The engineering analysis begins with the list of design options developed in consultation with the interested parties as a result of the screening process. The Department will establish the likely cost and performance improvement of each design option. Ranges and uncertainties of cost and performance will be established, although efforts will be made to minimize uncertainties by using measures such as test data or component or material supplier information where available. Estimated uncertainties will be carried forward in subsequent analyses. The use of quantitative

models will be supplemented by qualitative assessments as appropriate.

(c) The next step includes identifying, modifying, or developing any engineering models necessary to predict the efficiency impact of any one or combination of design options on the product/equipment. A base case configuration or starting point will be established, as well as the order and combination/blending of the design options to be evaluated. DOE will then perform the engineering analysis and develop the cost-efficiency curve for the product/equipment. The cost efficiency curve and any necessary models will be available to stakeholders during the pre-NOPR stage of the rulemaking.

14. Principles for the Analysis of Impacts on Manufacturers

(a) *Purpose.* The purpose of the manufacturer analysis is to identify the likely private impacts of efficiency standards on manufacturers. The Department will analyze the impact of standards on manufacturers with substantial input from manufacturers and other interested parties. This section describes the principles that will be used in conducting future manufacturing impact analyses.

(b) *Issue identification.* In the impact analysis stage (section 5(d)), the Department will identify issues that will require greater consideration in the detailed manufacturer impact analysis. Possible issues may include identification of specific types or groups of manufacturers and concerns over access to technology. Specialized contractor expertise, empirical data requirements, and analytical tools required to perform the manufacturer impact analysis also would be identified at this stage.

(c) *Industry characterization.* Prior to initiating detailed impact studies, the Department will seek input on the present and past industry structure and market characteristics. Input on the following issues will be sought:

(1) Manufacturers and their current and historical relative market shares;

(2) Manufacturer characteristics, such as whether manufacturers make a full line of models or serve a niche market;

(3) Trends in the number of manufacturers;

(4) Financial situation of manufacturers;

(5) Trends in product/equipment characteristics and retail markets including manufacturer market shares and market concentration; and

(6) Identification of other relevant regulatory actions and a description of the nature and timing of any likely impacts.

(d) *Cost impacts on manufacturers.* The costs of labor, material, engineering, tooling, and capital are difficult to estimate, manufacturer-specific, and usually proprietary. The Department will seek input from interested parties on the treatment of cost issues. Manufacturers will be encouraged to offer suggestions as to possible sources of data and appropriate data collection methodologies. Costing issues to be addressed include:

(1) Estimates of total private cost impacts, including product/equipment-specific costs (based on cost impacts estimated for the engineering analysis) and front-end investment/conversion costs for the full range of product/equipment models.

(2) Range of uncertainties in estimates of average cost, considering alternative designs and technologies which may vary cost impacts and changes in costs of material, labor, and other inputs which may vary costs.

(3) Variable cost impacts on particular types of manufacturers, considering factors such as atypical sunk costs or characteristics of specific models which may increase or decrease costs.

(e) *Impacts on product/equipment sales, features, prices, and cost recovery.* In order to make manufacturer cash-flow calculations, it is necessary to predict the number of products/equipment sold and their sale price. This requires an assessment of the likely impacts of price changes on the number of products/equipment sold and on typical features of models sold. Past analyses have relied on price and shipment data generated by economic models. The Department will develop additional estimates of prices and shipments by drawing on multiple sources of data and experience including: Actual shipment and pricing experience; data from manufacturers, retailers, and other market experts; financial models, and sensitivity analyses. The possible impacts of candidate/trial standard levels on consumer choices among competing fuels will be explicitly considered where relevant.

(f) *Measures of impact.* The manufacturer impact analysis will estimate the impacts of candidate/trial standard levels on the net cash flow of manufacturers. Computations will be performed for the industry as a whole and for typical and atypical manufacturers. The exact nature and the process by which the analysis will be conducted will be determined by DOE, with input from interested parties, as appropriate. Impacts to be analyzed include:

(1) Industry net present value, with sensitivity analyses based on uncertainty of costs, sales prices, and sales volumes;

(2) Cash flows, by year; and

(3) Other measures of impact, such as revenue, net income, and return on equity, as appropriate.

DOE also notes that the characteristics of a typical manufacturers worthy of special consideration will be determined in consultation with manufacturers and other interested parties and may include: Manufacturers incurring higher or lower than average costs; and manufacturers experiencing greater or fewer adverse impacts on sales. Alternative scenarios based on other methods of estimating cost or sales impacts also will be performed, as needed.

(g) *Cumulative Impacts of Other Federal Regulatory Actions.* (1) The Department will recognize and seek to mitigate the overlapping effects on manufacturers of new or revised DOE standards and other regulatory actions affecting the same products or equipment. DOE will analyze and consider the impact on manufacturers of multiple product/equipment-specific regulatory actions. These factors will be considered in setting rulemaking priorities, conducting the early assessment as to whether DOE should proceed with a standards rulemaking, assessing manufacturer impacts of a particular standard, and establishing compliance dates for a new or revised standard that, consistent with any statutory requirements, are appropriately coordinated with other regulatory actions to mitigate any cumulative burden.

(2) If the Department determines that a proposed standard would impose a significant impact on product or equipment manufacturers within approximately three years of the compliance date of another DOE standard that imposes significant impacts on the same manufacturers (or divisions thereof, as appropriate), the Department will, in addition to evaluating the impact on manufacturers of the proposed standard, assess the joint impacts of both standards on manufacturers.

(3) If the Department is directed to establish or revise standards for products/equipment that are components of other products/equipment subject to standards, the Department will consider the interaction between such standards in setting rulemaking priorities and assessing manufacturer impacts of a particular standard. The Department will assess, as part of the engineering and impact analyses, the cost of components subject to efficiency standards.

(h) *Summary of quantitative and qualitative assessments.* The summary of quantitative and qualitative assessments will contain a description and discussion of uncertainties. Alternative estimates of impacts, resulting from the different potential scenarios developed throughout the analysis, will be explicitly presented in the final analysis results.

(1) *Key modeling and analytical tools.* In its assessment of the likely impacts of standards on manufacturers, the Department will use models that are clear and understandable, feature accessible calculations, and have clearly explained assumptions. As a starting point, the Department will use the Government Regulatory Impact Model (GRIM). The Department will also support the development of economic models for price and volume forecasting. Research required to update key economic data will be considered.

(2) *Reserved.*

15. Principles for the Analysis of Impacts on Consumers

(a) *Early consideration of impacts on consumer utility.* The Department will consider at the earliest stages of the development of a standard whether particular design options will lessen the utility of the covered products/equipment to the consumer. See paragraph (c) of section 6.

(b) *Impacts on product/equipment availability.* The Department will determine, based on consideration of information submitted during the standard development process, whether a proposed standard is likely to result in the unavailability of any covered product/equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products/equipment generally available in

the U.S. at the time. DOE will not promulgate a standard if it concludes that it would result in such unavailability.

(c) *Department of Justice review.* As required by law, the Department will solicit the views of the Department of Justice on any lessening of competition likely to result from the imposition of a proposed standard and will give the views provided full consideration in assessing economic justification of a proposed standard. In addition, DOE may consult with the Department of Justice at earlier stages in the standards development process to seek its preliminary views on competitive impacts.

(d) *Variation in consumer impacts.* The Department will use regional analysis and sensitivity analysis tools, as appropriate, to evaluate the potential distribution of impacts of candidate/trial standard levels among different subgroups of consumers. The Department will consider impacts on significant segments of consumers in determining standards levels. Where there are significant negative impacts on identifiable subgroups, DOE will consider the efficacy of voluntary approaches as a means to achieve potential energy savings.

(e) *Payback period and first cost.* (1) In the assessment of consumer impacts of standards, the Department will consider Life-Cycle Cost, Payback Period, and Cost of Conserved Energy to evaluate the savings in operating expenses relative to increases in purchase price. The Department also performs sensitivity and scenario analyses when appropriate. The results of these analyses will be carried throughout the analysis and the ensuing uncertainty described.

(2) If, in the analysis of consumer impacts, the Department determines that a candidate/trial standard level would result in a substantial increase in product/equipment first costs to consumers or would not pay back such additional first costs through energy cost savings in less than three years, Department will assess the likely impacts of such a standard on low-income households, product/equipment sales and fuel switching, as appropriate.

16. Consideration of Non-Regulatory Approaches

The Department recognizes that non-regulatory efforts by manufacturers, utilities, and other interested parties can result in substantial efficiency improvements. The Department intends to consider the likely effects of non-regulatory initiatives on product/equipment energy use, consumer utility and life-cycle costs, manufacturers, competition, utilities, and the environment, as well as the distribution of these impacts among different regions, consumers, manufacturers, and utilities. DOE will attempt to base its assessment on the actual impacts of such initiatives to date, but also will consider information presented regarding the impacts that any existing initiative might have in the future. Such information is likely to include a demonstration of the strong commitment of manufacturers, distribution channels, utilities, or others to such non-regulatory efficiency improvements. This information will be used in assessing the likely incremental impacts of establishing or revising standards, in assessing—where possible—appropriate compliance dates for new or revised standards, and in considering DOE support of non-regulatory initiatives.

17. Cross-Cutting Analytical Assumptions

In selecting values for certain cross-cutting analytical assumptions, DOE expects to continue relying upon the following sources and general principles:

(a) *Underlying economic assumptions.* The appliance standards analyses will generally use the same economic growth and development assumptions that underlie the most current Annual Energy Outlook (AEO) published by the Energy Information Administration (EIA).

(b) *Analytic time length.* The appliance standards analyses will use two time lengths—30 years and another time length that is specific to the standard being considered such as the useful lifetime of the product under consideration. As a sensitivity case, the analyses will also use a 9-year regulatory time line in analyzing the effects of the standard.

(c) *Energy price and demand trends.* Analyses of the likely impact of appliance standards on typical users will generally adopt the mid-range energy price and demand scenario of the EIA's most current AEO. The sensitivity of such estimated impacts to possible variations in future energy prices are likely to be examined using the EIA's high and low energy price scenarios.

(d) *Product/equipment-specific energy-efficiency trends, without updated standards.* Product/equipment-specific energy-efficiency trends will be based on a combination of the efficiency trends forecast by the EIA's residential and commercial demand model of the National Energy Modeling System (NEMS) and product-specific assessments by DOE and its contractors with input from interested parties.

(e) *Price forecasting.* DOE will endeavor to use robust price forecasting techniques in projecting future prices of products.

(f) *Private Discount rates.* For residential and commercial consumers, ranges of three different real discount rates will be used. For residential consumers, the mid-range discount rate will represent DOE's approximation of the average financing cost (or opportunity costs of reduced savings) experienced by typical consumers. Sensitivity analyses will be performed using discount rates reflecting the costs more likely to be experienced by residential consumers with little or no savings and credit card financing and consumers with substantial savings. For commercial users, a mid-range discount rate reflecting DOE's approximation of the average real rate of return on commercial investment will be used, with sensitivity analyses being performed using values indicative of the range of real rates of return likely to be experienced by typical commercial businesses. For national net present value calculations, DOE would use the Administration's approximation of the average real rate of return on private investment in the U.S. economy. For manufacturer impacts, DOE typically uses a range of real discount rates which are representative of the real rates of return experienced by typical U.S. manufacturers affected by the program.

(g) *Social Discount Rates.* Social discount rates as specified in OMB Circular A–4 will be used in assessing social effects such as costs and benefits.

(h) *Environmental impacts.* (1) DOE calculates emission reductions of carbon dioxide, sulfur dioxide, nitrogen oxides, methane, nitrous oxides, and mercury likely to be avoided by candidate/trial standard levels based on an emissions analysis that includes the two components described in paragraphs (h)(2) and (h)(3) of this section.

(2) The first component estimates the effect of potential candidate/trial standard levels on power sector and site combustion emissions of carbon dioxide, nitrogen oxides, sulfur dioxide, mercury, methane, and nitrous oxide. DOE develops the power sector emissions analysis using a methodology based on DOE's latest Annual Energy Outlook. For site combustion of natural gas or petroleum fuels, the combustion emissions of carbon dioxide and nitrogen oxides are estimated using emission intensity factors from the Environmental Protection Agency.

(3) The second component of DOE's emissions analysis estimates the effect of potential candidate/trial standard levels on emissions of carbon dioxide, nitrogen oxides, sulfur dioxide, mercury, methane, and nitrous oxide due to ''upstream activities'' in the fuel production chain. These upstream activities include the emissions related to extracting, processing, and transporting fuels to the site of combustion as detailed in DOE's Fuel-Fuel-Cycle Statement of Policy (76 FR 51281 (August 18, 2011)). DOE will consider the effects of the candidate/trial standard levels on these emissions after assessing the seven factors required to demonstrate economic justification under EPCA. Consistent with Executive Order 13783, dated March 28, 2017, when monetizing the value of changes in reductions in CO_2 and nitrous oxides emissions resulting from its energy conservation standards regulations, including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates, DOE ensures, to the extent permitted by law, that any such estimates are consistent with the guidance contained in OMB Circular A–4 of September 17, 2003 (Regulatory Analysis).

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 3. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 4. Section 431.4 is added to subpart A to read as follows:

§ 431.4 Procedures, interpretations, and policies for consideration of new or revised energy conservation standards and test procedures for commercial/industrial equipment.

The procedures, interpretations, and policies for consideration of new or revised energy conservation standards and test procedures set forth in appendix A to subpart C of part 430 of this chapter shall apply to the consideration of new or revised energy conservation standards and test procedures considered for adoption under this part.

[FR Doc. 2019–01854 Filed 2–12–19; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

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Part IV

The President

Memorandum of December 21, 2018—Delegation of Functions and Authorities Under Section 1238 of the FAA Reauthorization Act of 2018

Memorandum of December 21, 2018—Delegation of Functions and Authorities Under Section 1245 of the National Defense Authorization Act for Fiscal Year 2019

Memorandum of January 8, 2019—Decision on the United States Consulate General in Jerusalem

Memorandum of January 15, 2019—Delegation of Functions and Authorities Under the Hizballah International Financing Prevention Act of 2015, as Amended, and the Hizballah International Financing Prevention Amendments Act of 2018

Proclamation 9843—Death of John David Dingell, Jr.

Federal Register
Vol. 84, No. 30
Wednesday, February 13, 2019

Presidential Documents

Title 3—

The President

Memorandum of December 21, 2018

Delegation of Functions and Authorities Under Section 1238 of the FAA Reauthorization Act of 2018

Memorandum for the Secretary of State [and] the Secretary of Homeland Security

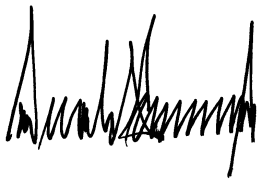
By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby:

(1) delegate to the Secretary of State the functions and authorities vested in the President by sections 1238(a)(1)(A)–(B) of the FAA Reauthorization Act of 2018 (Public Law 115–254); and

(2) delegate to the Secretary of Homeland Security the functions and authorities vested in the President by sections 1238(a)(1)(C)–(H) of the FAA Reauthorization Act of 2018.

The delegations in this memorandum shall apply to any provisions of any future public law that are the same or substantially the same as the provisions referenced in this memorandum. The Secretary of State and the Secretary of Homeland Security may redelegate within their departments the functions and authorities delegated by this memorandum to the extent authorized by law.

The Secretary of State is authorized and directed to publish this memorandum in the *Federal Register.*



THE WHITE HOUSE,
Washington, December 21, 2018

[FR Doc. 2019–02455
Filed 2–12–19; 11:15 am]
Billing code 4710–10–P

Presidential Documents

Memorandum of December 21, 2018

Delegation of Functions and Authorities Under Section 1245 of the National Defense Authorization Act for Fiscal Year 2019

Memorandum for the Secretary of State[,] the Secretary of Defense[, and] the Secretary of Energy

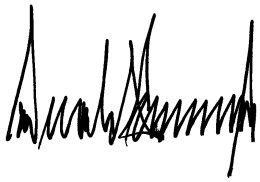
By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby:

(a) delegate to the Secretary of State, in coordination with departments and agencies through the National Security Presidential Memorandum–4 process, the functions and authorities vested in the President by sections 1245(a)(1) and 1245(a)(2) of the National Defense Authorization Act (NDAA) for Fiscal Year 2019 (Public Law 115–232); and

(b) delegate to the Secretary of Defense, in coordination with departments and agencies through the National Security Presidential Memorandum–4 process, the functions and authorities vested in the President by section 1245(a)(3) of the NDAA for Fiscal Year 2019.

The delegations in this memorandum shall apply to any provisions of any future public law that are the same or substantially the same as the provisions referenced in this memorandum.

The Secretary of State is authorized and directed to publish this memorandum in the *Federal Register.*



THE WHITE HOUSE,
Washington, December 21, 2018

[FR Doc. 2019–02456
Filed 2–12–19; 11:15 am]
Billing code 4710–10–P

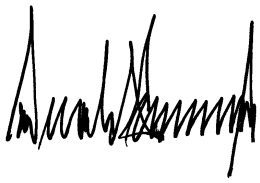
Presidential Documents

Memorandum of January 8, 2019

Decision on the United States Consulate General in Jerusalem

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Constitution and the laws of the United States of America, and after carefully considering the recommendation of the Secretary of State, I hereby authorize you to take the steps necessary to close the United States Consulate General in Jerusalem and to merge its functions into the United States Embassy to Israel.



THE WHITE HOUSE,
Washington, January 8, 2019

[FR Doc. 2019–02461
Filed 2–12–19; 11:15 am]
Billing code 3295–F9–P

Presidential Documents

Memorandum of January 15, 2019

Delegation of Functions and Authorities Under the Hizballah International Financing Prevention Act of 2015, as Amended, and the Hizballah International Financing Prevention Amendments Act of 2018

Memorandum for the Secretary of State[,] the Secretary of the Treasury[, and] the Director of National Intelligence

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby:

(a) delegate to the Secretary of State the functions and authorities vested in the President by sections 101(b)(2), 101(c), 102(b), 103(b–c), and 201(c) of the Hizballah International Financing Prevention Act of 2015 (Public Law 114–102) (HIFPA), as amended by the Hizballah International Financing Prevention Amendments Act of 2018 (Public Law 115–272) (HIFPAA);

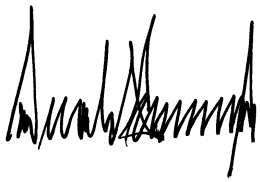
(b) delegate to the Secretary of the Treasury the functions and authorities vested in the President by sections 101(a), 101(b)(1), 102(a), 102(c), 103(a), 201(a–b), 204(b), and 302 of HIFPA, as amended by HIFPAA, as well as section 301 of HIFPAA; and

(c) delegate to the Director of National Intelligence the functions and authorities vested in the President by sections 202 and 204(a, c–d) of HIFPA, as amended by HIFPAA.

The functions and authorities delegated by this memorandum shall be exercised in coordination with departments and agencies through the National Security Presidential Memorandum–4 process.

This memorandum rescinds and replaces any prior delegations of authority to the Secretary of the Treasury, the Secretary of State, and the Director of National Intelligence under the HIFPA. Any reference in this memorandum to HIFPA or HIFPAA shall be deemed to be a reference to any future Act that is the same or substantially the same as such provision.

The Secretary of State is authorized and directed to publish this memorandum in the *Federal Register.*



THE WHITE HOUSE,
Washington, January 15, 2019

[FR Doc. 2019–02467
Filed 2–12–19; 11:15 am]
Billing code 4710–10–P

Presidential Documents

Proclamation 9843 of February 8, 2019

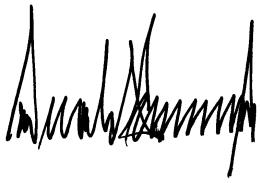
Death of John David Dingell, Jr.

By the President of the United States of America

A Proclamation

As a mark of respect for the memory and longstanding service of former Representative John David Dingell, Jr., of Michigan—the longest-serving Member of Congress in our Nation's history—I hereby order, by the authority vested in me by the Constitution and the laws of the United States of America, that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, February 9, 2019. I also direct that the flag shall be flown at half-staff for the same period at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of February, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-third.



[FR Doc. 2019–02478
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